
An Examination of Policies Promoting Large-Scale Investments in Farmland in Cambodia



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EXECUTIVE SUMMARY

Against the backdrop of ongoing intense debate in Cambodia about economic land concessions (ELCs) this paper aims to capture the status quo, more than ten years after the adoption of a new Land Law and almost seven years after the promulgation of the relevant Sub-Decree on Economic Land Concessions. It is hoped that a survey-like appeasement of the policies and practices of these land concessions to date will assist stakeholders in Cambodia in developing fresh policy responses to a series of significant challenges encountered until today. The question is to figure whether it is possible to identify a new 'common ground'. Uncovering such common ground and identifying lessons from past experiences may assist in formulating policy responses to current problems with economic land concessions and possibly present new directions for policy-making. Having this in mind, this paper will focus on the overall policy framework, namely the basic objectives that have guided decision-making in the field of economic land concessions. In doing so, the focus will be on reconnecting this policy with its original objectives, in particular the reduction of rural poverty and rural development, as these objectives constitute the benchmarks against which any progress or failure of these policies should be measured.

This paper begins first with describing the main problem that these policies originally intended to address, namely that of rural poverty in Cambodia. It then rebuilds the process through which economic land concessions were introduced as one measure for a proposed solution to this problem, in particular, by claiming to provide a triple win scenario for the state, the economy, and the affected people. Next, the paper contrasts this proposal for a solution with the reality and practice of economic land concessions and its impact on local populations. However, this paper also summarizes recent developments that seem to indicate some significant corrections to the original ELC policy, most visibly expressed by a proclaimed moratorium in May 2012 for future economic land concessions. After identifying an increasing convergence of opinion about the limitation of the current policy and practice, this paper makes an attempt to analyze some lessons from the past experiences with the policy and practice of economic land concessions, in particular by referring to (i) an insufficient consideration of the global context; (ii) an underestimation of the problems and opportunity costs involved in large-scale investments and transfers of farmland; (iii) an enhanced appreciation of the risks involved in land reforms and the commodification of land; (iv) an overestimation of the governance structures in place to deal with regulating these investments; and (v) an insufficient attention to alternative agricultural and rural development policies.

Considering these lessons from past experience, the question remains whether the recent developments that have occurred over the year 2012 provide enough

momentum for an increasing convergence in opinion among the government, civil society and donors with regards to the limitation of the current approach to economic land concessions. At a minimum, it appears from these recent developments that policy-makers are increasingly aware of the negative impacts. The moratorium on new economic land concessions and associated new initiatives, such as in the field of land titling represent an important shift in comparison with previous policy responses. Government, donors, civil society and other concerned stakeholders may in particular make use of the opportunity provided by the recent ELC moratorium to form a space for reflection about the lessons from the past experiences with economic land concessions. Such lessons are vital for formulating new policy responses that adequately address the risks associated with large investments in farmland and re-orient policy-making towards achieving the priority objectives in relation to the reduction of rural poverty. Bearing this in mind, this paper concludes by providing a number of short and long-term recommendations for consideration in a consultative processes leading up to the drafting of a new National Strategic Development Plan following the year 2013. This in turn could set the stage for a 'new deal' for reducing rural poverty and promoting agricultural and rural development in Cambodia beyond the Cambodian Millennium Development Goals 2015.

ABBREVIATIONS

ADHOC	Cambodian Human Rights and Development Association
CCHR	Cambodian Center for Human Rights
CDRI	Cambodian Development Resource Institute
CHRAC	Cambodian Human Rights Action Committee
ELC	Economic Land Concession
FIDH	International Federation for Human Rights
GTZ	Gesellschaft für Technische Zusammenarbeit (now GIZ)
ILC	International Land Coalition
LASED	Land Allocation for Social and Economic Development
LASSP	Land Administration Sub Sector Program
LICADHO	Cambodian League for the Promotion and Defense of Human Rights
LMAP	Land Management and Administration Project
MAFF	Ministry of Agriculture, Forestry and Fisheries
MDG	Millennium Development Goal
MLMUPC	Ministry of Land Management, Urban Planning and Construction
MoD	Ministry of Defence
MoE	Ministry of Environment
NALDR	National Authority for Land Dispute Resolution
NCDDS	National Committee for Sub-National Democratic Development Secretariat
ODC	Open Development Cambodia
OHCHR	Office of the High Commissioner for Human Rights
OPHI	Oxford Poverty and Human Development Initiative
RGC	Royal Government of Cambodia
SNEC	Supreme National Economic Council
SLC	Social Land Concession
SR	Special Rapporteur
SRSG	Special Representative of the UN Secretary-General
UNCDF	United Nations Capital Development Fund
UNDP	United Nations Development Program
UNTAC	United Nations Transitional Authority in Cambodia
WWF	World Wide Fund for Nature

1- INTRODUCTION

Against the backdrop of ongoing intense debate in Cambodia about economic land concessions (ELCs), this paper aims to capture the status quo, more than ten years after the adoption of a new Land Law and almost seven years after the promulgation of the relevant Sub-Decree on Economic Land Concessions. In particular, it is hoped that a survey-like appraisal of the policies and practices of these land concessions to date will assist stakeholders in Cambodia with developing fresh policy responses to a series of significant challenges encountered today. It is important to note on the outset that this paper does not attempt to generate new empirical data – numerous past and ongoing projects have been working on rectifying the noticeable lack of data – by contrast, this paper compiles the existing information on economic land concessions and sharpens the lens through which we view existing challenges. What do we know? And what follows from what we know? By reviewing available assessments of land concession practices in Cambodia this paper attempts to filter the findings which reappear across the board. The question – and the need on the ground – is to figure whether it is possible to identify a new ‘common ground’. On what points do the various studies and assessments by researchers, advocates and policy-makers agree? Uncovering such common ground and identifying lessons from past experiences may assist in formulating policy responses to current problems with economic land concessions and possibly present new directions for policy-making. Such an approach is timely since the government, over the course of the year 2012, has undertaken a number of significant initiatives which aim at reshaping the previous practice of economic land concessions.

Having this in mind, this paper will **focus** on the overall policy framework, namely the basic principles and objectives that have guided decision-making in the field of economic land concessions (hereinafter referred to as ‘the ELC policy’). By choosing a policy-paper approach, this paper invites policy-makers and other stakeholders on the ground to adopt a bird’s eye view of the current debate about economic land concessions in Cambodia. In doing so, the focus will be on reconnecting the ELC policy with its original objectives, in particular the reduction of rural poverty and rural development. This is essential insofar as losing sight of these self-imposed objectives would render ELC policies meaningless for the rural poor in Cambodia. Most importantly, these objectives constitute the benchmarks against which any progress or failure of these policies should be measured.

It is important to note from the beginning that this paper will deal primarily with economic land concessions granted for agricultural purposes. Little or no reference will be made to concessions for other purposes, such as in mining, forestry, tourism or special economic zones. Although these different concession types share certain

similarities in policy as well as in practice, each of them also displays distinct features which are beyond the scope of this paper. This paper has made the deliberate choice to focus on economic land concessions for agricultural purposes because this area relates to one of Cambodia's most pressing development challenges: overcoming rural poverty. At the same time, however, this choice limits the conclusions which can be drawn from this paper, as these cannot capture the full extent of the ELC policy, including its overall economic, social and environmental impacts.

The **methodological approach** of this paper follows from its policy-paper character. As mentioned before, this paper is by and large a desk study. The desk study involved (1) a comprehensive literature review and (2) semi-structured interviews with key stakeholders in Cambodia. The literature review gives credit to the expanding volume of publications about the topic. An extensive literature list is enclosed at the end of this document, covering more sources than referenced in this paper. In providing such an extensive list, this paper intends to make a contribution to improving Cambodian stakeholders' access to the variety of publications that has been written over the past few years, both nationally and internationally. It was beyond the scope of this paper to validate the data and findings of each study. Thus, the responsibility for the accuracy of data lies with the relevant authors. The information presented in this paper should therefore be taken with some degree of caution, especially because the situation is still evolving. However, by relying on a multitude of sources this paper attempts to minimize the risk of factual errors. A new thematic report on economic land concessions presented by the UN Special Rapporteur on the Situation of Human Rights in Cambodia ('2012 SR Report') was published shortly before the completion of this paper, so that its findings could not be fully considered. Likewise, the government has undertaken a series of changes to its ELC policy throughout the year 2012. At the time of writing, these recent developments were and still are ongoing and the available information is insufficient to thoroughly examine these policy changes.

Semi-structured interviews with around 30 key stakeholders, including experts, NGOs, donors and international organizations were conducted at different times between January and July 2012. It is important to note that one of the limitations of this study is that it was not able to reach out to interview partners from governmental offices. All interviewees were allowed to speak freely with only some guidance. These interviews formed an important background to this study. They are referenced only if the information from interviews was used directly to substantiate an argument in this paper and when interviewees provided their consent.

The **outline** of this paper is structured alongside its line of argumentation. Following the introductory remarks, this paper begins with reconstructing the argument which led to the creation of the ELC policy. In doing so, Chapter 2 first describes the main problem that these policies originally intended to address, namely that of rural

poverty in Cambodia. Chapter 3 then rebuilds the process through which economic land concessions were introduced as one measure for a proposed solution to this problem, in particular by claiming to provide a triple win scenario for the state, the economy, and the affected people. Examining the rhetoric of strategies, laws and public statements assists in understanding these initial intentions. Next, Chapter 4 deconstructs this proposal for a solution by contrasting it with the reality and practice of economic land concessions and its impact on local populations. This chapter also summarizes recent developments that seem to indicate some corrections to the original ELC policy, most visibly expressed by a proclaimed moratorium for future economic land concessions. These recent developments are ongoing, and as a result, this paper was only able to track them until August/September 2012. After identifying an increasing convergence of opinion about the limitation of the current ELC policy and practice, Chapter 5 makes an attempt to analyze some lessons from the past experiences with the policy and practice of economic land concessions. Why did these concessions not work in the way they were originally envisaged by their creators? Understanding the reasons for these problems is the prerequisite for developing new policy responses to existing challenges. On this basis, the last chapter then discusses the possible directions for future policy-making, including by providing a series of recommendations for stakeholders working on these issues.

2- Statement of the Problem: Land and Poverty in Cambodia

Before attempting to discuss solutions to current challenges surrounding economic land concessions, it is important to recapitulate the main statement of the problem which the ELC policy was trying to address at the beginning of the 21st century. Most government and donor development strategies and instruments describe **poverty** as the main obstacle to Cambodia's future development. The Cambodian Millennium Development Goals ('MDGs') commit the government, between 1993 and 2015, to halve the proportion of people living below the national poverty line. The country is considered as one of the poorest countries in East and Southeast Asia. Various datasets exist that try to measure the prevalence of poverty in Cambodia.

Largely based on data from the Cambodia Socio-Economic Survey (CSES), the World Bank provides regular estimates about poverty rates in Cambodia based on income. According to these data, Cambodia achieved a considerable reduction on the incidence of poverty from 1994 to 2007. Poverty as a whole declined from 47 percent in 1994 to 36 percent in 1997 to 35 percent in 2004 and finally to 30 percent in 2007. This decline was largely attributed to the end of the civil war and a positive macro-economic development. Although the decline in poverty was widespread, it benefited disproportionately those living in urban areas.¹ Likewise, a more comprehensive poverty assessment published in 2006 found that "the rural poor account for 91 percent of the total poor. The issue of poverty today is thus essentially one of rural livelihoods."² Despite the overall progress, inequality – as measured by the Gini coefficient (zero being perfect equality and 1 being absolute inequality) – increased significantly over time: the coefficient has moved upwards from 0.35 in 1994 to 0.40 in 2004 and 0.43 in 2007, which is somewhat higher than among Cambodia's neighboring countries.³ Much of the increase in inequality was attributed to a widening difference between urban and rural areas.

Using a broader, multidimensional measurement of poverty rates, the Oxford Poverty and Human Development Initiative ('OPHI') produced the Multidimensional Poverty Index ('MPI') which was used in UNDP's Human Development Report 2011. According to OPHI's findings, which used data from 2005, the incidence of poverty among Cambodians reached 52 percent. Although using a different approach in measuring poverty, the MPI confirms the large discrepancies between urban and rural areas with the highest incidence of poverty being concentrated in remote provinces

¹ World Bank (2011), Cambodia Poverty and Social Impact of the Global Economic Crises, 1-6.

² World Bank (2006), Halving Poverty by 2015, v.

³ World Bank (2009), Poverty Profile and Trends in Cambodia 2007, 20-26.

in the North and East of the country.⁴ Overall, UNDP's Human Development Index gave Cambodia a rank of 139 out of 187 countries worldwide, placing the country below the regional average.⁵

This manifest **problem of rural poverty** has to be seen in context. Approximately 80 percent of the whole population of Cambodia lives in rural areas. While the overall share in the economy of the agricultural sector has continuously decreased over the past two decades, around 70 to 75 percent of Cambodians continue to depend primarily on agriculture to earn their living.⁶ The authors of the World Bank's 2006 poverty assessment argue that "agricultural growth in Cambodia has not only been low relative to growth in the industrial and service sectors, it has also been unimpressive relative to its neighbors during comparable stages of development".⁷ Most of the rural labor force engages in rain fed subsistence farming, mostly in rice, on small plots of land. Nevertheless, 20 percent of the population, mostly in rural areas remain food-poor and do not get the minimum amount of calories per day to satisfy basic nutritional needs.⁸

An interconnected problem is the deteriorating situation regarding access to land by the rural poor. This trend is characterized by a **progressive consolidation of land holdings** in Cambodia and an increase in landlessness or near-landlessness. As to the trend in consolidation, reported data from household surveys show that the top ten percent of landholders held about 45 percent of total land held in 1999, but about 65 percent in 2003. The top fifth of landholders held 59 percent in 1999, but 70 percent in 2003.⁹ Similarly, other estimates indicate that 20 to 30 percent of the total land had been gradually concentrated in the hands of the top one percent of landholders.¹⁰ Consequently, the Gini coefficient indicated an inequality of land distribution in rural areas of 0.66.¹¹

The raising consolidation of landholdings when combined with Cambodia's demographic development (the country's population has grown from 8 million in the late 1980s to approximately 14 million today) has seen a dramatic **increase in landlessness** among the rural poor, resulting among other in a significant migration from the rural lowlands to the rural uplands. The number of rural households lacking land for farming has risen from 13 percent in 1997 and 16 percent in 1999 to 20 percent in 2004, estimated to be almost 25 percent in 2007.¹² UNDP further estimated that this number may be increasing by as much as two percentage points per year.¹³ Landlessness

⁴ Alkire, Sabina et al. (2011), Cambodia Country Briefing.

⁵ UNDP (2011), Human Development Report 2011.

⁶ UNDP (2007), Raising Rural Incomes in Cambodia, 3.

⁷ World Bank (2006), Halving Poverty by 2015, viii.

⁸ UNDP/MoP (2007), Cambodia Human Development Report, 9.

⁹ Cited from UNDP (2007), Raising Rural Incomes in Cambodia, 11-12.

¹⁰ Cited from UNCDF (2010), Local Development Outlook, 176.

¹¹ GTZ (2009), FDI in Land, 6.

¹² World Bank (2006), Halving Poverty by 2015, ix; UNCDF (2010), Local Development Outlook, 176.

¹³ UNDP/MoP (2007), Cambodia Human Development Report, 11.

seems to be noticeably higher among female-headed households, including war widows.¹⁴ In addition 40 percent of rural households have farms with a size of less than 0.5 ha, which is barely sufficient to cover a household's rice requirement and puts many of them at the threshold of near-landlessness.¹⁵ In particular, involuntary landlessness is seen as a major reason for rural poverty in Cambodia and a constraint to rural development.

This problem is aggravated by existing **land use** patterns as well as unclear property rights and tenure insecurity. The geographic area of Cambodia is estimated at 18.1 million hectares, or more than 181,000 square kilometers. The state owns roughly 14.5 million hectares (80 percent) whilst 3.6 million hectares are held by private owners (20 percent).¹⁶ Cultivated agricultural land is estimated to cover almost 4 million hectares (around 22 percent) with rice fields covering a majority of the total cultivated areas.¹⁷ Nevertheless, it was reported that as much as 80 percent of rural households that possessed land were without official land titles in 2004.¹⁸

Much of this problem has its roots in the legacy of violent conflict in Cambodia and its influence on the **history of landownership**. The concept of individual land ownership was first introduced during the time of French colonial administration prior to 1953, which involved a very limited form of registration. However, vast areas of the country were never reached by these policies. This rudimentary and fragmented ownership system was maintained after Cambodia's independence, while progress in further land registration remained limited. It was estimated that only 10 percent of landowners were issued titles in the pre-1975 period, which were concentrated largely in urban and low land areas.¹⁹ At the same time, it was estimated elsewhere that landlessness increased from 4 percent in 1950 to 20 percent in 1970.²⁰

Under the Khmer Rouge regime (1975-1979) private ownership of land was abolished and all ownership records were destroyed. A massive program of forced deportations and resettlement broke up existing societal structures. Under the successor regime, the People's Republic of Kampuchea (1979-1989), land was distributed to be used by farmers but remained under collective ownership and pre-1975 land titles were not recognized. This only changed during the reform period under the State of Cambodia (1989-1993) where private land ownership was gradually reinstated. Under pre-determined formulas collectively owned land was redistributed to farmers and various other users. Nevertheless, most land allocations were never properly documented because of the overwhelming number of documents and the

¹⁴ World Bank (2004), *A Fair Share for Women*, 60-61.

¹⁵ World Bank (2006), *Halving Poverty by 2015*, 84-85; GTZ (2009), *FDI in Land*, 11.

¹⁶ UNDP/MoP (2007), *Cambodia Human Development Report*, 42-44.

¹⁷ Chan et al. (2001), *Land Tenure in Cambodia*, 5-14; UNDP (2007), *Cambodia Human Development Report*, 42-46; GTZ (2009), *FDI in Land*, 10-11.

¹⁸ World Bank (2006), *Halving Poverty by 2015*, ix. Other sources report lower numbers, see for instance UNCDF (2010), *Local Development Outlook*, 176.

¹⁹ Cited in Un/So (2011), *Land Rights in Cambodia*, 291.

²⁰ Cited in Bues (2011), *Increasing Pressure for Land*, 6.

lack of government capacity to deal with them. This is a dilemma which continues to affect landholders today, such as in the form of insecure tenure and land disputes. In addition, the allocation process remained incomplete and according to some estimates up to one million people never received any land, including returned refugees and demobilized soldiers.²¹ The resulting tenure insecurity became particularly visible during the 1990s when, after the passage of the 1992 Land Law, large-scale land grabbing occurred. Some individuals benefited from these conditions, mainly in urban areas and often through speculative purchases, whereas few rural households managed to prove their land ownership rights. With inequality on the rise, this closes the circle to the above described statement of the problem.²²

To sum up this generalized statement of a complex problem, policy-makers in Cambodia at the turn of the millennium were confronted with an entrenched problem of rural poverty characterized by a widening gap between urban and rural areas, widespread tenure insecurity, and a progressive increase in inequality and landlessness. Taken together, this multidimensional challenge has posed a threat to the government's MDG objective of halving poverty by 2015 – aiming at the benchmark of 19.5 percent.²³ Interestingly, there appeared to be a **general convergence regarding the problem analysis**, with government and donors alike beginning to shift their attention toward rural and agricultural development policies. A report published by the Supreme National Economic Council thus concluded from this late recognition that “to achieve the ambitious Cambodian development goals, it will be essential to turn agriculture into a driver of economic growth and spread human development to the poor in the countryside.”²⁴ The following chapter describes how policy-makers have tried to formulate solutions to the problem and looks at their arguments for particular policy choices.

²¹ Van Acker (1999), *Hitting a Stone with an Egg*, 44-45; GTZ (2009), *FDI in Land*, 13.

²² So et al. (2001), *Social Assessment of Land*, 10-14; SNEC (2007), *Report of Land and Human Development*, 7-8.

²³ See RGC/MoP (2011), *Achieving Cambodia's MDGs*. However, in its mid-term review of the National Strategic Development Plan 2009-2013, the government presented preliminary forecasts showing the proportion of people living below the national poverty line to be around 20 percent.

²⁴ SNEC (2007), *Report of Land and Human Development*, 4.

3- The Argument and Framework for a Solution: Win-Win-Win – Economic Land Concessions Benefit the State, the Economy and the People

This chapter reconstructs the arguments through which economic land concessions were first presented by domestic and international policy-makers as one central solution to the stated problem. The first Rectangular Strategy for Growth, Employment, Equity and Efficiency (2003-2008), the government's overarching policy tool, identified the agricultural sector as "a key priority in the growth strategy of the Royal Government of Cambodia", particularly in the areas of agricultural productivity, diversification and competitiveness. At the same time, this policy document acknowledged that "in recent years land grabbing and disputes over access to and ownership of land have increased" and it proposed in response an effective land management scheme which would ensure "property rights [were] legally clear and secure".²⁵ This **two-pronged approach, focusing on economic growth in the agriculture sector and on land management** has constituted the main outline of the government's policy response.

The Second Socio-Economic Development Plan (2001-2005) further specified this approach. Importantly, it reflected a broad recognition of the problem statement and the priority of reducing rural poverty. In view of the availability of 'abundant' areas of 'underutilized' land, it identified the future development of the agricultural sector as a primary response, but argued that "agriculture has proved too static to propel the desired broad growth of the economy notwithstanding the significant potential of this sector. This calls for a new approach to the sector..." This new approach was characterized by a **focus on attracting private investment** in agriculture and expanding agricultural exports. The document substantiated this policy choice with the following way of reasoning:

"...continuing regional and global markets integration and agriculture liberalization raises a question mark about the long-term sustainability of small farmer agriculture. Anticipated greater exposure to competitive pressures imply that the future of Cambodia's agriculture is almost certainly one of accelerated commercialization and development of larger farms with greater use of markets know-how and lower unit costs. Implying increased risk to the welfare of the rural poor unless and until the industrial and service sectors and other aspects of the urban economy create alternative employment and self-employment opportunities for rural migrants. The implication of this is to place even greater emphasis on the importance of attracting increased levels of domestic and foreign investment of which trade liberalization is a key determinant of the latter, as Cambodia's preferential status can generate much needed investment from other countries."²⁶

The subsequent National Poverty Reduction Strategy (2003-2005) complemented this approach with further reference to improving rural livelihoods, including a strong focus on improving **access to land** for the rural poor. The paper argued that "secure

²⁵ RGC (2004), Rectangular Strategy, section 2.3.

²⁶ RGC (2002), SEDP II, 2001-2005, 38.

access to land for the poor in Cambodia's countryside will greatly contribute to reducing poverty and ensuring economic growth with equity". As such the government's land policy was to promote sustainable economic and social development and to reduce poverty by (1) making property rights legally clear and secure; (2) providing concessions for social purposes by distributing vacant state land to socially needy households; and (3) managing land in an environmentally sustainable way which provides the poor with access to natural resources.²⁷

The basis for the implementation of the two stated policy aims – to attract private investment to enhance growth in the agricultural sector and to improve land management, including redistribution of land – was provided through the adoption of the **2001 Land Law**. This Land Law generally distinguishes five main categories of property on land: (i) private land; (ii) state public land (where a public interest is involved, such as for infrastructure, riverbanks or natural reserves); (iii) state private land (all other land owned by the state); (iv) communal land; and (v) land of indigenous communities.²⁸ Foreigners are not allowed to own land, but are able to own property on land. Furthermore, an enterprise with at least 51 percent Cambodian ownership may be an owner of land.²⁹ The Law then establishes a system of land registration through a cadastral administration, including a land register, cadastral maps and official ownership titles. Many of the shortcomings of the 1992 Land Law are rectified by provisions of the 2001 Land Law.

Most importantly for the purposes of this paper, the 2001 Land Law provides for the lease of land in the form of **land concessions** as a mechanism for intensifying land use and making more land available for private investors and landless or land-poor people. In doing so the Law reflects the above mentioned government policies. Accordingly, such concessions can serve social or economic purposes. The Law also mentions "other kinds of concessions", including mining, fishing, industrial development and port concessions, which neither fall within its scope, nor the scope of this paper. Art. 49 of the Land Law specifies that "land concessions responding to an economic purpose allow the beneficiaries to clear the land for industrial agricultural exploitation..." Land concessions are only granted from state private land (Art. 58), shall not exceed 10,000 ha (Art. 59), and have a maximum lease duration of 99 years (Art. 61). Art. 59 additionally prohibits the grant of concessions in different locations (jointly exceeding the 10,000 ha limit) in favor of the same person or entity. Moreover, economic land concessions must be developed within 12 months after issuance, otherwise they shall be canceled (Art. 62).

Regulations for both types of land concessions – social land concessions ('SLCs') and economic land concessions ('ELCs') – were further specified in subsequent sub-decrees. The Sub-decree No. 19 on Social Land Concessions was promulgated in 2003 (hereinafter '2003 SLC Sub-Decree'), and the Sub-decree No. 146 on Economic Land Concessions in 2005 (hereinafter '2005 ELC Sub-Decree'). The 2005 ELC Sub-Decree determines the procedures, mechanisms and other arrangements for granting

²⁷ RGC/Council for Social Development (2002), National Poverty Reduction Strategy 2003-2005, 52-54.

²⁸ 2001 Land Law, Art. 4-28.

²⁹ 2001 Land Law, Art. 8-9.

state private land as **economic land concessions** for agricultural and agro-industrial production. It also highlights the government’s expectations with regard to economic land concessions and their purpose, namely:

- To develop *intensive agricultural and industrial-agricultural activities* that require a high rate and appropriate level of initial capital investment;
- To achieve a specific set of agreements from the investor for *developing the land* in an appropriate and perpetual manner based on a land use plan for the area;
- To increase *employment* in rural areas within a framework of intensification and diversification of livelihood opportunities and within a framework of natural resource management based on appropriate ecological systems;
- To encourage small as well as *large investments* in economic land concession projects; and
- To generate *state revenue* or the provincial or communal revenues through economic land use fees, taxation and related service charges.³⁰

Under this framework economic land concessions were intended to bring **benefits for the state, the rural economy and local populations**. At the same time these purposes, alongside the “promotion of living standards”, “perpetual environmental protection” and “avoidance or minimization of social impacts”, represent the benchmarks for assessing not only individual concessions, but as well the entire ELC policy.³¹ This matter will be further discussed in the following chapters.

The **2005 ELC Sub-Decree** further sets out **criteria and conditions** which have to be fulfilled before an economic land concession can be granted. These criteria include: (1) the land has been registered and classified as state private land; (2) a land use plan has been adopted by the local committees and the proposed use is consistent with the plan; (3) environmental and social impact assessments have been completed with respect to the proposed development; (4) solutions for resettlement are in place, in accordance with existing legal framework and procedures, and there shall be no involuntary resettlement by lawful landholders; and (5) public consultations are conducted with local authorities and residents.³² Thus, the Sub-Decree provides numerous safeguards which are intended to avoid adverse impacts of concession projects on local populations.

Competitive solicited proposals were identified in the 2005 ELC Sub-Decree as the prioritized method for granting land concessions – unsolicited proposals by investors may only be considered in exceptional cases.³³ Such an approach was presumably adopted to ensure that the most beneficial offer in line with the above cited criteria would succeed for a proposed land development project. The Sub-Decree stipulated that the Ministry of Agriculture, Forestry and Fisheries (MAFF) is responsible for granting land concessions that exceed a total land area of 1,000 ha. The provincial and municipal governors were originally authorized to grant concessions below this limit,³⁴ but this provision was modified in 2008 by Sub-Decree No. 131, which

³⁰ 2005 ELC Sub-Decree, Art. 3.

³¹ 2005 ELC Sub-Decree, Art. 5.

³² 2005 ELC Sub-Decree, Art. 4.

³³ 2005 ELC Sub-Decree, Art. 18.

³⁴ 2005 ELC Sub-Decree, Art. 29.

revoked the right of provincial and municipal authorities to grant ELCs.³⁵ Thus all responsibilities in granting economic land concessions now lie with the MAFF.

Considering a number of land concessions for economic purposes already existed prior to 2005, the 2005 ELC Sub-Decree also prescribed a detailed **review process of existing concessions**. With the support of the newly established Technical Secretariat, it included timelines and measures aimed at reducing ELCs that exceeded the limit of 10,000 ha.³⁶ An additional sub-decree was then issued in 2007, determining the principles and conditions for transferring rights to investors over a long-term lease as granted in the form of an economic land concession.³⁷ This sub-decree gave concessionaires the right to transfer their right to a concession to another person or entity, but only if that concession had been developed in accordance with the ELC contract. In addition, this sub-decree reiterated that the right over a concession did not create ownership over the land.³⁸



“Economic Land Concession granted in 2008 by the government to the Socfin-KCD company for rubber plantation, located in Busra Commune, Pich Chreada District, Monduliri Province (Photo by CHIRAC)”

With the introduction of the 2001 Land Law and the 2005 ELC Sub-Decree, all mechanisms were in place for **accelerating the implementation of the government’s chosen policy direction**. During a visit to Kuwait relating to a large land investment deal of that state in Cambodia, the Cambodian Prime Minister stressed that “the Royal Government of Cambodia supports large scale investments in agriculture and agro-industry through economic land concession with the main objective of socio-economic development, jobs creation and improved livelihood in rural areas by linking development with sustainable environment conservation”.³⁹ Similarly, the MAFF’s website states in relation to economic land concessions that “the major goal of this opening is to provide *free (non use) land* [italics by the author] for agricultural

³⁵ 2008 Sub-Decree on Modification of the Sub-decree on Economic Land Concessions.

³⁶ 2005 ELC Sub-Decree, Art. 36-42.

³⁷ 2007 Sub-Decree on the Mortgage and Transfer of the Rights over a Long-Term Lease or an Economic Land Concession.

³⁸ 2007 Sub-Decree on the Mortgage and Transfer of the Rights, Art. 3 and 4.

³⁹ Speech at the Cambodia-Kuwait Business Luncheon Organized by Kuwait Chamber of Commerce and Industry, 14 January 2009, Official visit to the State of Kuwait, 13-15 January 2009.

and agro-industrial plantation, and processing for export, which is expected by the government to create the jobs and generate income for the people living in the rural area.”⁴⁰

In line with this policy, the second phase of the Rectangular Strategy (2009-) finds that “the private sector has emerged as the ‘true engine of economic growth’”. In relation to the agriculture sector the document notes:

“The Royal Government continues to place priority on increasing agricultural productivity and diversification as well as promoting agro-industries. The Royal Government will continue to pay further attention to increased production by shifting from extension of cultivated area to intensive farming on the existing land. (...) The Royal Government will foster partnership between small land holders and large-scale agricultural farms or corporations, and between economic and social land concessionaires, especially those involved in agro-industries such as rubber plantation...”⁴¹

This passage provides an indication that the government envisaged that the new push into large-scale agriculture investment would complement the existing predominant smallholder agriculture as well as the new SLC policy.

Since the first elections in 1993, Cambodia has become a major recipient of international development aid. Nevertheless, accumulated investments in the agricultural sector, as approved by the Council for Development of Cambodia, accounted for only four percent of all investment projects, or slightly more than US\$1 billion.⁴² A 2007 UNDP report concludes that “public-sector investments supporting agricultural productivity and related rural infrastructure have been modest over the past decade; as a result, productivity and rural incomes remain low and poverty high”.⁴³ Since the beginning of the 21st century **development donors** have increasingly acknowledged the problem of rural poverty and the need to shift more attention to rural and agricultural development. This is for instance reflected in a multi-donor joint analysis of the country context:

“With 90 percent of the poor living in rural areas, promoting agriculture is considered to be the best strategy to accelerate growth, absorb a large part of the growing labor force, and address poverty more directly. Agricultural production, however, remains far below potential due to low productivity and constrained access to arable land and markets. Achieving new, or diversified, sources of growth would require significantly higher rates of productivity and investment.”⁴⁴

Large-scale private investments in agriculture were seen as important means for achieving these higher rates in growth and productivity. A World Bank document noted that “compared to other countries in the region, foreign agribusiness

⁴⁰ See MAFF at <http://www.elc.maff.gov.kh/en/overview.html> (accessed 14 September 2012).

⁴¹ RGC (2008), Rectangular Strategy Phase II, para. 46.

⁴² Ngo/Chan (2010), Does Large Scale Agricultural Investment Benefit the Poor, 4-6.

⁴³ UNDP/MoP (2007), Cambodia Human Development Report, 10.

⁴⁴ World Bank (2005), County Assistance Strategy for the Kingdom of Cambodia 2005-08, 3.

investment which can bring capital, technology and market access is negligible...”, and further “increased transformation of the smallholder agricultural sector away from subsistence towards greater commercial orientation, including regional specialization will be essential to increase productivity and incomes of farmers”.⁴⁵

Recognizing the importance of tackling rural poverty and its causes, donors began to establish further programs and projects in support of the government’s policies. Following some initial support to developing Cambodia’s cadastral system, the Land Management and Administration Project (LMAP, 2002-2009) was launched to comprehensively support the implementation of the 2001 Land Law, in particular, in relation to systematic land registration, land dispute resolutions mechanisms and the improvement of related institutional capacities. A successor program, the Land Administration Sub Sector Program (LASSP, 2009-2012) has continued some of the work of the LMAP project. Likewise, the Land Allocation for Social and Economic Development (LASED, 2008-2013) program was launched in 2008 to bring new impetus in implementing the social land concession policy.⁴⁶

To sum up, **the government’s main policy response** to the above described statement of an entrenched problem of rural poverty was (1) to raise economic growth in the agricultural sector, in particular by promoting large-scale private investment in the form of economic land concessions and other measures of agricultural commercialization, while at the same time (2) to address the problem of tenure insecurity through systematic land registration across the country. To counterbalance the specific problem of landlessness, the government envisaged a redistributive land policy in the form of social land concessions. The main underlying assumption for this policy choice was the abundance of ‘unused’ or ‘under-utilized’ land available for more intensive and commercialized agricultural exploitation, and economic land concessions are an effective vehicle to attract the necessary private investment for this purpose. In this regard, so the argument goes, economic land concessions constitute a development opportunity, namely by increasing tax and lease revenues for the state, providing new business opportunities for companies, increasing employment and promoting further rural development for the local populations. As such, the new ELC policy aimed to provide a win-win-win policy with benefits for the state, the economy and the rural poor. Ultimately, the outcomes were intended to make a significant contribution to poverty reduction in rural areas.

⁴⁵ World Bank (2007), Rural Sector Note and Business Plan, 2-4.

⁴⁶ See more at World Bank (2002), Land Management and Administration Project. Project Appraisal Document; World Bank (2008), Land Allocation for Social and Economic Development Project. Project Appraisal Document.

4. A Widening Gap between the Theory and Practice of Economic Land Concessions

4.1. Historical Trends with Economic Land Concessions in Cambodia

It should be noted that Cambodia was no stranger to land concessions for economic purposes prior to the adoption of the 2001 Land Law. A concession-style system of land management already existed under French colonial rule. Most concessions were of a small size with less than five hectares until the emergence in the 1920s of larger industrial plantations, mainly in rubber. Concessions of over 500 hectares were only granted to individuals or larger companies who could prove the financial means for the necessary investments.⁴⁷ Many of the predominantly French-owned plantations continued to operate in post-independence Cambodia after 1953. The abolishment of private land ownership rights under Democratic Kampuchea (1975-79) and the People's Republic of Kampuchea (1979-89) meant an end to this earlier concession system. It was only in 1993 that Cambodia completed the transition to a market-based economy with the adoption of a new Constitution.

One can now identify three phases of the contemporary process of granting economic land concessions. The **first phase (1992/93-2001)** encompassed the time period from the adoption of the 1992 Land Law and the 1993 Constitution to the promulgation of the 2001 Land Law. During that time the government implemented policies with the aim of stimulating private investment, including the grant of state land to companies, but mostly after 1996. The majority of investment at the time focused on forestry concessions. A report submitted in 2004 by the Special Representative of the UN Secretary-General (SRSG) on human rights in Cambodia ('2004 SRSG Report') described the rationale as follows:

"Agricultural development was to be a priority, aimed at guaranteeing food security and accelerating the growth of other sectors, especially by providing raw materials for the processing industry, increasing exports, and creating employment. The rationale for granting forests and other state lands to private companies for exploitation was to stimulate private enterprise, contribute to State revenue and reduce poverty in rural areas. Attracted by promises of fast incomes, many companies approached Cambodian officials at local and national level to obtain forestry and land concessions, with demand quickly exceeding supply. This process took place outside the law throughout the decade."⁴⁸

Those policy objectives sound familiar to those initially associated with the 2001 Land Law and the 2005 ELC Sub-Decree. The 1992 Land Law largely failed to regulate the grant of these land concessions for forestry or agricultural purposes and the lack of systematic land registration further facilitated this degenerative spiral. The law and

⁴⁷ 2004 SRSG Report, 10-11.

⁴⁸ 2004 SRSG Report, 12.

the situation it created were described elsewhere as a “‘get rich quick’ manual for the upwardly mobile”.⁴⁹ There was a particular increase in the grant of agricultural concessions between 1999 and 2001. These concessions could extend up to 70 years and were held both by Cambodian nationals and foreign investors.⁵⁰

Adopting the 2001 Land Law heralded a **second phase in the ELC policies (2001/02–2005)**. This phase was characterized by a new legal framework without the necessary implementation regulations and institutional mechanisms for enforcing the law and overseeing the management of past and future economic land concessions. During this time of transition, it appears that comparatively few new land concessions were granted and the overall number of concessions remained more or less stable.⁵¹

A **third phase (2005/06–2012)** began with the creation of the 2005 ELC Sub-Decree and the establishment in mid-2006 of the institutional mechanism for the implementation of the new ELC policies, including the Technical Secretariat and the provincial/municipal land management committees.⁵² It arguably ended with the announcement by the government, in May 2012, of a moratorium in granting new economic land concessions – although it remains to be seen how this change in policy is to be implemented. This third phase was characterized by an accelerated increase in the number of economic land concessions granted to companies, and will be discussed in more detail in relations to presenting the overall trends in granting land concessions.

As a large number of economic land concessions with a significant overall size, already existed prior to the adoption of the 2001 Land Law, the 2005 ELCs Sub-Decree contained a substantial section dealing with the **review of concessions** granted prior to the promulgation of the Sub-Decree in order to determine whether they comply with the criteria and conditions laid out in the 2005 ELC Sub-Decree. As well as finding that many individual concessions exceeded the maximum allowed size, the 2007 SRSG Report also identified a number of cases where the same individuals had interests in several companies or concessions in adjacent locations where the combined leased land area exceeded 10,000 hectares; a violation of the 2001 Land Law.⁵³ For the purposes of this review process, the newly established Technical Secretariat, with representatives from eight ministries and other government institutions, was to support contracting authorities, including requests for a voluntary reduction of land concessions exceeding the new limit of 10,000 hectares. The Technical Secretariat was tasked with a clear timetable to create a logbook containing all relevant information about concessions granted prior to the Sub-decree. Eventually, the Secretariat was to issue a review report, including an assessment of contract compliance and specific

⁴⁹ Williams (1999), *Where Has All the Land Gone*. Cited from 2004 SRSG Report, 12-13.

⁵⁰ Chan et al. (2001), *Land Tenure in Cambodia*, 19.

⁵¹ See a more detailed account of the trend in granting ELCs at Ngo/Chan (2010), *Does Large Scale Agricultural Investment Benefit the Poor*, 7.

⁵² 2005 ELC Sub-Decree, Art. 28.

⁵³ 2007 SRSG Report, 11.

recommendations on each economic land concession, which would be maintained as a public document at the Technical Secretariat as well as provincial and municipal land management committees.⁵⁴

Little is known about the **implementation of this review process** but it appears from the available facts that if a review process was conducted then it did not fully accord with the provisions of the 2005 ELC Sub-Decree. This has been most visible in relation the non-compliance with the stipulated timeline and the lack of a publically available report about the outcomes of this process. The MAFF's ELC website informs under the heading of 'Review existing Economic Land Concession' that, in mid-2009 – more than three years after the entry into force of the 2005 ELC Sub-Decree – the Ministry had set up working groups to review all existing land concessions, as well as requesting the government until April 2010 to cancel 41 companies with total land areas of 379,034 ha.⁵⁵ It is not indicated why they had been cancelled, how many of them relate to the review process, and whether or not the cancellations have actually been executed. In accordance with the 2005 ELC Sub-Decree, nine land concessions with a size of more than 10,000 hectares were reported to be subject to negotiations for a voluntary reduction to less than 10,000 hectares. As a result, five companies agreed to reduce the size of their concessions to 10,000 hectares, two contracts with companies were cancelled and the remaining two companies are 'under monitoring'. Most of these data seem to be outdated.⁵⁶

Overview of trends and available data on economic land concessions

A number of authors have attempted to track the trends in granting economic land concessions from 1995/96 to today. The validity of data on economic land concessions, from both official and non-official sources is generally difficult to assess, as they seem rarely complete and little is known about the criteria and methods they are based on.⁵⁷ All data cited in this report should therefore be taken with some degree of caution. In mid-2006, the MAFF created an ELC homepage on its website, which has provided since then basic information on companies and concessions.

The **first phase of economic land concessions (1992/93-2001)** began with less considerable domestic and foreign investments in land concessions during the 1990s, but ended with the granting of a larger number of land concessions between 1999 and 2001. The Cambodian Development Resource Institute ('CDRI') documented the process at the turn of the millennium.⁵⁸ As of 1999, data from the Department

⁵⁴ 2005 ELC Sub-Decree, Art. 36-42.

⁵⁵ Overall, the MAFF reported that it had set up five working groups to review all existing land concessions in 16 provinces. Shortly afterwards, the working groups submitted evaluation reports of all companies and identified 38 companies that were slow or showed delays in the implementation of their contracts; some got their contract cancelled. See more at <http://www.elc.maff.gov.kh/en/news/12-elc-status.html> (accessed 17 September 2012)

⁵⁶ See more at <http://www.elc.maff.gov.kh/en/news/12-elc-status.html> (accessed 17 September 2012)

⁵⁷ See for instance David Boyle and May Titthara, 'Not all economic land concessions listed', Phnom Penh Post, 05 July 2012.

⁵⁸ See CDRI project on land, rural livelihoods and food security through 2001 to 2003.

of Planning and Statistics indicated that the total area of land concessions for agricultural purposes was 662,496 hectares, given out to 46 companies. Many of these land concessions were larger than 10,000 hectares. The largest concession was to Pheapimex company with a total area of 315,000 hectares in the provinces of Kampong Chhnang and Pursat and it alone accounted for almost half of the total land conceded.⁵⁹ Thus it should be noted that although the number of annual concessions granted was lower in the first phases than the third phase, the scale and size of these concessions was immense. As of the end of 2001, the year when the new Land Law was passed, the total area of land concessions for agricultural purposes increased to a reported 809,296 hectares, leased to 40 companies. Fourteen out of the 40 concessions exceeded an area of 10,000 hectares – the maximum allowed under the new 2001 Land Law. It was further reported that 16 concessions had been cancelled over the 2-3 year period prior to 2001; although overall a considerable increase occurred in the years 2000 and 2001 prior to adoption of the new Land Law.⁶⁰ These data provide, by and large, the *baseline for the new regime of economic land concessions* established through the 2001 Land Law and the subsequent sub-decree.

The **second phase in the ELC policy (2001/02-2005)**, from the transition of the 2001 Land Law to the 2005 ELC Sub-Decree, saw comparatively few new economic land concessions granted. However, this changed dramatically during the **third phase (after 2005)** when the number, and total land area, of land concessions began to rise again. Apart from limited official data, important data sets and analyses were provided by the 2007 SRSG Report, Ngo and Chan (2010) and a more recent CDRI report (2012).⁶¹ The 2007 SRSG Report cited information from the MAFF stating that there were 59 concessions in late 2006, covering an area of 943,069 hectares in 15 provinces and constituting more than 5 percent of the total land area and more than 14 percent of all arable land in Cambodia.⁶² From these 59 land concessions in late 2006, the 2007 SRSG Report found that 36 concessions (61 percent) had some foreign business involved, whereas 25 concessions (42 percent) were owned by foreign businesses. Almost half of those foreign businesses were Chinese owned; other businesses included owners from Vietnam, Thailand, USA and South Korea.⁶³ These figures do not include land concessions below 1,000 hectares, which were granted by provincial authorities in accordance with the initial 2005 Sub-Decree until this practice ended in September 2008. Prior to this, as the Ministry's website informs us, 47 companies with individually less than 1,000 hectares had been granted by provincial authorities in nine provinces.⁶⁴

⁵⁹ Chan et al. (2001), *Land Tenure in Cambodia*, 19.

⁶⁰ McKenney/Prom (2002), *Natural Resources and Rural Livelihoods*, 24-25.

⁶¹ Ngo/Chan (2010), *Does Large Scale Agricultural Investment Benefit the Poor*; Saing et al. (2012), *Foreign Investment in Agriculture*. See also Un/So (2011), *Land Rights in Cambodia*, 299-300.

⁶² 2007 SRSG Report, 6.

⁶³ 2007 SRSG Report, 20.

⁶⁴ See at <http://www.elc.maff.gov.kh/en/news/12-elc-status.html> (accessed 17 September 2012)

Ngo and Chan (2012) and a more recent CDRI report (2012) provide a detailed assessment of the official MAFF data which span a time frame up to the end of 2009.⁶⁵ By the end of 2009, MAFF had granted 86 economic land concessions (excluding 12 concessions that were cancelled over time). For nine of those 86 concessions, no detailed information was provided at all.⁶⁶ The total size of reported land concessions was cited by both research papers to be above one million hectares. In addition Ngo and Chan indicate that the MAFF data do not include economic land concessions granted in protected areas administered by the Ministry of Environment (MoE) which, according to their research adds another approximately 500,000 hectares.⁶⁷ This would bring the total size of economic land concessions to 1.5 million hectares, which is a considerably larger proportion than that indicated by the MAFF data alone.

Most land concessions were granted to Cambodian nationals, both in terms of numbers as well as total land size (65 percent). Foreign investors were granted a total land area of more than 350,000 hectares (35 percent). Chinese companies represented the largest foreign investor with 17 projects, jointly covering almost 187,000 hectares (18 percent). The second largest foreign investor was Vietnam, which had seven ELC projects. Other foreign investors included Thailand, Korea, USA, Malaysia, India and Taiwan. According to those data, seven projects exceeded the 10,000 hectares limit, one of which was granted to a Chinese company.⁶⁸

Data after 2010 are more difficult to obtain, and thus it is not easy to provide an accurate assessment of available estimates which often vary greatly. Nevertheless, many estimates suggest a considerable acceleration in granting economic land concessions through 2011. In February 2012, a MAFF Secretary of State informed the media that the Ministry had granted 1.19 million hectares to 118 agro-industrial companies in 17 provinces, representing 13.5 percent Cambodia's total land area and around one third of its total arable land. Among the companies were 28 Chinese and 27 Vietnamese firms. Moreover, 51 firms which were granted a total of 479,000 hectares in land concessions had previously their concessions cancelled due to a failure to comply with their contracts.⁶⁹ These data were more or less confirmed by a new ELC table dated on 8 June 2012 that the MAFF posted on its website in mid-2012. The table lists 117 companies that were granted economic land concessions by the MAFF with a total land area of more than 1.18 million hectares between 1996 and June 2012.⁷⁰

The **estimates of local NGOs** are substantially higher than those published by the MAFF. Open Development Cambodia – an 'open data' website to help consolidate

⁶⁵ Ngo/Chan (2010), Does Large Scale Agricultural Investment Benefit the Poor; Saing et al. (2012), Foreign Investment in Agriculture; Saing et al. (2012), Foreign Investment in Agriculture.

⁶⁶ Saing et al. (2012), Foreign Investment in Agriculture, 19-20.

⁶⁷ Ngo / Chan (2010), Does Large Scale Agricultural Investment Benefit the Poor, 6-7.

⁶⁸ Saing et al. (2012), Foreign Investment in Agriculture, 19-21; Ngo/Chan (2010), Does Large Scale Agricultural Investment Benefit the Poor, 7-12.

⁶⁹ Statement cited in 'Land Concessions Now at 1.2 Million Hectares, Officials Say', The Cambodia Daily, Vol. 51, Issue 18, 29 February 2012, 20.

⁷⁰ MAFF (2012), Statistics of Investment Companies on Land Concession contracted with The Ministry of Agriculture Forestry and Fishery, 8 June 2012.

access to up-to-date information about Cambodia – reported that in September 2012 there were 337 economic land concessions, 87 mining concessions, and 23 special economic zones in existence.⁷¹ The Cambodian Human Rights and Development Association (ADHOC) estimated the number of economic land concessions at the end of 2011 at 2,276,349 hectares involving 225 companies. After reviewing governmental sub-decrees ADHOC asserted that the government granted 751,882 hectares of land through land concessions to at least 68 companies, although numerous sub-decrees apparently did not state the name of the company. If correct, this would represent the highest ever total land size of economic land concessions granted within a year since the beginning of the concession policy in the 1990s.⁷² Likewise, the Cambodian League for the Promotion and Defense of Human Rights (LICADHO), basing its calculation on official government documents, stated in March 2012 that the total area granted in land concessions for agro-industrial plantations amounted to approximately 2 million hectares to 227 companies, covering more than 50 percent of all arable land in Cambodia.⁷³

TABLE 1

Source	Official data			World Bank	ADHOC	LICADHO
	MAFF	MAFF Official	MAFF Table			
Year	04/2010	02/2012	06/2012	2004-2009	12/2011	03/2012
Total Land Area	956,690 ha	1,190,000 ha	1,181,522 ha	958,000 ha	2,276,349 ha	2,036,170 ha
No of Companies	85	118	117	61	225	227

Indicating a further worrying trend, ADHOC claimed that the majority of the land allocated in 2011, namely up to two-thirds, was located within **protected areas**, including wild life areas and national parks.⁷⁴ LICADHO confirmed this trend, stating that 346,000 hectares of those concessions were located inside conservation areas, which represented 10 percent of protected areas under the control of the Ministry of Environment.⁷⁵ Relying on official data provided by the MoE, the 2012 SR Report stated that 627,627 hectares, or fewer than 20 percent of Cambodia's total protected areas, were granted under various forms of concessions of which land concessions for agricultural purposes accounted for a majority of almost 80 percent.⁷⁶

The extensive grants of economic land concessions contrasts sharply with the grants of **social land concessions**. According to the government, an area of 12,391 hectares

⁷¹ Open Development Cambodia (2012). See at <http://www.opendevdevelopmentcambodia.net/concessions/> (accessed 18 September 2012).

⁷² ADHOC (2012), The Report of Land and Housing Rights 2011, 13-16.

⁷³ Vrieze/Kuch (2012), 'Carving up Cambodia. One Concession at a Time', 6-9.

⁷⁴ ADHOC (2012), The Report of Land and Housing Rights 2011, 13-16.

⁷⁵ Vrieze/Kuch (2012), 'Carving up Cambodia. One Concession at a Time', 6-9.

⁷⁶ 2012 SR Report, para. 93.

was distributed to 27,000 poor households between 2002 and 2007.⁷⁷ Cambodia's last two national strategic development plans each set targets of 10,000 landless poor households. It was reported that the target of distributing land to 10,000 households between 2006 and 2010 was not fully accomplished.⁷⁸ However, with the support of the LASED project since 2008, it appears that the government might be able to achieve its targets under the current development plan. As of 2011, the project had registered 6,850 hectares as state private land for the purpose of social land concessions and more than 4,000 hectares were being processed for registration.⁷⁹ In addition, simultaneous processes of granting social land concessions seemed to exist outside the project and mainly to veterans and their families.⁸⁰ Relying on numbers from the Ministry of Land Management, Urban Planning and Construction, the 2012 SR report cites higher numbers.⁸¹ Despite this progress in granting social land concessions, the overall size of land made available for this purpose stands in no correlation to the large areas of land granted as economic land concessions during the same time period.

To sum up the historical development of the government's contemporary ELC policy, a number of characteristics and trends can be identified. First, policy-makers were able to rely on almost a decade of experience with concession policies when they designed the new ELC framework in 2001/2005. The practice during the 1990s was assessed from a largely negative perspective in the relevant literature, and it is difficult to determine the extent to which past experiences were systematically evaluated and lessons considered in the development of the new policy and legal framework.

Second, the granting of land through economic land concessions gained considerable pace after the creation of the new framework in 2005/2006. The available data sets differ greatly and many are incomplete or inconsistent, including the official figures. Nevertheless, even on the more conservative figures published by the authorities, the conclusion is that granting access to land for domestic and foreign investors under very long-term leases has occurred at a very large scale in Cambodia. Moreover, the available evidence indicates that this process accelerated over time and that massive tracks of land were granted as economic land concessions (particularly throughout 2010 and 2011) including significant concessions in protected areas.⁸² In fact, the scale and total size of these land concessions has reached such heights that it began to dominate all other discourse on agricultural and rural development.

⁷⁷ Prime Minister, 'Address at the Closing of 2007 Stock-Taking Conference and Directions Setting for 2008 and the years ahead of the Ministry of Land Management, Urban Planning and Construction', Phnom Penh, 25 March 2008.

⁷⁸ Bickel/Löhr (2011), *Pro-Poor Land Distribution in Cambodia*, 34.

⁷⁹ NCDD (2011), *Report of Land Allocation for Social and Economic Development Project*.

⁸⁰ In a 2009 speech to veterans the Prime Minister indicated that the government would make available more than 16,000 hectares to veterans and their families in form of social land concessions. See Prime Minister, 'Keynote Address at the Dissemination of Statement on Social Land Concession Policy for Veterans and Families', Phnom Penh, 23 December 2009. Furthermore, ADHOC reports that land was approved for allocation to veterans and disabled soldiers in the form of social land concessions in 11 provinces across the country, amounting to 44,897 hectares in 2011. See ADHOC (2012), *Report of Land and Housing Rights*, 11.

⁸¹ The report cites 194,820 hectares for 30,588 households in a letter from the ministry dated 23 May 2012. See 2012 SR Report, para. 84.

⁸² See also May Tittahra, 'Companies given right to develop wildlife land', Phnom Penh Post, 30 March 2012.

Third, even though ownership structures are sometimes difficult to determine, it is clear that the majority of land concessions and the total land size granted for these concessions are held by Cambodian individuals or companies. This practice somewhat distinguishes Cambodia from other countries where large-scale agricultural concession policies are applied and where foreign investment is often dominating. Nevertheless, due to the limited information about ownership and shareholders, it is sometimes difficult to ascertain the number of Cambodian concessionaires acting in collaboration with foreign investors. Fourth, the majority of foreign investors in Cambodia do not come from Western countries, but from the region – in particular from China and Vietnam – with implications for regulatory policies.⁸³

Fifth, it is not apparent that an effective and transparent review process of existing economic land concessions in accordance with the provisions of the 2005 ELC Sub-Decree has taken place. The lack of an effective and timely review, including efficient institutional structures to implement this process has likely not improved the capacity for continuous monitoring of economic land concessions granted after the issuance of the 2005 ELC Sub-Decree. The experience of this review process should thus be carefully studied. These experiences and lessons may yield further insights into designing any future review processes for economic land concessions.

Sixth, social land concessions feature more prominently than economic land concessions in all policy and strategic documents. Yet despite these policy objectives, economic land concessions have gained considerable more momentum in the past ten years than social land concessions and exceed the land size granted to social land concessions many times over. A UNDCF report found that “for every hectare of land allocated to the landless people, 68 hectares were granted to investors as economic land concessions” since the adoption the 2001 Land Law.⁸⁴

⁸³ The Cambodian Center for Human Rights (CCHR) claims that almost half of all ELCs have been granted to Chinese companies, stating that from 1994 to 2012 some 973,000 hectares were granted to these companies and that even more land was granted in form of forest and mining concessions. See May Titthara, ‘China reaps concession windfalls’, Phnom Penh Post, 2 April 2012.

⁸⁴ UNCDF (2010), Local Development Outlook, 176-177.

BOX 1

Past Experiences with Forestry Concessions

Cambodia's past experience with its forestry concession policy is a prime example of the danger of a poorly regulated and nontransparent system of granting land use rights to companies at a large-scale. Cambodia has one of the highest levels of forest cover in Southeast Asia with over 10 million hectares in 2010. In the 1990s, a forestry concession system was introduced and in just about four years (1994-1997), the government granted 36 forest concessions covering close to 7 million hectares, or around 70 percent of Cambodia's forests (FA, FAO 2010). Until 2000, this system was characterized by rapid and widespread forest harvesting and logging.

A lack of monitoring and enforcement, raising concerns from local communities, limited public information, failures in the production management system and low realization of government revenues eventually prompted the government to change direction and to embark upon a period of revision. They first cancelled around 40 percent of all forest concessions in the early 2000s and ultimately issued, in January 2002, a moratorium on logging in concession areas and log transportation.

This policy change led to a significant reduction in rampant logging. Moreover, legal and institutional reform was initiated with the adoption of the 2002 Forestry Law and the reorganization of a new Forest Administration in 2003 to create a single authority for forestry matters at the national level. Local forest management has become increasingly important and a 2003 community forestry sub-decree has been widely supported. The government and international organizations have also shifted more focus to raising environmental awareness by educating communities on conservation and sustainable management of natural resources.

Between 1990 and 2010, total land forest cover in Cambodia fell from 73 to 57 percent. Over the same period, however, the area of forest designated for conservation increased to around 40 percent. The government has set a target to maintain 60 percent forest cover through 2015. After the issuance of a moratorium on forestry concession, new pressure on Cambodia's forests has arisen from an expansionary ELC policy. In particular, many land concessions have been granted in forested areas or former forest concessions contrary to the forestry law and other forestry regulations. As a result, this new concession policy has been closely related to deforestation.

The failure of the forestry concession policy of the 1990s and the subsequent 2002 moratorium highlight the enormous risks associated with a large-scale concession framework, especially in the absence of a functioning governance system capable of monitoring concessionaires and enforcing compliance with the regulatory framework. It would have been worth studying this experience in more detail and drawing the right lessons from it prior to embarking on a new economic land concession policy in 2001/2005.

Adapted from: Broadhead/Izquierdo (2010), Assessment of Land Use, Forest Policy and Governance; Chan et al. (2001), Land Tenure in Cambodia, 15-18; Le Billon, Philippe (2002), Logging in Muddy Waters, 563-586.

4.2. The Practice and Impacts of Economic Land Concessions

Against the background of an accelerating trend in economic land concessions, this section discusses how the ELC policy has been implemented in practice and how it impacts on local populations, poverty reduction, and rural development. In so doing this section will focus on four thematic categories: (1) legal and human rights considerations; (2) economic and social impacts; (3) governance; and (4) impacts on natural resources and the environment. It is important to note that there is extensive literature available on the impact of economic land concessions. This section only aims to summarize the most pertinent issues in a very simplified manner. For more in-depth information on this subject, refer to references in the footnotes and the literature list at the end of this report, specifically regarding individual case studies.

Legal and Human Rights Considerations

In addition to the legal framework regulating the ELC policy (as described in Chapter 3), Cambodia's legal landscape is also shaped by the many human rights treaties to which it is party to. This legal framework provides an important point of reference for assessing the practice of economic land concessions. Most importantly, the 2005 ELC Sub-Decree sets out the purpose to be achieved by economic land concessions, as well as the criteria by which economic land concessions are granted or rejected.⁸⁵ Despite the rationale behind the legal process of granting these concessions, the transition from the legal framework to the everyday practice has been much less successful in reality.

Considering that concessions represent a vehicle through which state land can be used for private and investment purposes, there have been widespread reports about significant deficits in the **management of state land**. Given Cambodia's history of land ownership most land has remained in state ownership. Article 4 of the 2005 ELC Sub-Decree mandates that only land 'classified as state private land' can be the subject of an ELC application. It has been documented that many authorities often arbitrarily re-classified parcels of land from 'state public land' to 'state private land' – the prerequisite for making land available for the purpose of granting economic land concessions.⁸⁶ When considered against the low level of official land titles held by rural Cambodians, this re-classification may have contributed to a misperceived abundance of land available for economic land concessions, despite the possibility that the land may already be occupied or used by local or indigenous residents.⁸⁷ Despite commendable attempts by the government to introduce a formal titling system of land ownership, there are reports that many Cambodians simply lack the requisite

⁸⁵ 2005 ELC Sub-Decree, Art. 1, 3, 4.

⁸⁶ 2007 SRSG Report; 2007 UNDP Report (2007), Raising Rural Incomes in Cambodia; GTZ (2009), FDI in Land; FIDH (2011), Land Cleared for Rubber.

⁸⁷ So et al, (2001), Social Assessment of Land; Van Acker (1999), Hitting a Stone with an Egg; Thiel (2010); Donor-Driven Land Reform.

understanding of how to safeguard their land rights in such a system.⁸⁸ Furthermore, as pristine forests are being ‘re-classified’ for the purpose of economic land concessions, not only are there significant environmental impacts, but also economic impacts on local and indigenous residents who rely on the forest land for their survival. Their loss of access to these collectively-used lands severely threatens their way of life and daily survival.⁸⁹ Commercial interests have exploited this perceived ‘abundance’ of rural land in Cambodia by applying for large ELC projects to the detriment of local residents who may not be aware of their rights and the importance of protecting their land interests.⁹⁰

The 2001 Land Law and the 2005 ELC Sub-Decree provide clear provisions regulating the **size and ownership of economic land concessions**. Of particular importance is the proviso that only land areas not more than 10,000 hectares can be granted under the ELC scheme. Several sources indicate that a number of concessions have not conformed to this criterion.⁹¹ Despite the fact that most land concessions comply with the limitation in size as provided by the 2001 Land Law, there have been frequent reports about cases where the same person or group of people have interests in land concessions, often in relation to adjoining lands and under different company names. The 2007 SRSG and 2012 SR Reports both list a number of such cases which obviously violate provisions of the 2001 Land Law.⁹² A lack of transparency with regard to ownership and shareholder information further facilitates such circumvention of the law.

The 2005 ELC Sub-Decree mandates a number of criteria that investors must fulfill before they can be granted an economic land concession. Among the most important criteria is the completion of **environmental and social impact assessments** with respect to proposed investment plans and the extensive **consultations with local authorities and affected populations**.⁹³ But contrary to these requirements, a review of the existing literature provides evidence that numerous economic land concessions have been granted without the due process as required by the law. Large areas of land appear to have been granted with no or deficient consultation, and without genuine and comprehensive environmental and social impact assessments.⁹⁴ Monitors have reported difficulties in their attempts to verify any of the due process steps, because information is often not made available or accessible.⁹⁵ Other NGOs have further indicated that companies had begun to clear forests from concession lands prior to the completion of their impact assessments, while other concessionaires had already signed their contracts prior to completing their necessary impact assessments.⁹⁶ The

⁸⁸ So et al, (2001), Social Assessment of Land, 10.

⁸⁹ GTZ (2009), FDI in Land, 31-33; see also Bues (2011), Increasing Pressure for Land 33; and 2007 SRSG Report, 13.

⁹⁰ Un/So (2011), Land Rights in Cambodia, 289-303.

⁹¹ See for example, LICADHO (2009), Land Grabbing and Poverty in Cambodia, 16.

⁹² 2007 SRSG Report, 11; 2012 SR Report, paras. 97-100.

⁹³ 2005 ELC Sub-Decree, Art 4(2), (3), (5).

⁹⁴ See for instance 2007 SRSG Report, 10; ADHOC (2012), Report on Land and Housing Rights, 18-19.

⁹⁵ LICADHO (2009), Land Grabbing and Poverty in Cambodia, 17; 2012 SR Report, para. 87.

⁹⁶ ADHOC (2012), Report on Land and Housing Rights, 18; 2012 SR Report, para. 116.

additional lack of inclusive and public consultations often means that local and indigenous people are not aware of the fact that the land they have been relying on for their basic needs had been granted as a land concession.⁹⁷ As a result, local residents are often not involved in or aware of the development plans or impact assessments.⁹⁸ These reports indicated a frequent lack of due care from concessionaires and the responsible authorities.

Another commonly reported abuse of economic land concessions granted to companies is the **inactivity or underutilization of their concessions**, resulting in a failure to cultivate the land in accordance with their contracts. Many concessions have not been exploited within the 12 month period after their issuance as stipulated by the 2005 ELC Sub-Decree and in most cases without any sanctions.⁹⁹ The UNDP reported that only around 2 percent of land under concession was being actively cultivated at the end of 2005¹⁰⁰ – a trend which appears to continue to date.¹⁰¹ The government itself acknowledged that many companies do not comply with the terms of their contracts and that “large areas under economic land concessions have not been utilized efficiently as targeted, needing strict government measures to tackle them”.¹⁰² Given that land concessions are granted to enable “intensive agricultural and industrial-agricultural activities” with an “appropriate level of initial capital investment”,¹⁰³ this practice of inactivity and underutilization seems to undermine the very basis for which these concessions were granted in the first place. These trends seem to be indications for a high rate of speculation and ‘rent-seeking’ activities.¹⁰⁴

The lack of tenure security, insufficient impact assessments, and failed consultation efforts combined with an expansionary ELC policy has resulted in an **increase in land disputes** involving people living on or around concession lands.¹⁰⁵ Land disputes between local residents and the companies granted land concessions have been described as “among the most serious human rights issues”.¹⁰⁶ The NGO Forum has been documenting land disputes over a number of years and their data show a rapid increase in land disputes in the period following the issuance of the 2005 ELC Sub-Decree until 2008, with most of them involving disputes over agricultural land.¹⁰⁷

The rapid rise in ELC projects and the failed involvement of affected people early on in these processes has also contributed to a **rising trend in displacements of local**

⁹⁷ NGO Forum (2012), Free, Prior and Informed Consent.

⁹⁸ 2007 SRSG Report, 10.

⁹⁹ 2007 SRSG Report, 9.

¹⁰⁰ UNDP/MoP (2007), Cambodia Human Development Report, 46.

¹⁰¹ See Thiel (2010), Donor-Driven Land Reform, 236; Ngo/Chan (2010), Does Large Scale Agricultural Investment Benefit the Poor, 12.

¹⁰² RGC/MoP (2010), National Strategic Development Plan 2009-2013, 26.

¹⁰³ 2005 ELC Sub-Decree, Art. 3.

¹⁰⁴ Thiel (2010), 236.

¹⁰⁵ FIDH (2011), 35.

¹⁰⁶ Amnesty International (2011), Report 2011. The State of the World’s Human Rights, 92.

¹⁰⁷ The NGO Forum’s “statistics show that out of 282 LD cases, 14 percent or 39 cases have been rooted in development projects especially in the granting of Economic Land Concessions”. NGO Forum (2011), Statistical Analysis on Land Disputes, 6.

populations. The 2005 ELC Sub-Decree makes provisions for land concessions to ensure that there “will not be involuntary resettlement by lawful landholders and that access to private land shall be respected”.¹⁰⁸ However, in 2008 Amnesty International reported that at least 150,000 Cambodians were believed to be living under the threat of forced eviction.¹⁰⁹ The majority of forced evictions seemed to affect people living in urban or near urban areas, with the Boeung Kak Lake and Borei Keila cases in Phnom Penh being two prominent cases.¹¹⁰ Nevertheless, relocations and involuntary resettlements have also been on the rise in rural areas in Cambodia.¹¹¹ The authorities claim that displacements and forced evictions are only carried out when absolutely necessary and that “evictees are provided with fair and just compensation in advance”.¹¹² However, there are numerous reports which indicate that this is often not the case. Those people affected are normally given little or no opportunity to engage in discussion or genuine participation in the relocation process beforehand. More seriously, the NGO LICADHO identified the involvement of military and other state security personnel in evicting families and residents from concession granted land as a particular concern.¹¹³ In addition, monetary and other forms of compensation and relocation assistance are often reported to be insufficient.¹¹⁴

Economic and Social Impact

The creation of new **employment** opportunities is an important aim of economic land concessions.¹¹⁵ Ngo and Chan have shown how some land concessions have transformed the lives of local communities, including positive impacts in terms of providing stable employment.¹¹⁶ Thus, it appears that a number of concessions deliver expected employment opportunities.¹¹⁷ But if many of these concessions are assessed against the stated goals of the 2005 ELC Sub-Decree, namely to “promote living standards of the people”,¹¹⁸ it is apparent from numerous other reports that the increase in employment opportunities often do not lead to improved standards of living, particularly when the local residents lose their ability to secure their own nutritional needs.¹¹⁹ Moreover, some NGOs have documented case studies where the grant of land concessions in rural areas was instead responsible for making the poor poorer.¹²⁰

¹⁰⁸ 2005 ELC Sub-Decree, Art 4(4).

¹⁰⁹ Amnesty International (2008), *Rights Razed, Forced Evictions in Cambodia*. See also Land and Housing Working Group (2009), *Land and Housing Rights*, 8-9; DanChurchAid (2011), *Stolen Land Stolen Future*, 9.

¹¹⁰ ADHOC (2012), *Report on Land and Housing Rights*, 6-10

¹¹¹ CHRAC/HRTF (2010), *Still Losing Ground*. This report details complaints of communities that were related to economic land concessions and land conflicts affecting approximately 12,000 families in 164 villages in 19 provinces and in regards to around 700,000 hectares of contested land.

¹¹² Land and Housing Working Group (2009), *Land and Housing Rights*, 9, citing Cambodia’s 2008 State Party Report, para. 534.

¹¹³ LICADHO (2009), *Land Grabbing and Poverty*, 20-21; see also Land and Housing Working Group (2009), *Land and Housing Rights* (2009), 7.

¹¹⁴ Land and Housing Working Group (2009), *Land and Housing Rights*, 7.

¹¹⁵ 2005 ELC Sub-Decree, Art 3.

¹¹⁶ Ngo/Chan (2010), *Does Large Scale Agricultural Investment Benefit the Poor*.

¹¹⁷ See also GTZ (2009), *FDI in Land*, 32.

¹¹⁸ 2005 ELC Sub-Decree, Art. 3, 5.

¹¹⁹ GTZ (2009), *FDI in Land*, 31-34; see also Bues (2011), *Increasing Pressure for Land*, 34, where Bues points out the impact on indigenous people.

¹²⁰ See DanChurchAid Report (2010), *Stolen Land, Stolen Future*, 9-10.

Local residents have often been reluctant to make the shift from their self-sustaining lifestyle to a wage-labor lifestyle,¹²¹ because many jobs operate on a seasonal basis and do not offer regular income, posing threats to food security.¹²² As some reports have shown this has resulted in many concessionaires' reluctance to employ local residents, as they believe that they are less reliable.¹²³ Concessionaires have instead chosen to bring in migrant workers from other districts or provinces who are willing to accept lower wages than local residents, adding to the financial pressures.¹²⁴ Furthermore, many of the jobs offered are of low quality and do not contribute to building the capacities of local residents.



"Farmer block a road after a land dispute related to economic land concession in Amlaing commune, Tpong district, Kampong Speu province, involved with Kampong Speu Sugar Co., Ltd (Photo by CHRAC)"

Vulnerable populations have been particularly affected by the rising trend in granting economic land concessions. Indigenous people, for instance, have legal collective rights to their ancestral lands,¹²⁵ but a number of reports have described various deficiencies and shortcomings in the enforcement of this particular provision of the 2001 Land Law.¹²⁶ The process for indigenous communities to gain recognition of their land remains complicated and lengthy. These inherent issues have often resulted in land concession projects being initiated before indigenous communities even had the opportunity to assert their legal rights.¹²⁷ As many indigenous lands are forested areas they are at particular risk to land concession projects because of their potential for economic development opportunities such as logging and other natural resource initiatives. Despite government policies on indigenous land rights the reality is that there is a "disproportionate concentration of concessions on indigenous land

¹²¹ Bues (2011), *Increasing Pressure for Land*, 23 and 34.

¹²² GTZ (2009), *FDI in Land*, 33.

¹²³ FIDH (2011), *Land Cleared for Rubber*, 43.

¹²⁴ Men/van Westen (2011), *Land Acquisitions by Non-Local Actors*, 27.

¹²⁵ 2001 Land Law, Art 26.

¹²⁶ Indigenous Peoples NGO Network (2010), *The Rights of Indigenous People*; Amnesty International (2008), *Rights Razed*, 23.

¹²⁷ CHRAC (2009), *Losing Ground*, 70; Amnesty International (2008), *Ignoring the Rights of Indigenous People*.

in violation of both Cambodian law and international human rights law”.¹²⁸ Overall, it appears that indigenous people have benefitted little from these ELC projects on or near their lands.¹²⁹ Another vulnerable group impacted by economic land concessions is women and girls. The 2012 SR Report detailed the various impacts that ELCs had on this particular group. Because women often lack the opportunity to work locally at agricultural plantations the land concession projects have led to “further marginalization of women [in Cambodia], who are generally more prone to poverty and undernourishment” in the first instance.¹³⁰ The personal safety of women and girls also remains a major concern. As reported by several sources, women become more visible in precarious situations such as land disputes, displacements, and forced evictions.¹³¹

Governance Aspects

It is clear from the above practice in granting economic land concessions that many ELC projects have not complied with the laws as set out by the government. At the same time there has been little reporting about judicial action, sanctions, or cancellation of ELC contracts. This seems to point to a **lack of capacity and/or willingness among authorities to enforce compliance with the ELC legal framework**. Numerous aspects of the ELC process as provided by the law suffer from shortcomings, ranging from state land management to insufficient public consultation and impact assessments. Many reports attribute these deficiencies to a lack of capacity within both the local and national level of government to monitor and audit the ELC projects and enforce the procedures and conditions in accordance with the law.

There is a broad consensus from the existing literature that there is a **lack of transparency** and failure of the authorities to meet legal obligations regarding public information about the ELC process and contracts.¹³² This information relates to basic data about size and ownership of concessions, impact assessments, contractual agreements, investment plans, and revenue results from concession projects. The overlapping responsibilities of various government ministries regarding the control of land and grant of land concessions meant that progress toward transparency has been slow or impossible.¹³³ This lack of transparency is of particular concern to the affected populations who have little or no knowledge about the ELC projects on the lands they are using. It makes it also difficult for the public to assess the benefits the land concessions will bring for the country and its development. According to various reports, this general lack of transparency has facilitated acts of corruption, affecting various stages of the process in granting economic land concessions. Although it is commendable that the Cambodian Parliament eventually passed the Law on Anti-

¹²⁸ Indigenous Peoples NGO Network (2010), *The Rights of Indigenous People*, 4-5.

¹²⁹ See also Men (2011), *Land Acquisition by Non-Local Actors*.

¹³⁰ 2012 SR Report, para. 168.

¹³¹ 2012 SR Report, paras.169-171; Bues (2011), *Increasing Pressure for Land*, 23.

¹³² LICADHO (2009), *Land Grabbing and Poverty*, 17.

¹³³ Un/So (2011), *Land Rights in Cambodia*, 289, 302.

Corruption in 2010, most reports concur that there remains a need to apply the law consistently to the practice of economic land concessions.¹³⁴

One of the stated purposes of the economic land concessions is to generate **state revenues**, mainly through lease fees and taxation.¹³⁵ The lack of information about these revenues makes any assessment difficult. However, most reports agree that the state has so far received very little revenue from economic land concessions.¹³⁶ The ELC fees are low and fixed according to production, with tax holidays being granted for some plantations with longer-growing agricultural products. Fees have been reported to be between \$0-10 per year and per hectare, “which is not enough to create any economic pressure to use the land”.¹³⁷ Many concessionaries have simply not paid their deposit or fees.¹³⁸ However, the NGO ADHOC reported that, based on the data from the 2010 national budget, the government earned roughly \$20 million from economic land concessions.¹³⁹ Nevertheless, the 2012 SR Report states “there is no available evidence that revenue generated from land concessions has been used by the Government in concession areas for social and economic development, such as in the health and education sectors or in infrastructure development”.¹⁴⁰



“Economic land concession for rubber plantation in Pi Thnou and Sre Char communes, Snuol district, Kratie province granted to CIV Development Agro Industry Company (Photo by CHRAC)”

¹³⁴ See Anonyms ‘Cambodia Anti-Corruption Law Sees First Conviction’ (12 May 2011) Wall Street Journal.

¹³⁵ 2005 ELC Sub-Decree, Art 3.

¹³⁶ Cambodian Economic Association president Chan Sophal was cited in the Phnom Penh Post in saying that concessions are technically granted for free and therefore the government does not generate any substantial amount of money from a concession once it was granted. “There might be a small processing fee paid by companies, but this is very small in comparison to their revenue, and it is not a formal fee paid to the government”. Bridget Di Certo and Meas Sokchea (2012), ‘PM institutes land concessions moratorium’, Phnom Penh Post, 8 May 2012.

¹³⁷ Löhr (2011), Cambodian Land Market, 42.

¹³⁸ 2007 SRSG Report, 9.

¹³⁹ Cited in Kuch (2012), ‘Cambodia Surges Full-Speed Ahead With Land Concessions’, The Cambodia Daily, 23 March 2012, 18.

¹⁴⁰ 2012 SR Report, para. 128.

Environmental Impact

The 2005 ELC Sub-Decree stipulates that all economic land concessions will be based on the criteria of “perpetual environmental protection and natural resources management”.¹⁴¹ Nevertheless, there have been numerous reports about **adverse environmental impacts** regarding ELC projects. Although it was originally envisaged that most land concessions would be granted on degraded forest land or non-used land, several reports have documented cases where economic land concessions have been granted in areas of pristine forest land, or even within protected areas such as national parks.¹⁴² This practice sparks the memory of the former system of forestry concessions that was operated throughout the 1990s.¹⁴³ One of the biggest concerns over economic land concessions has thus been the illicit logging of forestland granted to concessionaries. Land concessions granted over forest areas are particularly prone to this type of practice in instances where the concessionaries have no intention of setting up any industrial-agricultural business.¹⁴⁴ Many of the affected forest and protected areas are recognized for their biodiversity which is now severely threatened in a number of areas.¹⁴⁵ Further problems have arisen in terms of soil erosion as well as threats to water security and water contamination.¹⁴⁶

To sum up, even though Cambodia established a relatively well-developed legal framework for regulating its ELC policy, a review of the available literature clearly demonstrates that there have been significant challenges and shortcomings in implementing the policy in accordance with the law. A UNCDF report stated that “while regulations on economic land concessions set forth rational principles, there is a serious absence both of functional rules governing compensation and of procedures to effectively protect property interests of owners and possessors of the land to be taken, including those of indigenous communities, whose land is granted special protection under the Land Law”.¹⁴⁷ UNDP observed “that most land concessions have thus far not proven to be effective drivers of economic growth or job creation in rural Cambodia”.¹⁴⁸ Cambodia’s desire to attract more investment for ‘agricultural and infrastructure development’ has so far meant that the social need of effectively protecting the local residents’ rights and interests is often insufficiently considered during the process of granting land concessions.¹⁴⁹ Considering these and other findings, the Special Rapporteur lamented the “high human cost of many land concessions”¹⁵⁰ and concluded that “it is not clear to what extent the people of Cambodia have actually benefited from land concessions”.¹⁵¹

¹⁴¹ 2005 ELC Sub-Decree, Art. 5.

¹⁴² 2012 SR Report, paras. 146-149.

¹⁴³ See McKenney/Prom (2002), *Natural Resources and Rural Livelihoods in Cambodia*, section 4.6. on the forest concession system that operated before the implementation of large scale ELCs.

¹⁴⁴ See 2007 SRSG Report, 15; Guttal (2011), *Whose Lands*, 93.

¹⁴⁵ GTZ (2009), *FDI in Land*, 35.

¹⁴⁶ Bues (2011), *Increasing Pressure for Land*, 35; GTZ (2009), *FDI in Land*, 35-36.

¹⁴⁷ UNCDF (2010), *Local Development Outlook*, 176-177.

¹⁴⁸ UNDP (2007), *Raising Rural Incomes*, 12.

¹⁴⁹ UNCDF, *Local Development Outlook*, 177.

¹⁵⁰ ‘Human cost of land concessions high: UN special rapporteur’, *Phnom Penh Post*, 28 August 2012.

¹⁵¹ 2012 SR Report, para. 67.

4.3. Reaching the Limits: Recent Developments in 2012

The year 2012 marked a decisive year for the government's ELC policy. Despite increasingly virulent land disputes, there seemed to be initially no movement to correct the ongoing problems with the implementation of the legal and regulatory framework. Government representatives and policy-makers continued to defend the existing policy. A local newspaper reported after a media inquiry with a lawmaker of the ruling party that:

“[the lawmaker] strongly defended the government's policy to approve the rapid increase of agro-industrial plantations, claiming it was a sound economic model to develop the country and reduce poverty. ‘The big increases in economic land concessionaire made in compliance with the government's development policy in alleviating poverty for the country,’ he said, adding that relevant ministries were taking all necessary steps to study and avoid the social and environmental impacts of concessions. ...where negative impacts did occur, there is still a positive net effect. ‘The impact [of concessions] is just so little compared to the benefits for the country's economy... Nothing is perfect, so development always has an impact. We acknowledge the economic land concessions for growing rubber and other agri-business are affecting local people and the environment. The affected people should understand that they should sacrifice for the nation in order to help government in reducing people's poverty.’”¹⁵²

Given that most estimates indicated that the largest ever number of economic land concessions had been granted in 2011, the government's policy was fast reaching an **impasse**. On 26 April 2012 a prominent environmental campaigner, Mr Chhut Vuthy, was shot dead with the involvement of local police officials whilst travelling to a threatened forest in Koh Kong province. Although the exact circumstances of his death remain unclear this event provoked an outcry among local communities, national and international advocates, and the media.¹⁵³ Meanwhile in Chhlong district in Kratie province land disputes took on a further deadly tone. In mid-May 2012, a 14-year old girl was shot dead by joint police and military police forces during the forced eviction of hundreds of families.¹⁵⁴

With growing pressure ahead of Cambodia's communal elections at the beginning of June 2012, the Prime Minister surprised the public by announcing a **moratorium on new economic land concessions** on 7 May 2012. The government's corresponding Directive 01 on “measures to strengthen and foster the effectiveness [of] the management of economic land concessions” called for (1) an immediate, but temporary, moratorium on the issuance of new economic land concessions; (2) a requirement that all competent ministries and authorities ensure that companies comply with their ELC contracts, in particular the stipulation that their development does not affect communal land and the livelihood of citizens; (3) an announcement to withdraw or cancel land concessions from companies which failed to comply with the applicable

¹⁵² Vrieze/Kuch (2012), *Carving up Cambodia*, 7.

¹⁵³ ‘Cambodia: Blood Trial’, *The Economist*, Vol. 43, No. 8783, 5-11 May 2012, 32-33.

¹⁵⁴ May Tiththara and David Boyle, ‘Teenage girl gunned down by security forces in eviction’, *Phnom Penh Post*, 17 May 2012.

procedures and contracts, either through logging the area without further developing the concession, grabbing more land, leaving land vacant for resale, or conducting business contrary to the terms of the contract and/or encroaching on the land of citizens or communities; and (4) a provision that all land concessions that had received a permit from the government prior to the issuance of the directive shall proceed to comply with the applicable laws and procedures.¹⁵⁵ At the end of September 2012, the Prime Minister was reported to have stated that the ELC moratorium would remain in place until his political retirement, indicating that the move might represent more than just a temporary measure.¹⁵⁶

Shortly after the moratorium announcement, the government proposed a **new initiative to accelerate the land titling process**, calling this a scheme of “new actions based on old/existing policies”. At the midterm review conference of the National Strategic Development Plan (2009-2013), the government reiterated its “leopard spot/skin” formula. This proposal stipulated that private companies should not develop concession land which lies within a community, but should instead develop the land around those communities. Furthermore, it was announced that local people living in ELC areas and areas affected by other concessions would be granted land titles. Along with this, the government would allocate 10 percent of affected land or other concession areas for local people who had been living in those areas.¹⁵⁷ According to local media reports, the Prime Minister at first gave provincial governors only six months to demarcate the 10 percent of every economic land concession to be surrendered.¹⁵⁸ The government established a new high-level inter-ministerial Committee to oversee and monitor the implementation of Directive 01. The role of the Committee was to brainstorm further ideas on matters relating to economic land concessions and the distribution of land, and to ensure that the existing laws were implemented.¹⁵⁹

In order to accelerate this **new distributive land policy**, the government declared it would bring in almost 2,000 student volunteers to assist with the titling process. The students would work in mixed teams with officials to measure and demarcate the land of people living in or near the areas affected by economic land and forestry concessions. According to this policy, each household would receive up to five hectare of land, unless they required or already possessed a greater area. In the former case they could be granted additional unplanted land as a small economic land concession. The government set an initial target under this initiative of measuring 1.2 million hectares of land for around 300,000 families.¹⁶⁰ It was later reported that this target was further increased to 1.8 million hectares for up to 470,000 households. This land appears to concern predominantly “not yet legally occupied” state land,

¹⁵⁵ RGC (2012), ‘Directive 01 on measures to strengthen and foster the effectiveness of the management of economic land concessions’, 7 May 2012.

¹⁵⁶ May Titthara, ‘ELC moratorium will last ‘until I retire’, PM says’, Phnom Penh Post, 1 October 2012, 3.

¹⁵⁷ Prime Minister, ‘Keynote Speech at the Launching of the 2011 Mid-term Review Report on the Implementation of the National Strategic Development Plan Update 2009-2013’, Phnom Penh, June 14, 2012.

¹⁵⁸ David Boyle and May Titthara, ‘Critics dismiss Hun Sen’s pledge as empty promises’, Phnom Penh Post, 15 June 2012.

¹⁵⁹ RGC (2012), ‘Government decision to establish committee to oversee the implementation of Directive 01’, 25 June 2012.

¹⁶⁰ Prime Minister, ‘Selected Impromptu Statements and Comments during the Meeting with Youth Volunteers for Land Measuring Missions for the People’, Koh Pij, 26 June 2012.

including economic land concessions, forest concessions and confiscated land in the forest cover.¹⁶¹ It is important to note that initial public statements indicated that this process would only involve undisputed land. Land which continued to be the subject of ownership disputes was to be resolved through official titling and dispute resolution mechanisms. However, a few months later, reports emerged stating that disputed land between economic land concessions and local communities may also be covered by this new titling initiative.

According to supplementary policy directives, the land titling initiative would be implemented in three steps: (1) mapping out the land, identifying the affected households, demarcating the land, and submitting maps to the provincial land management committees; (2) verifying the information through the relevant authorities which would publically display all data and maps at local community meetings, issuing preliminary land titles free of charge; and (3) issuing definitive land titles at a later stage after central registration.¹⁶² It appears from various sources, that this last policy instruction has somewhat changed later on in that authorities now appear to issue definitive titles to farmers right away. In addition to this specific policy initiative the government reconfirmed that it would continue its initial policy on social land concessions for landless people. In a speech delivered in June 2012 the Prime Minister justified this new policy initiative by using much of the previous rhetoric:

“What we are doing is to provide land titles to them [the people] so as to achieve stability on issues of land possession and occupation, social safety, effective land use, poverty reduction and economic growth. Social aspects to be obtained from such policies and actions would contribute greatly for the betterment of the people’s livelihood. [...] In this case of economic land concession, this action would address to the wish of both companies and people’s communities as they would know where their borders meet. It is more so as people would also use their land titles to secure loans from banks too. It is going to be win-win situation for all, the investors and the people’s communities win. While attracting foreign investments, it is important to make sure that they all are abiding by the Cambodian judicial system.”¹⁶³

At the beginning of August 2012, the government provided new data from the Ministry of Land Management, Urban Planning and Construction, which indicated that some 172,845 hectares have been measured under the new initiative, involving 74,047 land holdings. According to this data 95,068 families had been registered and 78,433 families had been verified. The original timeframe of six months for the initiative was also extended.¹⁶⁴ In addition to the new land titling initiative, the media also reported that there had been a limited number of concession cancellations between

¹⁶¹ Speech of H.E. Im Chhun Lim, Senior Minister and Minister of Land Management, Urban Planning and Construction and Chairman of Council for Land Policy, GDCC Meeting in Phnom Penh, 26 September 2012.

¹⁶² The Supreme Council of State Reform/The Council for Land Policy (2012), ‘Directive No. 018 Regarding Land identification, People identification and the issuance of preliminary certificate of ownership in compliance with the Directive No.01 BB, 07th of May 2012 of the Royal Government on Measures to Strengthen and Enhance the Effectiveness of the Economic Land Concession Management’, Phnom Penh, 20 July 2012.

¹⁶³ Prime Minister, ‘Selected Impromptu Statements and Comments during the Meeting with Youth Volunteers for Land Measuring Missions for the People’, Koh Pij, 26 June 2012.

¹⁶⁴ Prime Minister, ‘Selected Impromptu Comments of Samdech Techo Hun Sen during the Inauguration of the National Road 62 (the southern section) from the National Road 6 at Kompong Thom Province to the City of Preah Vihear, Preah Vihear Province, 8 August 2012.

July and August 2012. These cancellations included an almost 15,000 hectare concession in the Cardamom mountains, which was granted for a banana plantation, and four further concessions totaling more than 40,000 hectares, located inside the Prey Lang forest. These cancellations were largely justified on the basis of fears about their environmental and social impact.¹⁶⁵ It is not clear whether this series of cancellations represents the beginning of a more systematic review of economic land concession compliance.

The reaction amongst the public, advocates, and other stakeholders was mixed, ranging from praise to caution and skepticism. Most commentators welcomed the moratorium on new economic land concessions, but fresh criticism arose when the government continued to grant land concessions which had allegedly received permission prior to the proclamation of the ban on 7 May 2012.¹⁶⁶ At the end of June 2012 a Cambodian NGO reported that 13 economic land concessions totaling over 80,000 hectares had been granted since the moratorium.¹⁶⁷ In August 2012, the media reported that there was a prospect of three additional concessions totaling more than 23,000 hectares in Preah Vihear province.¹⁶⁸ No information was made available to the public about how many economic land concessions had been under negotiation prior to the official declaration of the ban.

So **what should be made from these recent developments** and the new activism displayed by the government? Considering the rapid policy changes over the year 2012 and limited information available about their implementation, it is too early for a reliable assessment of these initiatives. As the situation keeps evolving at the time of writing this report, only a few preliminary remarks are possible. First, the moratorium on new economic land concessions and the corresponding policy initiatives, hastily put together, represent an important shift compared to previous responses by the government which largely ignored the growing problems associated with its ELC policy. The new activism also seems to indicate that the government belatedly recognizes that some of the policy's negative impacts were harming overall governmental policy-making. This is a positive development.

Second, it is not fully clear from public announcements how the practice of the new ad hoc land titling initiatives will relate to the existing institutionalized processes and procedures, such as systematic land titling. The latter have been built up with much donor support over the past few years. The government declared that the new initiative would work in line with the procedures established under the systematic land registration process.¹⁶⁹ Despite these efforts in seeking to accommodate these initiatives within the established framework, it remains to be seen whether they can work in complement. Similarly, some lawyers have argued that the government's new policy would change, and in some cases breach existing ELC contracts. This would

¹⁶⁵ Phak Seangly, 'Land concession cancelled by PM', Phnom Penh Post, 23 July 2012; David Boyle and May Titthara, 'Economic land concessions in Prey Lang rejected', Phnom Penh Post, 6 August 2012.

¹⁶⁶ May Titthara, 'Hun Sen grants four economic land concessions', Phnom Penh Post, Monday, 25 June 2012

¹⁶⁷ Documented by LICADHO and cited in Vong Sokheng, 'PM defends economic land concession signings', Phnom Penh Post, 27 June 2012.

¹⁶⁸ May Titthara, 'PreahVihear land primed for plantation', Phnom Penh Post, 22 August 2012.

¹⁶⁹ Speech of H.E. Im Chhun Lim, Senior Minister and Minister of Land Management, Urban Planning and Construction and Chairman of Council for Land Policy, Phnom Penh, 26 September 2012.

make it necessary to establish the necessary procedures with the affected companies and possibly pay compensation.¹⁷⁰ Moreover, other groups of rural poor in need of assistance, such as those affected by landlessness, may not immediately benefit from these measures because they have not been the primary target of the new initiatives. Nevertheless, it was also reported that the government aimed at accelerating its conventional SLC policy as well, for instance, by further identifying state land for this purpose or by using confiscated land from economic land concessions for potential use as social land concessions.¹⁷¹ Overall, it is still too early to assess whether the government's new activities will have the intended effect of increasing tenure security for investors and local populations.

Third, the government presented these measures as “new actions based on old/existing policies”. Apart from the temporary ban on new economic land concessions and the removal of a few areas of land from existing concessions, the new initiatives have left the existing ELC policy largely untouched. It appears to be the belief of domestic policy-makers that these initiatives will contribute to re-balancing the current ELC policy and recreating the win-win scenario for companies and local populations, including the rural poor that all policy documents had initially stipulated. In so doing, however, these policy-makers seem to have made not enough effort to understand the underlying flaws and weaknesses of their ELC policy, which led into the current impasse. An important benchmark will be visible progress on a transparent and systematic review of all existing land concessions to assess whether they comply with their contracts and other regulations, as stipulated by the 2005 ELC Sub-Decree.

Despite current uncertainties as to the long-term impact of these recent developments, there appears to be momentum for an increasing convergence in opinion among the government, civil society, and the donors in regards to the limitation of the current approach to economic land concessions. The question remains whether and how this momentum can be exploited for a positive change in current policies. Before one can start to discuss a remaking of policies, it is essential to understand why, over the past decade, many economic land concessions have not delivered the expected benefits and not made a substantial contribution to poverty reduction, in particular in rural areas of Cambodia. Many land concessions have instead caused a demonstrable adverse impact on local populations and the environment. In this regard the next chapter will attempt to shed some light on aspects of the ELC policy which require attention by policy-makers and other stakeholders in future discourses on reshaping theory and practice.

¹⁷⁰ David Boyle and May Titthara, ‘Critics dismiss Hun Sen’s pledge as empty promises’, Phnom Penh Post, 15 June 2012.
¹⁷¹ Speech of H.E. Im Chhun Lim, Senior Minister and Minister of Land Management, Urban Planning and Construction and Chairman of Council for Land Policy, Phnom Penh, 26 September 2012.

5. Recognizing the Challenge: Learning Lessons from Past Experiences

Providing a comprehensive and in-depth analysis of the past experience with economic land concessions in Cambodia would be a project in its own right and would go beyond the scope of this paper. However, having arrived at the current impasse, there is an urgent need to assess the theory and practice of economic land concessions to date. It is important to draw lessons from past experience in order to shape the reformulation of this policy while refocusing attention on the broader objectives of rural development and poverty reduction in Cambodia. This is even more imperative given the fact that history appears to have repeated itself in the context of Cambodia. The present situation and debates resemble in many ways the debates that policy-makers found themselves in at the end of the 1990s. For instance, the previous forestry concession policy also ended in a moratorium on further concessions during the early 2000s (see box). A comprehensive assessment would assist policy-makers in moving the ELC policy debate away from the ideological perspective about the roles of private business and the state in agricultural and rural development. Instead, the discourse would benefit from moving toward fact-based discussions on the prerequisites of a successful policy and the most effective way to reduce poverty among rural populations. This chapter will not provide a full response to these issues, but will draw some attention to areas that may explain the current challenges with the ELC policy and the underlying weaknesses in the past approach to economic land concessions. It is hoped that this examination may inspire further research into these areas of interest, which could in turn assist policy-makers to lift more of Cambodia's rural households out of poverty.



“Economic land concessions sugarcane planting granted in 2010 to two companies, Kampong Speu Sugar Co., Ltd and Phnom Penh Sugar Co., Ltd in Oral and Tpong Districts, Kampong Speu province (Photo by CHRAP)”

5.1. Insufficient Consideration of the Global Context

During the interviews conducted for this study, it often seemed as if Cambodia was an isolated island and the discourse on the pros and cons of the government's ELC policy was largely focused on domestic factors. It is therefore important to put this domestic discourse in the context of the extensive, and often fierce, debates that are going on at the global level about large-scale investment in agriculture and related land deals. Cambodia is part of these global dynamics with implications for domestic policy-making. Therefore, policy-makers need to sufficiently consider the context beyond the country's borders.

The first decade of the 21st century has seen an unprecedented and world-wide increase in large-scale investments in land, mainly for agro-business purposes. Although large agricultural investments, such as in plantations, are not new and have occurred in many developing countries since colonial times, the extent and intensity of the current investments represents a new trend that many actors involved are still trying to understand. This phenomenon is described in various ways, as "global land rush", "global land grabbing" or "global pressure on land". A wake-up call was a 2011 World Bank report, based on an inventory of media reports, on the global rise in investment in farmland which reported about land acquisitions totaling 56.6 million hectares worldwide within only one year from 2008 to 2009. Some two-thirds of this is located in Africa; with Southeast Asia following in second place. Cambodia was one of the researched case studies. Actual farming had only started on around 20 percent of these deals.¹⁷² Based on the collaborative 'land matrix' project, led by the International Land Coalition and Oxfam, a recent Oxfam report estimated that as much as 227 million hectares might have been sold or leased between 2001 and 2010 – of this number about 67 million hectares have been cross-checked. Although over 70 percent of these cross-checked deals have been in agriculture, with most of the investments taking place between 2009 and 2010, there is additional pressure on land resulting from investments in forestry, mining and tourism.¹⁷³ These figures show the significant scale of the recent investment in land, mainly in the Southern hemisphere.

A review of relevant literature provides various reasons for this phenomenon. Only a view will be highlighted here. First, the global food crisis in 2007/2008 and the associated rise in food prices raised new concerns in relation to food security, in particular among countries that heavily depend on food imports to cover their needs. In addition, the crisis created expectations that rising food prices would constitute a longer-term trend in the context of global economic growth and a growing population. Second, a change in energy policies and oil prices has contributed to a rise in biofuels investments, including by acquiring access to land in the global South. Third, there

¹⁷² Deininger et al. (2011), *Rising Global Interest in Farmland*, 50-52.

¹⁷³ Oxfam (2011), *Land and Power*, 5-6. Similar number can be found in a more recent report drawing on the same matrix data set. See Anseeuw et al. (2012), *Transnational Land Deals for Agriculture*, vi-x.

has also been a rise in demand for certain agricultural commodities for industrial use, such as rubber. This has particularly been visible in Cambodia and Lao PDR. These and a number of other factors make agricultural commodities an attractive investment option. In order to secure volumes and supply, a number of agribusinesses have begun to invest down the supply chain in order to gain more direct access and control of the production of these commodities.¹⁷⁴

These large-scale investments in land deals have provoked much international debate in recent years. Some observers have welcomed these investments as an opportunity in bringing much needed capital and development to low-income countries, while making an important contribution in ensuring global food security in the future. Others have been critical of these large investment deals, in particular in relation to their impact on rural populations and the environment in the South. Oxfam characterized it in a recent report as “development in reverse”.¹⁷⁵ Despite this divergence in opinions, there is increasing agreement across the literature that it is a sign of a new process of economic and social transformation in agriculture – one that has begun having profound implications for the predominant smallholder agriculture in developing economies.¹⁷⁶ Policy-makers and development donors in these countries need to be aware of these global dynamics.

Cambodia re-launched its ELC policy in 2001/2005 in the midst of these developments at the global level. Much of the international debate around large-scale investments in agriculture and associated land deals appears familiar when looking at the rhetoric of economic land concessions as presented in Chapter 3 and the critical analysis of its practice as discussed in Chapter 4. It is not only shown by Cambodia’s own past experience with land concessions in the 1990s, but also evidence around the globe had already suggested that large-scale investments and associated land deals in order to benefit local populations would require strong governance systems with the necessary capacity to manage and monitor these investments. Instead, Cambodia joined the ranks of weak governance low-income countries in opening up their land markets, often with a lower level of requirements for investors with the declared goal of attracting domestic and foreign capital. Opening Cambodia’s doors to little controlled investment at this critical phase meant that policy-makers had underestimated the underlying global dynamics and transformations at work, in particular in view of the unpreparedness of the domestic system in dealing with the consequences.

Cambodia’s choice for an extensive ELC policy was certainly not an automatic one. Solely looking at its neighboring countries in mainland Southeast Asia, different models in agricultural investment and development are pursued: whereas Lao PDR follows a similar concession policy as Cambodia does, Thailand and Vietnam have followed different models. The 2011 World Bank report states that

¹⁷⁴ See for instance Anseeuw et al. (2012), *Land Rights and the Rush for Land*, 18-28; Cotula (2012), *The International Political Economy of the Global Land Rush*, 649-680.

¹⁷⁵ Oxfam (2011), *Land and Power*, 3.

¹⁷⁶ Cotula (2012), 649-680.

“Thailand and Vietnam have clarified property rights and used public investment to provide smallholders with access to technology. The small and medium farmer-driven expansion of rice exports – and subsequently exports of other commodities with higher value added – in these countries indicates that these policies had a major impact on poverty reduction and gradual increases of farm size as nonagricultural growth accelerated as well. It also illustrates that increases in production are by no means contingent on largescale land acquisition.”¹⁷⁷

Whatever policy direction Cambodia will pursue in the coming years, policy-makers need to consider these global dynamics carefully as well as the problems and opportunity costs involved in large-scale agricultural investments and associated transfers of farmland to investors.

BOX 2

A Regional Following: Moratoriums in the Lao PDR

Among Cambodia’s neighbors, the Lao People’s Democratic Republic (Lao PDR) is the country that has most closely followed comparable land concession policies. Possessing similar characteristics as Cambodia, such as a perceived abundance of land largely under state control, low population density and limited availability of domestic capital, Lao embarked on implementing policies to promote large-scale investments in agriculture by leasing land as concessions to domestic and international companies. Most foreign investment originated from China and Vietnam. Although Lao experienced a considerable macro-economic growth over the past decade, these policies soon began to show negative economic, social and ecological impacts similar to the ones described in this report in relation to Cambodia: local communities lost access and use rights to hundreds of thousands of hectares of land affecting negatively the livelihoods of poor farmers and communities and hampering the Lao government’s efforts in attaining the Millennium Development Goals, in particular in the reduction of poverty (Hansen 2007, Dwyer 2007).

The Lao government recognized these impacts and increasing criticism from local communities and responded by issuing, in May 2007, a first moratorium on land concessions over 100 hectares for industrial tree planting (rubber plantation represent a bulk of the investments), perennial plants and mining. The moratorium foresaw a critical review of existing policies and practices. In May 2009, the moratorium was repealed in a new decree that tried to address the negative impacts of land concessions, mostly by requiring government officials to conduct more thorough land survey when identifying the suitability of land for concessionary investment (Kenney-Lazar 2010).

Despite these control measures, land concessions have continued to be granted by governmental authorities as a primary vehicle for channeling investment in land-based resources extraction in Laos. When this renewed failing became evident, the Lao government issued, in June 2012, shortly after Cambodia’s ELC moratorium, a new moratorium on land concessions for rubber plantations and new mining investments until 2015. In addition, the Lao Minister of Planning

and Investment stated that all existing projects would be reviewed and future projects would not be approved until the government has conducted thorough land surveys (ABC, 27 June 2012).

Similar lines can be drawn from the two countries' moratoriums which responded to the effects of policies that aimed at promoting large-scale investments into agriculture on 'state land' through long-term concession policies. First, Cambodia stands not alone in the region with a largely negative experience with its ELC policy. Second, both countries had weak governance structures in place when they initiated these policies. These structures were unable to implement consultative planning processes, enforce existing laws, and prevent encroachment on land and conversation areas, resulting in negative impacts on local communities. Third, the experience with Laos' first 2007 moratorium suggests that an effective and comprehensive review of existing projects and policies is a prerequisite for avoiding a perpetuate cycle of problems and negative impacts, including a thorough consideration of alternative policies that may better achieve stated development objectives.

5.2. Underestimating the Problems and Opportunity Costs Involved in Large-Scale Investments and Transfers of Farmland

More than 10 years after the adoption of the 2001 Land Law and almost seven years after the promulgation of the related 2005 ELC Sub-Decree, the available evidence suggests that much of the expected benefits associated with large-scale agricultural investments and transfer of lands have not (yet) materialized. To the contrary, and as described previously, numerous problems have occurred which by and large affect those originally intended to become one of the primary beneficiaries of this policy – Cambodia's rural poor. There appears to have been a clear underestimation of the problems and costs that come along with leasing out large tracks of land to investors. This has become visible in a number of areas. Most of them show early problems without yet being able to fully appreciate any additional long-term impacts of these policies.

(1) The ELC policy and the dynamic it gained after 2005 have further increased the pressure on land in Cambodia. Although land prices and land competition had already been on a raising trend after years of economic growth – in particular in and around urban areas and key infrastructure projects – the new ELC policy and its massive scale rapidly increased the pressure on land in rural areas, even in parts that were previously considered remote and far away from the general economic development in the country.¹⁷⁸ The existence of large areas of 'unused' or 'underutilized' land often turned out to be an illusion, as most concession projects had to deal with people who had already occupied the land or communities who were using the land for other aspects of their livelihood.

¹⁷⁸

See also Löhr (2011), *Cambodian Land Market*, 33-34.

(2) It should have come as no surprise that most of the large-scale land lease deals, resulting from an ELC policy that accelerated over time, had significant economic and social impacts on local populations, in particular the rural poor, including access to natural resources, food security, etc. Employment promises that rarely materialized were in many cases not able to compensate for the loss of access to land and natural resources, leaving affected populations worse off than before.¹⁷⁹ Although in a number of cases households were able to gain additional income from labor at plantations, in many other cases the nature of seasonal or semi-permanent plantation labor did often not allow for sustainable livelihood, leaving many of these laborers in precarious situation.¹⁸⁰ Given the importance assigned to employment creation, both in rhetoric and legal instruments, it is surprising how little data is available.

(3) An expansionary ELC policy, often outside proper legal procedures, has contributed to uprooting and displacing an increasing number of people among Cambodia's rural poor. Along with the growing number of economic land concessions, communities living on the leased lands have increasingly become subject to various forms of displacement, including involuntary resettlements and forced evictions. The NGO ADHOC reported that 127 communities comprising of 56,904 families in 11 municipalities/provinces were forcibly evicted as of 2011, with more than half of these forced evictions occurring in the urban area of the capital Phnom Penh.¹⁸¹ As to concession projects in rural areas, formal dispossession may not always lead to immediate displacement. Many landholders continue to live on concession areas, sometimes unaware of the ELC contract in the first place until the concessionaire begins to develop the land. Most of these displacements, forcibly or not, are poorly planned without following due process of law and leave affected populations worse off than before, including higher incidences of poverty and food insecurity.¹⁸² Unfavorable compensation deals have further reinforced these negative trends.

(4) Policy-makers have overestimated the capacities of many investors and underestimated the opportunity costs that come along when locking-up large tracks of land through long-term lease agreements. Even years after contracts are concluded, only a fraction of the leased land is actually being developed. It is estimated that less than 10 percent of the concession area is under production.¹⁸³ Many investors have struggled to meet the targets as agreed in land use and investment plans. The 2011 World Bank report captures this in its assessment of this situation that is prevalent in Cambodia:

¹⁷⁹ See for instance LICADHO (2005), Harmful Effects of Economic Land Concession; and Men (2011).

¹⁸⁰ See also Men Prachvuthy, as cited in Zsombor Peter (2012), 'Study Finds Land Concessions of No Benefit', The Cambodia Daily, 24 October 2012, 19.

¹⁸¹ ADHOC (2012), Report on Land and Housing Rights, 6.

¹⁸² See for instance UNHABITAT/OHCHR (2011), Losing Your Home, 52-55; ADHOC (2012), Report on Land and Housing Rights, 6-10.

¹⁸³ World Bank (2008), LASED Project Appraisal Document, 2.

“...investors acquired land in quantities much larger than they could use, at least initially. Many saw this tactic as motivated by a desire to lock in very favorable terms of land access and eliminate future competition. In settings where either the technology or investor capacity is unproven, the acquisition of land in larger quantities than an investor can reasonably operate involves significant risks. Especially in areas where land values are expected to appreciate and no effective mechanisms for land taxation are in place, large land allocations to investors with little experience are risky.”¹⁸⁴

In Cambodia, many of the concession projects granted after the 2001 Land Law covered areas at or near the maximum allowed limitation of 10,000 hectares. At a minimum, and considering the negative experience of the 1990s and the limited capacities of governmental authorities, it would have been recommendable to grant smaller lots of land to a larger number of investors under shorter lease periods.¹⁸⁵ This would have allowed extending leases or potentially granting additional land to those who prove that they could fulfill the criteria and deliver the expected benefits to local populations. The 2011 World Bank report further suggests that “given the evidence that investors do not always live up to their promises, greater scrutiny of investment proposals’ viability and use of deposits to ensure investment is actually made are now widely recognized as necessary to screen investors”.¹⁸⁶ Looking at the large number of concessions granted during the last years, it is reasonable to assume that there had been a lack of an appropriate screening of investors.

Similarly, taking into account the fact that most of the concessionaires are investors with little available public records, it is not clear how it was established that these investors would bring with them the necessary expertise in managing large-scale projects, modern technologies and high capital investments, as promised in most policy documents. All these questions are critical considering that the state has already leased out to investors at the minimum more than one million hectares of land under very long-term agreements. According to these agreements, these concession lands will remain locked up for decades to come and they will not be available for alternative and possibly more productive purposes.

(5) Policy-makers have largely failed in their objective of accompanying the ELC policy with a progressive policy on social land concessions. As mentioned before, social land concessions figure much more prominently in most governmental policy and strategic documents, but represent only a fraction of the land granted through economic land concessions. According to the government’s 2009 Declaration on Land Policy, “the objective of land distribution is to provide a clear direction for the allocation and usage of State land for public and private purposes in a transparent and equitable manner in response to the needs for land by the people, particularly the poor, disabled soldiers, and family of deceased soldiers who have no land or lack land by implementing social land concession program”.¹⁸⁷

¹⁸⁴ Deiningner et al. (2011), *Rising Global Interest in Farmland*, 63.

¹⁸⁵ Löhner (2011) reports that “it also appears that smaller ELCs (up to 6,000 ha) are used comparatively more efficiently than larger ones. However, most of the area is granted as large ELCs.” Löhner (2011), *Cambodian Land Market*, 42.

¹⁸⁶ Deiningner et al. (2011), *Rising Global Interest in Farmland*, 63.

¹⁸⁷ RGC (2009), *Declaration of the Royal Government on Land Policy*.

Although social land concessions and economic land concessions were both envisaged by the 2001 Land Law, the granting of economic land concessions soon outpaced the small SLC programs by far. This divergence was mainly due to the fact that economic land concessions were decided in a quick top-down process, often lacking due process, whereas the commune-based stream of the social land concession policy involved a slow and complex bottom-up process with multiple administrative steps.¹⁸⁸ As a consequence, the distributive aspect of the government's land policy so far has neither been "equitable", nor has it responded "to the needs for land of the people, particularly the poor". The SLC policy to date has not provided access to land for the growing number of landless or near-landless among the rural population. In addition, no viable alternative was available that could have absorbed the increasing number of people affected by an expansionary ELC policy. There is an urgent need to address this significant imbalance and to bring the practice in line with the government's own development plans. Recent public statements by government representatives appear to indicate an increasing recognition by policy-makers of this imbalance and the need to prioritize and expand the SLC policy.

(6) In a number of provinces with a high prevalence of land concessions, ELC projects have begun to have adverse effects on rural development projects implemented by development partners in collaboration with smallholder farmers. In recent years, a number of international development partners have observed that some ELC projects had begun to negatively affect their development work with rural communities, including projects in the field of food security and community-based rural development. In some of these cases, large-scale land investment changed the conditions for the development projects to an extent that the initial objectives of these programs lapsed in view of the new challenges resulting insecurity of access to land and land use and changes to local rural economies.¹⁸⁹ Apart from a loss of investment, these impacts question the sustainability of development work in rural communities.

(7) A general expansionary concession policy, extending to concessions in forestry, mining and tourism, has resulted in negative impacts on the environment and further strains on access to natural resources. The World Wide Fund for Nature (WWF) reported in 2007 that the proliferation of industrial plantation had already led to environmental consequences of serious concern, including the "increased threats to already-under-funded protected areas due to direct encroachment and the displacement of lowland farming communities by plantations; the fragmentation of ecologically important areas that lack formal protection; greater risks to connective corridors between protected and unprotected areas which provide valuable habitat for wildlife species; and potential risks for watersheds and river systems".¹⁹⁰ Therefore, many authors argue that large-scale plantations come along with significant environmental risks, and that smallholder farming is in many ways more environmentally sustainable. In addition, certification schemes could possibly assist

¹⁸⁸ Bues (2011), *Increasing Pressure for Land*, 33-36.

¹⁸⁹ See for instance Welthungerhilfe (2011), *Large-Scale Land Investments*.

¹⁹⁰ WWF (2007), *Addressing the Environmental and Social Challenges Resulting from Large-Scale Agricultural Land Concessions*, 3.

in making these larger plantations in future more considerate of their environmental impact, although the required institutional frameworks for such an approach are not yet in place.¹⁹¹

BOX 3

Principles of Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources

The Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources ('RAI Principles') were formulated to establish standards for business enterprises on the protection of human rights and the environment. The drafters stated that the current problems merits "a broader effort to build on ongoing private initiatives that involve some mix of guidelines, codes of good or best practice, and perhaps even independently verifiable performance standards couple with benchmarking". The existing initiatives were limited, general, and not applicable to all agro-investing situations. The initial draft principles were developed by the World Bank Group along with FAO, IFAD, and UNCTAD based on research work conducted since 2009. A further two-year consultation process on these guidelines was approved by the Committee on World Food Security in October 2012 with the aim to present in 2014 the final guidelines for endorsement.

Principle 1: Existing rights to land and associated natural resources are recognized and respected.

Principle 2: Investments do not jeopardize food security but rather strengthen it.

Principle 3: Processes for accessing land and other resources and then making associated investments are transparent, monitored, and ensure accountability by all stakeholders, within a proper business, legal, and regulatory environment.

Principle 4: All those materially affected are consulted, and agreements from consultations are recorded and enforced.

Principle 5: Investors ensure that project respect the rule of law, reflect industry best practice, are viable economically, and result in durable shared value.

Principle 6: Investments generate desirable social and distributional impacts and do not increase vulnerability.

Principle 7: Environmental impacts due to a project are quantified and measures taken to encourage sustainable resource use while minimizing the risk/magnitude of negative impacts and mitigating them.

Adapted from: *Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources*, A discussion note prepared by FAO, IFAD, UNCTAD and the World Bank Group, 25 January 2010. See also more information at <http://www.fao.org/cfs/en/> (accessed on 30 October 2012).

¹⁹¹ Löhr (2011), *Cambodian Land Market*, 43.

5.3. Appreciating Risks Involved in Land Reforms and the Commodification of Land

Many of Cambodia's current problems with its ELC policy and practice are interrelated with its simultaneous challenging land reform process. The main vision of the government's land policy is "to administer, manage, use and distribute land in an equitable, transparent, efficient, and sustainable manner in order to contribute to achieving national goals of poverty alleviation [*italic by the author*], ensuring food security, natural resources and environmental protection, national defense and socio-economic development in the context of market economy".¹⁹² As briefly described in Chapter 2, since the end of the 1980s, Cambodia has progressively introduced private property rights. So far, however, "only the original 2.5 million ha of land distributed to all households in 1989 is considered to be clearly private, while the remaining area includes primarily areas claimed as forest and protected areas, military development zones and other state lands – all with significant existing occupation by both large and small land holders".¹⁹³ Around 80 percent of the country's total land is still technically considered to be state land. The previously mentioned challenges of increasing landlessness and speculative pressures on land have caused further encroachment on state land, mainly through the conversion of forested or degraded forest areas.¹⁹⁴

With the adoption of the 2001 Land Law, a systematic land titling process was established. Up to early 2011, the Ministry of Land Management, Urbanization and Construction issued about 2.4 million land title certificates in 16 provinces.¹⁹⁵ Despite these commendable achievements, the LMAP-supported land registration process has attracted some criticism, in particular for its approach to exclude 'disputed areas or areas of 'unclear status' from the initial titling program. By doing so, some NGOs argued it "is not improving tenure security for segments of Cambodian society that are most vulnerable to displacement".¹⁹⁶

Although it goes beyond the scope of this report to review the government's land policy to date, it is nevertheless important for the report's purpose to highlight some of those areas which relate to the dynamics that led the ELC policy into its current impasse:

(1) It was a considerable risk for policy-makers to re-launch an ELC policy at a time when a systematic land titling process and the establishment of an effective state land management was still underway and far from accomplished. A precondition for the granting of economic land concessions is the existence of an effective state land

¹⁹² RGC (2009), Declaration of the Royal Government on Land Policy.

¹⁹³ World Bank (2008), LASED Project Appraisal Document, 1.

¹⁹⁴ World Bank (2008), LASED Project Appraisal Document, 1; GTZ (2009), FDI in Land, 12.

¹⁹⁵ Prime Minister, 'Keynote Speech at the Launching of the 2011 Mid-term Review Report on the Implementation of the National Strategic Development Plan Update 2009-2013', Phnom Penh, June 14, 2012.

¹⁹⁶ Grimsditch/Henderson (2009), Untitled, 1.

management, including a comprehensive state land inventory and land use planning. The main regulatory tool to effectively manage the state land was provided through Sub-Decree 118 on State Land Management which was issued in October 2005.¹⁹⁷ The Sub-Decree also establishes the procedures through which state public land can be reclassified as state private land- the gate-opener for legally selling or leasing state land to private businesses, including through economic land concessions. Shortly afterwards, a new Sub-Decree 129 was passed to redefine rules for reclassifying state public land into state private land.¹⁹⁸ Some critics have argued that these procedures are less rigorous and transparent.¹⁹⁹

Even more than four years after the issuance of the 2005 Sub-Decree on State Land Management, it was reported that “the law is not enforced yet, the systematic mapping, classification and registration of state public and private land in Cambodia has only partially taken place”.²⁰⁰ Regardless of the existence of an effective state land management, the granting of economic land concessions was already fully under way. Transparency in this process was further complicated by the fact that the 2001 Land Law technically allowed various government ministries to be owners of land. As a consequence, different ministries, not just including the MAFF, but also the Ministry of Environment (MoE) and the Ministry of Defense (MoD) – all under the oversight of the Ministry of Economy and Finance – manage large areas of state land. All of these ministries to a different degree made use of the procedure of reclassifying these lands into state private land and leased these lands out to private investors, often in forms of economic land concessions.²⁰¹

This process was facilitated by the fact that most people in Cambodia simply lacked the requisite understanding of the process of formal titling and property systems. For many people in rural Cambodia the proof of land ownership has lied in the fact that they occupy and control the land, mostly supported by an informal system of social norms.²⁰² The low number of ‘titles’ granted in rural Cambodia has given rise to a perceived abundance of available land especially for economic concession purpose when the land may already be occupied by local residents.²⁰³ Commercial interests have been able to exploit this ‘abundance’ of rural land in Cambodia and apply for large economic land concession. Against this background, the granting of economic land concessions soon outpaced the gradual progress made in the field of land registration and state land management reform. Without the necessary preconditions and safeguards in place, this rapidly expanding ELC practice proved to be a recipe for further land disputes and land concentration.

¹⁹⁷ 2005 Sub-Decree on State Land Management.

¹⁹⁸ 2006 Sub-Decree on Rules and Procedures on Reclassification of State Public Properties and Public Entities.

¹⁹⁹ Grimsditch/Henderson (2009), Untitled, 58-59.

²⁰⁰ GTZ (2009), FDI in Land, 19.

²⁰¹ Un/So (2011), Land Rights in Cambodia, 301-302.

²⁰² See for instance Adler et al. (2008), Legal Pluralism and Equity.

²⁰³ So et al, (2001), Social Assessment of Land; Van Acker (1999), Hitting a Stone with an Egg; Thiel (2010), Donor-Driven Land Reform.

(2) Security of tenure must not necessarily equate establishing and promoting a market for private property over land. One of the main goals of government policy has been to improve security of tenure in land. The government's approach is supported by various studies who found a correlation between improved tenure security and poverty reduction.²⁰⁴ Therefore, it must be an objective to promote policies that improve access to land and security of tenure among Cambodia's rural poor. However, promoting private property rights over land, in combination with individual titling schemes is not the only way to achieve improved tenure security. In a situation of growing inequality in land ownership and a significant power imbalance between small groups of elites with economic and/or political control and the majority of poor farmers, there is a risk that such schemes confirm and potentially exacerbate the unequal distribution of land. Thus, without an appropriate system of safeguards in place, including a functioning and independent judiciary and dispute resolution mechanisms, access to capital for poor farmers and redistributive land schemes for the poor, such processes may easily lead to a reconcentration of land.²⁰⁵ Löhr argues that

“Unlike smallholders and landless or land-poor people, domestic and foreign agro-business companies can be considered as powerful, well-organized actors that work closely with the government. They may also be the strongest group in the future competition for land. If the trends described in this report are realized, these powerful actors will try to get more land. Not all investors follow a social responsibility code. This means that there is a certain danger that the losers will be the poorly organized groups...”²⁰⁶

Therefore, for low-income countries like Cambodia to achieve the desired poverty-reducing impact, it is crucial to strengthen tenure security in a way that respects the entitlements of those most in need of access to land to ensure their livelihood and food security. Instead of predominantly relying on the promotion of private property rights, other approaches to improving tenure security are pursued in similar contexts, such as leasing or renting out public land (with private land use rights) or recognizing customary or collective forms of tenure.²⁰⁷ Policy-makers in Cambodia somewhat chose a middle way with the introduction of a concession system. However, without the necessary safeguards and monitoring in place, it has in many instances become impossible to ensure the public interest in ELC projects, including compliance with the 2005 ELC Sub-Decree and local land use plans (if they exist). In addition, given the length of the lease agreements being on average 70 years and a maximum of 99 years, Thiel argues, “the right of an economic concessionaire is nearly comparable to

²⁰⁴ Engvall/Kokko (2007), *Poverty and Land Policy in Cambodia*; SNEC (2007), *Report of Land and Human Development*.

²⁰⁵ De Schutter (2011), *How Not to Think of Land-Grabbing*, 268-270.

²⁰⁶ Löhr (2011), *Cambodian Land Market*, 34. Likewise UNDP/MoP (2007) argue that “the sudden liberalisation of land markets from 1989 onward, without first putting in place adequate institutional safeguards, laws and effective governance, left these weaker and less-informed members of society highly vulnerable to unregulated market forces and information asymmetries – to the advantage of the better informed, influential and powerful”. UNDP/MoP (2007), *Cambodia Human Development Report*, 11.

²⁰⁷ See Thiel (2010), *Donor-Driven Land Reform*, 232-234; De Schutter (2011), *How Not to Think of Land-Grabbing*, 271.

the eternal right of a private owner".²⁰⁸ Indeed, many concessionaires have displayed attitudes of that of private owners of the leased lands. It is important in this context to re-establish private land use rights as provided through concession agreements are not to be confused with private property rights. Economic land concessions remain state land, and the state has a responsibility to ensure that the public interest is upheld in the use of these lands, including contributions to poverty reduction.

BOX 4

Voluntary Guidelines on the Responsible Governance of Tenure of Land Fisheries and Forests in the Context of National Food Security

The Voluntary Guidelines on the Responsible Governance of Tenure of Land Fisheries and Forests in the Context of National Food Security ('Voluntary Guidelines') were created with the purpose to improve the governance of land, fisheries and forests tenure with the overarching goal of attaining food security and the protection of the right to adequate food. Furthermore, these Guidelines are intended to contribute to global and national efforts towards the eradication of hunger and poverty, based on the principles of sustainable development and with the recognition of the centrality of land to development, by promoting tenure security rights and equitable access to land, fisheries and forests.

It should be noted that these Voluntary Guidelines are voluntary in nature and complement the existing state obligations under domestic and international law. They closely follow the format of other FAO voluntary instruments that set our principles and internationally accepted standards for responsible practices. In addition, the Guidelines provide the framework that can be used to accompany the development of strategies, policies, and programs. The Voluntary Guidelines were by the FAO and partners, and they were endorsed by the Committee on World Food Security in May 2012.

Adapted from: <http://www.fao.org/nr/tenure/voluntary-guidelines/en/> (accessed on 30 October 2012)

(3) Policy-makers have overestimated the notion of 'allocative efficiency' in relation to ELCs, and underestimated the speculative nature of land transfers. One underlying assumption in the promotion of land markets and concession policies in Cambodia and elsewhere is that they assist in reallocating land towards the more efficient and productive land users.²⁰⁹ Thus, considering the assumption that there is vast 'abundant' or 'underutilized' land in Cambodia, an ELC policy can contribute to attracting investors who with higher capital investment, modern technology, access to markets, among other factors will use this land more efficiently than small subsistence farmers. In turn, these investors would contribute to maximizing national welfare and reducing poverty. However, the above mentioned imbalances in access to capital and influence on economic and political control along with non-transparent, often patronage-based, decision-making and land allocation processes have

²⁰⁸ Thiel (2010), Donor-Driven Land Reform, 237.

²⁰⁹ See De Schutter (2011), How Not to Think of Land-Grabbing, 269-270.

facilitated a surge in speculative land transfers.²¹⁰ The underutilization of economic land concessions is not only due to the limited capacities of investors, but also to the high level of speculative investors who want to secure access to land as a mere economic asset.²¹¹ Long-term lease agreements and low taxation coupled with little monitoring and the widespread absence of penalties for non-compliance make this an attractive option for investors who seek short-term benefits – in Cambodia these are predominantly domestic investors and elites. This speculative dimension in the practice of granting land concessions has contributed to the undermining of positive benefits expected from the government’s ELC policy because of the reallocation of large areas of land to speculative investors. All the while, many poor farmers or landless people who would have used this land more productively have no access to land. Therefore, it is an encouraging sign that the government recently announced the introduction of an additional tax on land concessions, which may assist in curbing speculative landholdings and increasing state revenues.²¹²

(4) Policy-makers aggravated the situation of many rural poor, in particular among the indigenous people by neglecting the recognition and implementation of communal and collective land rights. Much of Cambodia’s land area has seen customary forms of land use for centuries, in particular but not limited to its many indigenous groups. Just because the state declared all lands not privately owned as ‘state land’ does not mean that the state can sell and transfer these lands at free will. Large areas of land are occupied and held by indigenous communities through customary tenure systems, including agricultural land, forests and water resources. The 2001 Land Law acknowledges this fact and recognizes the right of indigenous people to collective ownership of their lands.²¹³ The Law also stipulates that “prior to their legal status being determined under a law on communities, the groups actually existing at present shall continue to manage their community and immovable property according to their traditional customs...”²¹⁴

However, in practice many indigenous communities were not sufficiently aware of or struggled with the complex and time-consuming procedures for registering with the Ministry of Interior as a legal entity and then applying for the mapping and registration of the collective ownership title of their lands.²¹⁵ As a result there was only little progress in formalizing these collective land titles, whilst large-scale ELC projects were being granted in provinces with large indigenous populations, such as Rattanakiri and Mondulakiri, leading to encroachment and deforestation of indigenous

²¹⁰ See for instance Un/So (2011), Land Rights in Cambodia, 305-308.

²¹¹ See Löhr (2011), Cambodian Land Market, 41-42.

²¹² According to media reports, the government announced in September 2012 to amend Directive No. 660, dated 22 June 2012, on Economic Land Concession Tax insofar as to require concessionaires to pay US\$ 5 for each hectare from the sixth year of the investment. See Kuch Naren, ‘Hun Sen Announces Tax on Land Concessions’, Cambodia Daily, 29-30 September 2012, 11.

²¹³ 2001 Land Law, Art. 23-28.

²¹⁴ 2001 Land Law, Art. 23.

²¹⁵ Bues (2011), Increasing Pressure for Land; Amnesty International (2008), Ignoring the Rights of Indigenous Peoples.

land and threatening these communities' traditional lifestyles.²¹⁶ These developments progressively undermined the rights granted to indigenous communities under the 2001 Land Law. In 2009, the government adopted new policies on the Development of the Indigenous Peoples and the Registration and Use of Indigenous People's Community Land, which included the plain objectives "to expand and strengthen national economic base through promoting private sector investment in agro industry (e.g. rubber plantation), minerals and others, and to mitigate risks of conflict of interest between the indigenous people and the appropriation of economic land concession in order to protect the best interest of the country and with participatory approach".²¹⁷

It was only in 2009, eight years after the adoption of the Land Law, that the government provided with Sub-Decree 83 the necessary procedures and mechanisms to register land of indigenous communities as collective land titles, and initiated a number of limited pilot projects.²¹⁸ Moreover, when economic land concessions continued to threaten indigenous communities, an inter-ministerial circular had to be issued providing interim protective measures for indigenous communities that were in process of completing the lengthy procedures for receiving their collective land title.²¹⁹ Although interim protection is critical at this stage of the intertwined processes of land titling and granting of economic land concessions, the protection provided through circular remains incomplete: The circular excludes areas that had already in principle been agreed for investment and development prior to the adoption of the circular. Furthermore, the circular only aims at protecting those indigenous communities that have already requested collective land titling.²²⁰

It was only in December 2011 and March 2012 that the first collective land titles were granted to indigenous communities in Rattanakiri and Mondulakiri provinces – ten years after the adoption of Land Law.²²¹ By that time, large areas of land had been granted through ELC projects to the detriment of the traditional owners of these lands. Although it is commendable that the government included communal land titling into the new Joint Monitoring Indicators, setting joint goals for development activities with donors, it is unlikely that the envisaged modest number of three communal land titles per year would provide sufficient safeguards for indigenous communities at risk.²²² Interim protective measures will therefore remain of vital importance.

²¹⁶ Indigenous Peoples NGO Network (2010), *The Rights of Indigenous People*.

²¹⁷ Cited from RGC/MoP (2010), *National Strategic Development Plan 2009-2013*, 125, para. 408. See also 'National Policy on the Development of Indigenous People', prepared by the Ministry of Rural Development, approved by the Council of Ministers, 24 April 2009.

²¹⁸ 2009 Sub-Decree on Procedures of Registration of Land of Indigenous Communities.

²¹⁹ Ministry of Interior and MLMUPC (2011), *Inter-ministerial Circular on Interim Protective Measures Protecting Lands of Indigenous Peoples that Has Been Requested for Collective Ownership Titling, While Awaiting Titling Process According to Procedure to be Completed*, 31 May 2011.

²²⁰ NGO Forum (2012), *NGO Position Papers on Cambodia's Development in 2010-2012*, 74-75.

²²¹ Kuch Naren and Kate Bartlett (2012), 'Mondulakiri Minority Group Granted Communal Land Title', *The Cambodia Daily*, 22 March 2012, 16.

²²² Zsombor Peter and Phorn Bopha, 'Gov't and Donors Set New Reform Targets', *The Cambodia Daily*, 28 September 2012, 17.

BOX 5**Alternative Land Use and Management Models: Community Forestry**

Following the 2002 moratorium on logging in forestry concessions, new management models were explored by the government and international organizations. Given the success of community based natural resource management and protection initiatives in other countries, community forestry has since emerged as one of the most effective methods of achieving decentralized sustainable forest management in Cambodia. A majority of Cambodia's rural households rely to some extent on forests for their livelihood. Including local communities in forest management has therefore garnered much attention in as an alternative to large-scale concession policies.

Cambodia's Forest Law recognizes the traditional user rights of local communities to collect and use forest by-products, and it authorizes the allocation of any part or whole areas of permanent forest reserve as community forestry, giving local communities the rights to manage and use the forest resources. The adoption of an additional 2003 Sub-Decree on Community Forestry Management indicated a shift from informal community forestry projects to the emergence of community forestry as part of the national development strategy. This Sub-Decree provided a more detailed legal framework and the necessary rules and procedures for this management model. The rationale for why local communities can often manage forest areas better is because they live in close proximity to the forest, which gives them readily access and an incentive in maintaining it. The community's management of the forest produces fruitful benefits for the local people, providing them an incentive to continue conserving and protecting the forest in a sustainability manner while creating small-scale livelihood and business opportunities.

Increased attention from Cambodia's Forestry Administration and from international donors and NGOs, such as RECOFTC, has resulted in a proliferation of community forestry in recent years and there are currently more than 420 community forestry sites covering around 400,000 hectares. As of December 2011, 281 of those community forestry sites covering 244,265 hectares of land have been legally recognized with a signed agreement by the MAFF (2012 SR Report). Given the positive experience with community forestry projects, community forestry became a central element under the National Forest Policy (NFP, 2010-2030). Moreover, the Forestry Administration has expressed plans to turn over 2 million hectares of forestry areas to local communities by 2030.

Community forestry programs are gaining positive reviews from domestic and international audiences. When they are legally registered, they seem to increase local tenure right and decrease the threat that forests will be appropriated by external interests and converted to agricultural production. As with any other start up project, the management of community forestry will best improve with further training and education for local communities and the reformation of local level governmental planning. There is much to be learnt from the experience with community forestry for more localized and sustainable management models of Cambodia's natural resources.

Adapted from: Broadhead/Izquierdo (2010); Chandran/RECOFTC (2012).

5.4. Overestimating the Governance Structures

The available literature on large-scale investment in agriculture in developing low-income countries highlights the paramount importance of effective governance structures in order for the expected benefits to be realized. Accordingly, deficiencies in governance will only increase the risks of adverse impacts from those policies. The development and practice of the ELC policy as described in Chapter 4 have revealed several areas of Cambodia's governance of the implementation that are in urgent need of improvement. A few of these aspects are highlighted in this section.

(1) The practice of economic land concessions shows clear deviations from the policy framework and displays a disregard for a relatively well-established legal framework. One lesson from Cambodia's experience with the loose concession policy during the 1990s was the need for a thorough policy and legal framework that was able to better protect the public interests and the rights of local populations. The 2001 Land Law and the 2005 ELC Sub-Decree represent a mechanism that, if properly implemented, may possibly have accomplished this objective. However, this is difficult to say as the actual implementation of policy and law deviated substantially from the theoretical framework. The entire ELC process suffered from a growing divergence between law and practice ranging from a lack of effective state land management, insufficient screening of investors' proposals, inadequate impact assessments and no or little public consultations to a lack of monitoring ELC projects, holding investors accountable for failing to comply with their contracts and avoiding involuntary resettlements. Available literature and case studies cited in this report have all pointed to a consistent failure by various levels of authorities to adhere to existing regulations. Ultimately, this ever widening gap between theory and reality made it increasingly impossible for policy-makers to achieve the initial ELC policy objectives of benefiting local population. In fact, numerous communities appear to be worse off than before and the contribution to reducing rural poverty can in many cases not be substantiated.

(2) One of the main reasons for economic land concessions not delivering on the expected benefits is the manifest lack of transparency surrounding all aspects of the process of granting and monitoring these concessions. The biggest challenge in reviewing Cambodia's ELC policy is the lack of transparency in its implementation. The government's National Strategic Development Plan pledged to provide "equitable and fair public participation" through the "adherence to the rule of law, transparency, predictability and accountability of public institutions".²²³ However, most official data and sources relating to economic land concessions are often incomplete or contradictory. In many cases it is not known why a certain company was granted an ELC project, the intended benefits and expected social and environmental impacts. As

²²³

RGC/MoP (2010), National Strategic Development Plan 2009-2013, 11.

previously mentioned, local populations are often not aware of the projects or only insufficiently consulted in the design of investment plans. The lack of information makes it also difficult if not impossible to verify some of the authorities' claims on the presumed benefits of land concessions, as there is a fundamental lack of evidence-based study into these concessions. The Special Rapporteur has expressed concerns over this situation and concluded that "many concessionaires operate behind a veil of secrecy."²²⁴

Although access to information about public politics is a general problem in Cambodia, it is very pronounced in the implementation of its ELC policy. In a report on access to information, the Cambodian Center for Human Rights (CCHR) highlights the problems that may result from a non-transparent practice on land concessions:

"Transactions involving a country's land and natural resources should be concluded with the interests of the people in mind, free from corruption and in line with legal requirements. The only way to ensure that this is the case is to provide people with access to information about such transactions. The absence of information means that important resources could be 'captured for personal gains rather than national benefit' and could contribute to the mismanagement of funds, potentially serving to widen the gap between those who benefit from the land concessions and those who feel their rights have been neglected."²²⁵

Other adverse effects from a lack of transparency are for instance visible in the process of granting economic land concessions. The 2005 ELC Sub-Decree prescribes a clear preference for open solicited proposals as the "prioritized method" through which investors can apply for a concession in a competitive process.²²⁶ The Sub-Decree also stipulates in detail a transparent process of granting economic land concessions through competitive solicited proposals. This process entails the obligation for the ELC Technical Secretariat to "widely disseminate the notice for solicited proposals", "organize a public meeting for clarification on any point of the solicitation documents" and finally "publish the scoring for ranking each proposal" based on the previously cited evaluation criteria, including the "provision of sound preventive or reduction measures for adverse environmental and social impacts", "operational feasibility", "feasibility of employment creation and promotion of living standards of the people" and "the amount and manner of payment of the fee offered by the proposer for the use of the land".²²⁷ It becomes clear from reading the relevant laws and regulations that by simply ensuring a higher degree of transparency and due legal process policy-makers would have been able to avoid many of the current problems associated with land concessions, including social and environmental impacts and choosing investors who have the capacity and motivation to timely implement investment plans in accordance with the law.

²²⁴ 2012 SR Report, para. 200.

²²⁵ CCHR (2012), Freedom of Information in Cambodia, 34.

²²⁶ 2005 ELC Sub-Decree, Art. 18.

²²⁷ 2005 ELC Sub-Decree, Art. 10, 13, 14.

(3) Policy-makers overestimated the ability of Cambodia's governance structures to effectively implement, monitor and enforce the ELC policy. By putting a more developed legal framework in place, policy-makers have learned one lesson from the experience with their concession policy during the 1990s. However, they seemed not to have learned another valuable lesson, namely the need for effective institutional structures able to monitor, enforce and where necessary, to correct the implementation of law and policies. The rapid granting of economic land concessions, often without due process, and the violation of laws without accountability is evidence for the authorities' inability to ensure that the usage of concession projects conforms to the stated purpose and the legal requirements.

Numerous deficiencies are visible at all level of governance, from the local to the national level. While the process of granting concession projects has since 2008 been concentrated at the national level, much of the monitoring and auditing has to come from local or provincial authorities. A number of reports point to the "poor flow of information between governmental hierarchies", in that lower levels of government often have more information about the actual implementation of ELC projects and associated problems, but seem to lack decision-making powers; whereas higher levels of government who have the power to make decisions are often insufficiently informed about a particular ELC project or simply ignore the problems.²²⁸ Much of this is a consequence of Cambodia's prevailing top-down governance structure despite some progress with decentralization. Together with the high level of personal involvement among government officials in ELC projects (see next point), this results in an inability of the governance structures to effectively monitor economic land concessions and enforce compliance with the law and companies' contractual obligations. As a consequence, few land concessions contracts are cancelled and even fewer concessionaires are held accountable for violating the law or provisions of their contract.

(4) An inherent weakness of the current ELC system is that it has disproportionately favored a small domestic elite, mainly because the institutions involved were not able to overcome and independently regulate existing neopatrimonial dynamics. Typical for many developing countries, the state in Cambodia has known the existence of parallel, yet often competing governance models. On the one hand side, there have been efforts during the past two decades in establishing a civil service bureaucracy and building up the institutional infrastructure of a modern state; on the other hand, neopatrimonial administrative conventions based on personalized patronage networks pervade these formal structures, in particular in relation to the politically motivated allocation of power and resources.²²⁹

These parallel structures and norms are also visible in the implementation of the

²²⁸ Bues (2011), *Increasing Pressure for Land*, 30-32, 37.

²²⁹ Un/So (2011), *Land Rights in Cambodia*, 294-295.

government's land and ELC policy where "a competing set of norms deriving from both previous regulatory regimes and practices that empower government officials at various levels to authorize transactions over lands within their administrative jurisdiction".²³⁰ Furthermore, it was elsewhere argued that "the mechanisms through which these transfers are made possible undermine the state's ability to implement land management, protect land tenure security, and strengthen state land administration".²³¹ These patronage networks extend to the provincial and lower levels of governance where local officials, who are supposed to represent the interests of their constituencies, are often actively involved in facilitating land concession deals.²³² 'Revenues' generated around these land deals do not always reach the official provincial or national state budgets and are therefore not available for public investments for local populations. As a result, only some elements of the national elite benefit disproportionately from a policy which was originally intended to developing rural areas and reducing rural poverty.

These underlying factors may also help to explain the predominance of domestic actors and the prevalence of speculative investments in Cambodia's ELC scheme. It is unlikely that most of these domestic 'companies' have more competitive offers to make in terms of capital investment, modern technology transfer and access to new markets, than more experienced internationally active companies. Cotula therefore stresses

"...the central role played by national elites (politicians, senior civil servants, business people) in land acquisition processes. The role of these players, both as land acquirers and as intermediaries and strategic allies working with international capital, is the continuation of a longer-term process whereby national elites have become increasingly interested in rural lands [...]. The role of nationals must be understood in light of different and often more localized factors, including the importance of land in local investment options, strategic positioning and political patronage; but also, increasingly, in light of its links to international capital and global processes."²³³

These neopatrimonial dynamics are not unknown and have been well-documented, for instance, during the time when the forestry concession policy ended.²³⁴ Nevertheless, it appears that policy-makers overestimated the capacities of the modern state institutions to independently regulate these parallel features of governance. As a result, they further limited the ability of the state and its officials to impartially enforce the law and resolve land disputes. For instance, this has become visible in the many documented cases where military and other state security personnel were deployed to guard land concessions areas or to execute evictions on behalf of private interests.²³⁵ Worryingly, these instances ultimately undermine the perception of the

²³⁰ Adler et al. (2008), *Legal Pluralism and Equity*, 2.

²³¹ Un/So (2011), *Land Rights in Cambodia*, 295.

²³² Bues (2011), *Increasing Pressure for Land*; Un/So (2011), *Land Rights in Cambodia*, 305-306.

²³³ Cotula (2012), *The International Political Economy of the Global Land Rush*, 673.

²³⁴ Brinkley, Joel (2011), *Cambodia's Curse*, 265-286; Global Witness (2009), *Country for Sale*, 13-14.

²³⁵ LICADHO (2009), *Land Grabbing and Poverty*, 20-25.

state among local populations as neutral arbiter in cases of conflict and disputes. Thiel argued that “they [the power elite] become the arbiters of land disputes and tend to decide in their own interest rather than for the public good”.²³⁶

(5) Affected populations have had only limited or no recourse to an effective remedy, including functioning dispute resolution mechanisms and an independent judiciary. The situation of an expansionary ELC policy resulting in a growing number of adverse impacts on local populations and the environment was further aggravated by the fact that many affected people have little or no resource to an effective remedy for any violations of their rights whether through judicial or non-judicial means. The deficiencies of the judiciary are well known and to some extent acknowledged by policy-makers.²³⁷ ‘Access to justice’ comes along with various administrative and procedure hurdles, which make the process of seeking remedy against a particular company time-consuming and costly for a potential complainant to go through. ‘Unofficial’ fees, non-availability of legal aid and a lack of faith all contribute to dissuade a potential complainant to seek remedy. According to Transparency International, the judiciary is perceived by Cambodians as the most corrupt institution in the country, followed by the police and public officials.²³⁸ Consequently, many affected people never lodge an official complaint with the courts,²³⁹ but instead complain directly to local authorities, the government or the national assembly in the hope that their problems will be heard. Many of these cases remain unresolved.²⁴⁰

As a result of the limited capacity and the shortcoming in the judiciary the government has additionally created a number of quasi- or non-judicial mechanisms for dispute resolution (see box). Most importantly, the 2001 Land Law provided for the establishment of a cadastral system at various levels of government administration, in part to ease the burden of the national courts in relation to land disputes.²⁴¹ In 2010, the government reported that cases submitted to the Cadastral Commission had increased from year to year by around 20 percent.²⁴² Citing numbers from the Ministry of Land Management, Urban Planning and Construction, the Special Rapporteur reports that, between 2003 and April 2012, the cadastral system had resolved land disputes involving more than 10,000 households and covering more than 3,600 hectares.²⁴³ In addition to the cadastral system, the government created the National Authority for Land Dispute Resolution (NALDR), which appears to be a political body that deals largely with high-profile cases.²⁴⁴ It is not clear to what extent these mechanisms have contributed in providing a viable avenue for affected people, in particular from conflict-prone areas to have their cases resolved. However, the

²³⁶ Thiel (2010), *Donor-Driven Land Reform*, 227.

²³⁷ See various reports from the SRSG on the situation of human rights in Cambodia.

²³⁸ Transparency International (2012), *Country Profile Cambodia*.

²³⁹ See Men/van Westen (2011), *Land Acquisition by Non-Local Actors*, 1.

²⁴⁰ NGO Forum (2011), *Statistical Analysis of Land Disputes*, 8-10.

²⁴¹ See for instance CAS (2006), *Towards Institutional Justice*.

²⁴² RGC/MoP (2010), *National Strategic Development Plan 2009-2013*, paras. 113-114.

²⁴³ 2012 SR Report, para. 178.

²⁴⁴ Land and Housing Rights Working Group (2009), *Land and Housing Rights*, 25.

increasing number of land disputes, open street protests and forced evictions indicate that most populations affected by an expansionary ELC policy seem to lack the access to an effective remedy that would provide a solution to their problems, including prompt and adequate compensation in cases of resettlement or violation of rights.

BOX 6

Judicial and Non-Judicial State Mechanisms for Land Conflict Resolution

There are judicial and non-judicial mechanisms for resolving land disputes in Cambodia. Generally, one can distinguish the following formal mechanisms put in place by the government for solving disputes relating to land rights: the Commune Councils, the Administrative Committees, the Cadastral Commission, the National Authority for Land Conflict Resolution (NALDR), and the court system.

The Commune Councils only resolve differences of opinion among people in the communes, but do not make any legal decisions. Given the importance of local administration, in practice most cases go first to the Commune Councils before they reach higher levels. The Administrative Committees have been established in relation to the systematic land registration process and they reconcile disputes that occur from this registration process. These Committees do not have the authority to issue a formal decision, and therefore, unsolved disputes are forwarded to the Cadastral Commission.

A multi-level system of Cadastral Commissions was created through the 2001 Land Law and came formally into effect following an additional 2002 sub-decree in May 2002. The Cadastral Commission system is responsible for resolving disputes over unregistered land, as well as disputes that cannot be resolved by the Administrative Committees in relation to the systematic land registration. The Cadastral Commission system comprises of a three-tier structure with commission offices at the district, provincial/municipal and national levels. The last resort for reconciliation within this system is the National Cadastral Commission, which has the power to give a decision. Disputants may appeal this decision to the judicial court system within 30 days. According to the Minister of Land Management Urban Planning and Construction, from 2003 to April 2012, the cadastral system resolved land conflicts covering a total of 3,608 hectares that affected 10,881 households. The Cadastral Commission has no jurisdiction over land disputes concerning registered land, which must be heard by the courts.

The NALDR was established in 2006 after the passing of the Land Law. As a body of political nature, it does not have a place within the current legal framework for land conflict resolution. Its responsibilities are to hear cases “beyond the competence of the National Cadastral Commission” and to receive complaints regarding land disputes. Little information is available about functioning of this authority or its case load.

Adapted from: SR 2012 Report, paras. 55-59.

(6) The massive scale of granting economic land concessions and the significant number of political and economic decision-makers benefiting from it will likely be a great challenge to the system's ability for corrective action and increase the costs for and resistance against any positive change in course of politics. Many of the governance problems are not new and often acknowledged by the government. Since the re-launching of the ELC policy in 2001/2005, there have been recurring warnings by the government to concession companies for them to implement the law, or their concession contracts would be cancelled. Shortly after the issuance of the 2005 ELC Sub-Decree, the National Strategic Development Plan (2006-2010) states that "the challenges are to control and curb further land concentration in few hands, including review of already granted large concessions exceeding limits under the 2001 land law, where land is still lying fallow and unproductive".²⁴⁵ The focus at the time was largely on economic land concessions which existed prior to the 2001 Land Law. However, soon the focus shifted to the new land concessions granted after the 2005 ELC Sub-Decree. In 2008, the Rectangular Strategy found that "land concentration and landless people are on a rising trend, adversely impacting on the equity and efficiency of land use. On the other hand, large areas under economic land concessions have not been utilized efficiently as targeted, needing strict government measures to tackle them."²⁴⁶ The rhetoric got stronger in 2010 when the government said that it would "continue to take back economic land concession, where concessionaire has not followed the contract..."²⁴⁷ More recently, in 2012, the government announced in unequivocal terms that "the companies that have been granted economic land concession but violated procedures and conditions by logging without developing the land, illegally encroaching more land, keeping the land for resale, violating agreement conditions, infringing on individual or community's lands, the Royal Government will revoke all those economic land concessions."²⁴⁸

This escalating rhetoric has to be seen in the context of an accelerating trend in granting ever more economic land concessions. Despite a stronger rhetoric, there has not been any visible change in course on the ground until 2012. It is difficult to speculate from the outside about the reasons for the government not being able to have its various branches effectively implement these directions for corrective action – whether it is related to a lack of capacity and resources in the governance units overseeing land concessions, or simply insufficient willingness to enforce compliance against the interests of a growing domestic elite benefiting from lax regulations in the ELC scheme. This situation only appeared to change in 2012 with the proclamation of a moratorium for new economic land concessions and a new review process. However, it is too early to assess the prospects for sustainable change in the course

²⁴⁵ RGC (2006), National Strategic Development Plan 2006-2010, para 4.50, 59.

²⁴⁶ RGC (2008), Rectangular Strategy Phase II, para. 11. This statement was also incorporated into the new National Strategic Development Plan (2009-2013).

²⁴⁷ Prime Minister, 'Keynote Address at the Stocktaking Conference of the 2009–2010 Achievements in Agriculture, Forestry and Fisheries Sectors and Direction Setting for 2010–2011', Royal University of Agriculture, April 6, 2010.

²⁴⁸ Prime Minister, 'Keynote Speech at the Launching of the 2011 Mid-term Review Report on the Implementation of the National Strategic Development Plan Update 2009-2013', Phnom Penh, June 14, 2012.

politics resulting from these measures. Past ad hoc review processes or cancellations, such as following the 2005 ELC Sub-Decree, have not been consistent and have not led to a fundamental change in practice in the long-term.²⁴⁹ The question is therefore whether ‘new actions based on old policies’ are really sufficient, not just to stop the escalating dynamic of granting more and more land through large-scale ELC projects to private investors, but also to mobilize corrective action to undo some of the harm already done and enforce the law among all existing land concessions, including cancellations of projects that do not comply with their contracts or legal requirements. Many members of the domestic elite have so far disproportionately benefited from the ELC policy. Their resistance may increase the costs for the government for the changes that might be necessary to improve long-term prospects for development and rural poverty reduction. Likewise, the Special Rapporteur on the right to food, Olivier de Schutter, argued that large-scale investments in farmland could potentially benefit all parties concerned, but that this presupposes an appropriate institutional framework is in place. He further claims that “if that is not the case at the time of the investment, the arrival of large investors may in fact make it less likely, not more, that such a framework will be set up in the future, since large investors may gain sufficient influence to avoid regulation that could curtail the pursuit of their own interests.”²⁵⁰

5.5. Insufficient Attention to Alternative Agricultural and Rural Development

As reflected in the government’s strategic development plans, agricultural and rural development is a multi-dimensional undertaking. Poverty-reducing impacts will only be achieved if a well balanced approach is taken which constantly considers the needs of the rural poor. The following general remarks aim at locating the government’s ELC policy within its broader agricultural and rural development strategy and highlighting the impact of an expansionary ELC policy on this policy area.

(1) Despite a balanced policy approach, the practice of economic land concessions put in danger the government’s own agricultural and rural development strategy.

The prioritized policies outlined in the government’s National Strategic Development Plan (2009-2013) represent a broad-based approach to agricultural development with the aim to contribute to reducing rural poverty.²⁵¹ Although the promotion of agribusinesses and a further commercialization of agriculture are clearly stated objectives, as outlined in Chapter 3, the rapid increase in land being granted to investors for agricultural purposes stands in contrast with the more balanced policy objectives. Even if considering only the more conservative official ELC data, economic land concessions now cover more than one third of Cambodia’s total arable land and

²⁴⁹ 2012 SR Report, para. 105.

²⁵⁰ Large-Scale Land Acquisitions and Leases: A Set of Minimum Principles and Measures to Address the Human Rights Challenge, Report of the Special Rapporteur on the right to food, Olivier De Schutter, Addendum, UN doc. [A/HRC/13/33/Add.2 of 28 December 2009], para. 33.

²⁵¹ See an overview in RGC/MoP (2010), National Strategic Development Plan 2009-2013, para 401.

some of previously cited estimates are even higher.²⁵² Thus, economic land concessions have suddenly developed, in practice, into a phenomenon that has begun to re-shape Cambodia's agricultural sector. Although a number of those concessions have the potential to contribute to some of the macro-indicators of the government's strategy, such as in expanding irrigation systems and diversifying agricultural products, it is not clear that they will also benefit the local populations and contribute to rural poverty reduction. Lower than expected levels of capital investment, investment in rural infrastructure and employment, limited involvement of local smallholders into new ELC projects, as well as displacements and environmental damages raise doubts about the actual benefits for Cambodia's rural poor and endanger some of the government's own policy objectives in relation to agricultural and rural development.

(2) The focus on promoting large-scale investments through economic land concessions, mostly in primary agricultural production, has contributed to sidelining Cambodia's predominant smallholder farming sector. Cambodia's expansionary ELC policy and the slow progress with granting social land concession to landless or land-poor people reveal a policy bias towards large-scale, industrialized agriculture, often to the detriment of the country's majority smallholder agriculture.²⁵³ In addition, the concession policy's focus on promoting investment in primary agricultural production has seen too little consideration of promoting further investment into processing and other secondary processes higher up in the value chain. The majority of the investment is currently going to establishing large plantations while smallholders suffer from neglect in policy implementation and resource allocation. Referring to similar developments globally, a recent report commissioned by the International Land Coalition concluded that "the sidelining of smallholder agriculture should be seen as a policy failure or a failure of governance".²⁵⁴ The underlying assumption for such a policy bias seems to be that smallholder farming is not competitive and that large-scale agriculture is able to generate more jobs and revenues. However, a review of the existing literature does not support this bias view towards promoting a large-scale and industrialized agricultural sector.²⁵⁵ LASED's 2008 appraisal report presents evidence that supports smallholder production:

"Overall sectoral growth and employment objectives are more likely to be achieved through a focus on smallholder production than through efforts to accelerate a process of land consolidation through allocation of state lands to economic land concessions. [...] Recent analysis has demonstrated that, similar to other countries at its stage of development, productivity and profitability can be as high (or even higher) for smallholders as for medium and large farms for most crops. This is particularly true when smallholders are organized through farmer associations or contract farming to facilitate technology transfer and sharing of market information. Importantly, small farms generally absorb at least five times as much labor per ha compared to more capital intensive, larger farms and achieve similar (or greater) levels of productivity and profitability."²⁵⁶

²⁵² Löhr (2011), *Cambodian Land Market*, 34.

²⁵³ Also a finding in Anseeuw (2011), *Land Rights and the Rush for Land*, 55.

²⁵⁴ Anseeuw (2011), *Land Rights and the Rush for Land*, 56.

²⁵⁵ Anseeuw (2011), *Land Rights and the Rush for Land*.

²⁵⁶ World Bank (2008), *LASED Project Appraisal Document*, 2.

The authors of this report draw on regional experiences²⁵⁷ and other international evidence when concluding that “small- and medium-sized family run farms are generally more efficient in terms of productivity per hectare than large commercial enterprises”.²⁵⁸ Combined with the finding that smallholder farming can generate five times more employment per hectare, this makes a strong case for investing more into this part of Cambodia’s agricultural sector. In addition, De Schutter points to evidence that the poverty-reducing potential of smallholder farming in low-income countries is generally much higher.²⁵⁹ It is true that large-scale plantations can produce more volumes due to a more technological- and capital-based system of production. However, a government that has oriented its policy towards poverty reduction and sustainable development also needs to consider the social and environmental costs of any investment.

These findings suggest that policy-makers should avoid promoting concentration of land in the hands of a few investors, but instead make more efforts in implementing distributive policies that allocate more land to smallholders and land-poor people, such as through Cambodia’s social land concession scheme. The authors of LASED’s appraisal report nevertheless warn that land distribution alone will not solve the problem:

“SLCs alone cannot provide the basis for improved agricultural growth and employment, but neither can economic land concessions. Both social and economic land concessions are simply mechanisms for intensifying land use – one based on labor and the other on expected capital investments. In both cases, their success will depend largely on their ability to integrate into higher value supply chains. These, in turn, require improvements in the investment climate and infrastructure which will attract additional investment into the downstream links such as processing, transport and marketing. [...] Government may therefore wish to focus, as have several countries in Southeast Asia, on facilitating domestic and foreign capital investment into agricultural processing transport and marketing, rather than almost uniquely on primary production which can be implemented as efficiently by small farmers.”²⁶⁰

(3) So far there has been little progress in implementing an ELC policy that would complement and raise synergies with the predominant small farming sector in Cambodia. According to the government’s 2009 Declaration on Land Policy, one of the declared objectives of the current ELC policy is “to implement partnership between small and large-scale plantation holders, and cooperatives in agricultural production, and between economic land concessions and social land concessions in order to generate employment opportunities and creating market[s] for local residents”.²⁶¹

²⁵⁷ “Regional experience suggests that even in the context of accelerating growth of the nonfarm economy, migration out of agriculture cannot be expected to rapidly absorb this expanding labor force. In Thailand and Indonesia, agriculture’s share of total employment in the 1970s was similar to that of Cambodia today – about 65 percent. Over the following thirty years, both countries experienced rapid, if uneven, economic growth and transformation of their economies such that the differences between agricultural and non-agricultural incomes increased steadily. However, by the late 1990s, their agricultural sectors still employed 40 to 50 percent of all workers.” World Bank (2008), LASED Project Appraisal Document, Annex 1, 34-35.

²⁵⁸ World Bank (2008), LASED Project Appraisal Document, Annex 1, 41.

²⁵⁹ De Schutter (2011), How Not to Think of Land-Grabbing, 261-262.

²⁶⁰ World Bank (2008), LASED Project Appraisal Document, Annex 1, 42.

²⁶¹ RGC (2009), Declaration of the Royal Government on Land Policy.

Such partnerships were thus expected to bring benefits to small farmers by enabling collaboration between concession projects and local farmers, such as through access to new markets, modern technologies or the creation of outgrower schemes (instead of relying only on wage labor).

Although some examples exist where companies experiment with contract farming and other models, many concession deals have seemed to sideline local farmers and not considered them in their land use or investment plans. “Contract farming can be understood as a firm lending ‘inputs’ – such as seed, fertilizer, credit or extension – to a farmer in exchange for exclusive purchasing rights over the specified crop. It is a form of vertical integration within agricultural commodity chains so that the firm has greater control over the production process and final product.”²⁶² Recent evidence indicates that smallholders tend to be excluded from successful contract farming schemes in dualistic agricultural economies where large-scale investment in farmland coexists with smallholder farming. However, smallholders enjoy greater participation rates when inequality in landholding sizes is low.²⁶³ These findings suggest that inequality in assets, particularly over land, has a negative effect on smallholders’ participation and standing in contract farming schemes. An investor who develops primary agricultural production on 10,000 hectares of land simply does not rely on additional products from neighboring smallholders to the same extent as investors with less available production land. Policy-makers may want to consider such findings when designing investment schemes in farmland that aim at raising synergies with the existing smallholder farming sector.

Even if more attention will be paid in the future to the co-existence of economic land concessions and small farmers, mutual benefits are not guaranteed. Numerous examples from other countries demonstrate how challenging it can be to establish a win-win scenario between modern, large-scale agro-businesses and traditional smallholder farming.²⁶⁴ De Schutter raised these concerns stating that “where the two types of productive units are competitors on the same markets, there is a risk that small farms will either be driven out, or will only subsist at the expense of smallholders living under conditions of extreme poverty”, mainly because smallholders contribution to poverty reduction and more environmentally friendly operations will not be reflected in the price of agricultural products.²⁶⁵ The Special Rapporteur argues therefore for a scenario in which government direct investment into the support of small-scale farming as “a way of ensuring that investment will be directed towards ends that are most poverty-reducing”.²⁶⁶ In this regard, the innovative work of many organizations assisting smallholders, such as the Cambodian Center for Study and Development in Agriculture (CEDAC) should be acknowledged and supported.²⁶⁷

²⁶² Prowse (2012), *Contract Farming in Developing Countries*, 4.

²⁶³ Prowse (2012), *Contract Farming in Developing Countries*, 47.

²⁶⁴ See for instance Guttal (2011), *Whose Lands*, 91-97; Löhr (2011), *Cambodian Land Market*, 44-45; Haralambous et al. (2009), *The Growing Demand for Land*.

²⁶⁵ De Schutter (2011), *How Not to Think of Land-Grabbing*, 259-260.

²⁶⁶ De Schutter (2011), *How Not to Think of Land-Grabbing*, 261-262.

²⁶⁷ Justine Drennan (2011), ‘Cambodian scoops Asia’s Nobel Prize’, *Phnom Penh Post*, 27 July 2012.

(4) Policy-makers have channeled insufficient investment into rural development and infrastructure which could have helped to maximize poverty-reducing impacts of its agricultural policies. As mentioned before, rural development and agriculture had largely been neglected throughout the 1990s. This was in fact a global trend that saw official development assistance (ODA) into agriculture decline dramatically.²⁶⁸ A 2007 report by the Supreme National Economic Council (SNEC) made an analysis into the poverty-reducing impact of land policies, including land titling, land allocation and complementary reform (in particular with infrastructure). The report confirmed the poverty-reducing impact of tenure security, but more so, it showed the significant effect on poverty reduction through complementary infrastructure investments.²⁶⁹ The report concludes that “only distributing land to landless households has a limited impact on poverty and human development. The large gains are realized when increased access to land is combined with strengthened ownership rights, investments in land improvement and irrigation, as well as complementary reforms in infrastructure.” The necessary complementary reforms include public services, such as health care and education as well as measures to improve market infrastructure.

This potential is somewhat recognized in the National Strategic Development Plan (2009-2013) in that “rural development, as a vital parameter for the enhancement of agriculture and poverty reduction, is a major crosscutting issue, covering rural infrastructure, health, education, agriculture, water supply and sanitation, and other areas of socio-economic development in rural areas. It is central to poverty reduction since 85 percent of Cambodian population, which have high poverty incidence, live in rural areas.”²⁷⁰ Despite the fact that rural development occupied such a central importance in declared government policies, in 2008, only 40 percent of the rural population had access to improved drinking water, 23 percent access to sanitation, and only 10 percent access to electricity (in comparison to 75 percent in urban households).²⁷¹ There is a clear need to channel more funding into rural development, both public and private.²⁷² It is therefore encouraging that the government recently announced to provide additional investment into development serving the four basic needs of roads, schools, health centers and water.²⁷³ Any large-scale private investment should also be assessed against its contribution to rural development and related infrastructure for the benefit of rural populations.

²⁶⁸ The World Bank reported that “the share of agriculture in official development assistance (ODA) declined sharply over the past two decades, from a high of about 18 percent in 1979 to 3.5 percent in 2004. It also declined in absolute terms, from a high of about \$8 billion (2004 US\$) in 1984 to \$3.4 billion in 2004.” See World Bank (2008), *Agriculture for Development*, 41.

²⁶⁹ SNEC (2007), *Report of Land and Human Development*, 22-24.

²⁷⁰ RGC/MoP (2010), *National Strategic Development Plan 2009-13*, para. 136

²⁷¹ RGC/MoP (2010), *National Strategic Development Plan 2009-13*, paras. 166, 439.

²⁷² Ngo and Chan (2010) show that public spending in support of agriculture decreased between 2005 and 2010 in terms of its share in the overall national budget. The authors argue that “such declining trend does not suggest that agriculture has been respected as priority” and “the progress of Cambodia’s agricultural development has arguably been constrained by under-expenditure of the allocated budget, which has left small farmers under-supported by limited public services”. Ngo/Chan (2010), *Agriculture Sector Financing*, viii.

²⁷³ Speech of H.E. Im Chhun Lim, Senior Minister and Minister of Land Management, Urban Planning and Construction and Chairman of Council for Land Policy, Phnom Penh, 26 September 2012

6. Conclusion: A 'New Deal' for Reducing Rural Poverty and Promoting Agricultural and Rural Development in Cambodia

Taking into account the various challenges associated with economic land concessions, it is vital that policy-makers are aware that any large-scale investment in agriculture and associated land deals will have an impact on local populations and natural resources. Therefore, they need to carefully consider the problems and opportunity costs that come along with such investments in their decision-making. This process entails the constant consideration of alternative models of land use and investment. It appears from a review of the ELC policy during the past ten years that policy-makers either underestimated or ignored these challenges until the moment when the policy arrived in the current impasse. Given the importance of careful consideration and screening of concession deals, more attention should have been given to adequate social and environmental impact assessments and inclusive consultations with affected people and local communities. In neglecting this crucial aspect of their own policy, governmental authorities deprived themselves of early-warning mechanisms that could have prevented the current impasse and allowed for earlier corrections in the implementation of these policies.

Considering the multi-layered risks in relation to Cambodia's sensitive and long-term land reform process, Cambodian policy-makers took a great risk when they started to promote an expansionary ELC policy. Within a short time period, this policy began to jeopardize a land reform process in which both government and donors had invested much time and resources. In particular, the reallocation of land use through the ELC policy towards agribusinesses and speculative investors has so far worked contrary to many of the state's own policy objectives as formulated in its land policy, such as "to prevent land concentration and promote productive and effective use of land".²⁷⁴

Most importantly, policy-makers seemed to have lost sight of their primary development goal of reducing poverty in rural Cambodia. It is therefore paramount to return to this initial objective and make it a key benchmark through which the progress of any future agriculture or rural development policy is measured against. As to economic land concessions, the experience of the past years suggests that the burden of proof has shifted: from the critics to show that economic land concessions harm development to the proponents of these land concessions to show they actually deliver the promised benefits and contribute toward reducing rural poverty. More evidence-based research is needed in this area.

²⁷⁴ RGC (2009), Declaration of the Royal Government on Land Policy.

The historical experience with the implementation of Cambodia's ELC policy have demonstrated that policy-makers have greatly underestimated the level of governance and functioning institutional framework needed for the implementation of this policy and conversely overestimated the capacity of the existing institutions to ensure effective regulation. De Schutter identified this phenomenon as a global problem arguing that "there remains a considerable gap between the existing institutional and governance conditions in host states and the framework that should be established in order for large-scale investments in land to truly benefit local communities".²⁷⁵ In Cambodia, effective governance would have been the pre-requisite for achieving the ELC policy objectives. It was not sufficient to attempt to build up the required governance structures, including in the field of security of tenure, throughout the process and after re-launching the ELC policy in 2001/2005. By then many problems had already escalated.

Despite these challenges, the question remains whether the recent change in course provides enough momentum for an increasing convergence in opinion among the government, civil society and donors with regards to the limitation of the current approach to economic land concessions. There is a need to convince the elites of the political utility of sustainable land reforms as "resistance by the elites can be eased if proposed reforms are presented so as to align them with the elites' interests".²⁷⁶ The political utility is most evident in arguments centered on the political and economic stability of the country. In his most recent report, the Special Rapporteur warned that perhaps the greatest impact of the practice of economic land concessions to date is on the country's stability.²⁷⁷ Likewise, the argument that the past concessions practice is increasingly damaging the country's reputation among international investors can be brought forward - or as one interviewee put it "bad governance will likely attract bad investors". Policy-makers need to be aware that these consequences represent a tangible threat to a long-term cost benefit both for the country and for the implementation of their own policy objectives.

It appears from the recent developments that have occurred in 2012 that policy-makers are taking these negative impacts increasingly serious. The moratorium on new economic land concessions and associated new initiatives, such as in the field of land titling, represent an important shift in comparison with previous policy responses. Government, donors, civil society and other concerned stakeholders may in particular make use of the opportunity provided by the recent ELC moratorium to form a space for reflection about the lessons from the past experiences with economic land concessions. Such lessons are vital for formulating new policy responses that adequately address the risks associated with large investments in farmland and re-orient policy-making towards achieving the priority objectives in relation to

²⁷⁵ De Schutter (2011), 264.

²⁷⁶ So (2010), *Land Rights in Cambodia: An Unfinished Reform*, 6.

²⁷⁷ 2012 SR Report, para. 132.

the reduction of rural poverty. These reflections and discussions would ideally be incorporated into structured consultative processes leading up to the drafting of a new National Strategic Development Plan following the year 2013. This in turn could set the stage for a 'new deal' for reducing rural poverty and promoting agricultural and rural development in Cambodia beyond the Cambodian Millennium Development Goals 2015.

Having this in mind, the following recommendations aim, first, to assist in forming the necessary space for reflection and consultation ('short-term recommendations'), including a series of interim protective measures, and second, to provide some ideas that would deserve attention when formulating policies and objectives for a 'new deal' for reducing rural poverty and promoting agricultural and rural development in Cambodia ('mid- and long-term recommendations'). The result of such discussions could possibly be enshrined in a new National Strategic Development Plan after 2013.

RECOMMENDATIONS

Short-term Recommendations: “Take a Break!”

- 1- **Maintain the moratorium on new economic land concessions, at least until the completion of a comprehensive and transparent review of all existing economic land concessions.**

Based on an extensive review of the existing literature and reports about economic land concessions, this paper has come to the conclusion that the pre-conditions for a successful ELC policy are still to be established. Continuing the current practice would come along with great risks and further jeopardize the government’s development agenda and the fight against rural poverty. It is therefore highly recommended that the current moratorium is maintained at least until a comprehensive and transparent review of all existing economic land concession, as pledged by the government, is completed. The government’s recent announcement of possibly extending the current moratorium indefinitely is therefore an encouraging step.

- 2- **Focus now on designing and implementing an effective, comprehensive and transparent review process for all exiting economic land concessions.**

Given that large areas of land are already under long-term concession agreements, there is a need for a comprehensive review process. For this purpose, it is recommended for the government to design a mechanism that has the ability to conduct such a review. An inter-ministerial committee as currently envisaged may not suffice to complete the mammoth task of reviewing at least 117 or possibly even more than 200 companies and ELC projects and related documents. There may be a need for a better resourced mechanism that is capable of reviewing all existing ELC projects, possibly covering initial investment proposals, impact assessments, reviewing the background of investors, and quantifying capital investments and employment creation to date. Following the findings of such a review, the government would have an informed basis to consider the cancellation of concessions projects in cases of grave violations of the contract and/or existing laws and regulations, or renegotiations of contracts with the aim to possibly reduce the size and the lease period of ELC projects. Overall, there is a need to learn from the challenges with previous ad hoc review processes and to conduct this time a serious review with the potential to change the tide with regard to the perpetuation of adverse impacts from economic land concessions.

- 3- **Consolidate and publish information about all existing economic land concessions.**

Through the MAFF, the government should consolidate information about all existing economic land concessions, including those contracted through other

ministries and agencies. These data will assist with informed decision-making and they should be made available to the public and be regularly updated. Necessary information should include more background about the concessionaire (company ownership, shareholders, contact details etc.) as well as the terms of the contract (deposit/fees paid, investment plans, etc.).

4- Inform the public about the number of economic land concessions which have received in principle approval prior to the 7 May 2012 moratorium and are still under negotiation.

In order to uphold the credibility of the moratorium, it is recommended to publish the number and basic information about the nature of concession projects which have received in principle approval and are still under negotiation in accordance with Directive 01. Furthermore, the government may consider temporarily holding these negotiations until a full review of all existing concessions is completed. Additional safeguards should be applied during these negotiations, including full enforcement of the legal requirements in relation to the bidding process, impact assessments and consultations.

5- Issue a number of temporary interim protective measures to ease the social, political and ecological pressure and to provide a space for reflection and consultation.

Such interim protective measures may include (a) ceasing all development activities on ELC projects granted in protected areas, until all land concession projects have been fully reviewed, including environmental impact assessments; (b) banning all evictions and involuntary resettlements pending the outcome of the review process; and (c) fully implementing the 2011 Inter-Ministerial Circular on interim protective measures for indigenous communities, including safeguards that no further concession projects are granted on or near land claimed by Cambodia's indigenous people until all indigenous community's land is demarcated and secured through land titles, including communal land titles.

6- Ensure that the new titling initiative is in line with existing procedures and regulations.

It is commendable that the government has assigned new priority to providing land titles to people living on or near economic and other land concessions. In this regard, it is recommended to ensure that the new initiative is in line with existing processes and regulations of the systematic land titling process. Recent announcements by the government indicate that officials are aware of these implications, and they have therefore, committed to various procedural safeguards. There is a need for the authorities to carefully monitor the implementation to make sure that security of tenure is enhanced and no further contradictions occur.

Implementing these short-term measures will provide the government and other stakeholders with a much needed ‘break’ – a pause from now and into the year 2013 to review the past experience, seek consultations for solutions and reflect on a new course in politics in relation to agricultural and rural development in Cambodia.

Mid- and Long-Term Recommendations: “New Actions and New Policies”

1- Take the necessary steps to improve the management of state land, including speeding up the implementation of 2005 Sub-Decree 118 on State Land Management.

Effective state land management is a precondition for ensuring the strategic and sustainable use of state land. There is an urgent need to fully implement all provisions of the 2005 Sub-Decree 118, including a comprehensive state land inventory, land use planning, and transparent demarcation of state land. A sustainable land use policy is key to avoiding inefficient land use and determining any costs and benefits of further land use changes. The process of re-classifying state public land should be transparent and uphold the public interest.

2- Continue implementing the systematic land titling process, including communal and collective land titles, and expand it urgently to areas affected by land disputes together with effective cadastral and other non-judicial dispute resolution mechanism in those areas.

One of the weaknesses of the system to date was policies that have sidelined those people most in need, namely people affected by disputing claims over their land. There is a need to expand titling and dispute resolution scheme to those areas, using the current moratorium and other proposed interim protective measures as a ‘window of opportunity’ to bring security of tenure to those most in need. Proper oversight will be necessary in order to avoid previous injustice and inequalities are manifested through this process. More emphasis may be given to collective land titles and land use rights, recognizing existing land use patterns not just in indigenous communities and providing viable alternatives for more efficient land use, such as demonstrated through the experience with community forestry.

3- Rebalance the allocation of land between economic and social land concessions by giving more weight to allocating land to landless and land-poor people through social land concessions.

The government has announced to give more weight to its own objectives in the field of social land concessions which figure more prominently than economic land concessions in almost all governmental strategies. The moratorium on economic land concessions can be used to rebalance the allocation of land

between those two types of concessions towards more pro-poor land use, including raising the modest targets for social land concessions and increasing accompanying investment from the state, private sector and international donors in development activities for those projects. Recovered land from cancelled or renegotiated economic land concessions could be used for this purpose as already proposed by governmental statements over the past months.

- 4- **Use the pause created through the 7 May 2012 moratorium to draw lessons from the past experience with large-scale economic land concessions and conduct broad consultations ahead of the drafting of a new National Strategic Development Plan following 2013.**

The pause created by the moratorium on new economic land concessions and further interim measures represents a unique opportunity to assess the past experience with large-scale investment and land deals and to draw vital lessons for the country's future development strategy. The experience of the past suggests that there may not only be a need for new actions, but also for new policies. This process would benefit from broad public consultations among key stakeholders, including government, parliament, civil society, researchers, affected populations and donors. The results of this review and the public consultations could be channeled into the drafting of a new National Strategic Development Plan after 2013, possibly outlining a new deal for Cambodia's agricultural and rural development.

- 5- **After the completion of the comprehensive and transparent review process, define the future role and scope of economic land concession in a new National Strategic Development Plan and establish an effective monitoring system for all existing land concessions.**

After the consultations around the drafting of a new development strategy, the government may have a more informed basis from which to consider the lessons of the past and define the place and scope economic land concessions will occupy in a revised strategy. Should the decision be in favor of continuing a revised ELC policy, compliance with and enforcement of the law and existing regulations are paramount, including much shorter lease periods and smaller size of land, greater scrutiny of investment proposals as well as thorough impact assessments and broad consultations. An effective monitoring system would need to be put in place, for instance by reforming and/or strengthening the relevant institutions and further improving the flow of information from lower levels of government to the national level as well as promoting evidence-based research on the impacts of economic land concessions.

6- Reinvigorate the reduction of poverty, in particular rural poverty as a priority benchmark.

There is a clear need to reestablish the reduction of rural poverty as a priority benchmark. All public and private projects in the field of agricultural and rural development should be measured against their contribution to this overriding objective in Cambodia's development strategy. This is of relevance in light of achieving Cambodia's Millennium Development Goals 2015 and beyond.

7- Put smallholder farming at the center of any future agriculture and rural development strategy.

Smallholder farming represents the backbone of Cambodia's agriculture. The past years have seen the implementation of policies favoring large-scale private investment in agriculture often to the detriment of smallholder farming. This bias towards large-scale industrialized farming, mostly articulated in large-scale transfer of land use rights towards companies should be reconsidered when drafting a new National Strategic Development Plan that places more emphasis on support measures for smallholders, including in the fields of access to finance, productivity, organization of smallholder producers, market access and sustainable food production.

8- Identify and study pilot projects that try to raise synergies between economic land concessions and smallholder farming.

Despite an underlying presumption of synergies between industrialized agribusinesses and smallholder farming in most strategic document, there is so far little experience and evidence in relation to a productive co-existence between the two models. There is a need to study existing experiences and promote further pilot projects, such as in the field of contract farming. Evidence-based research should be conducted to evaluate the claim for added-value in the promotion of both systems and to determine the conditions for mutual benefits.

9- Expand investment into rural development, including infrastructure as well as health and education.

Rural development is an important element in achieving a further reduction in rural poverty rates. Thus, there is a clear need to channel more funding into rural development, both public and private, as recognized in recent statements by the government. Any large-scale private investment should also be assessed against its contribution to rural development and related infrastructure for the benefit of rural populations.

10- Companies should voluntarily commit to adhere to human rights, environmental and development standards when implementing their investment projects.

Recent years have seen the creation of a growing number of frameworks that try to address and/or incorporate the responsibilities of companies when

conducting their businesses: the UN Guidelines on Business and Human Rights, the Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources as well as the minimum principles and measures to address the human rights challenge in large-scale land acquisitions and leases, written by the UN Special Rapporteur on the Right to Food. Considering the high reputational risks involved in investing in large-scale land projects in the country, companies leasing economic land concessions should consider voluntarily applying such guidelines or principles and to report publically about their implementation. This would also assist with separating good from bad performers among the divers setting of investors in Cambodia's ELC scheme.

11- Donors should continue to carefully monitor the situation while adhering to established 'do-no-harm' and human rights-bases approaches in their development policies and activities.

BOX 7

Guiding Principles on Business and Human Rights

In conjunction with globalization, trade liberalization and the privatization of governmental functions, the past decades have seen an increasing importance of non-state actors in the realization of human rights, in particular transnational corporations/multinational enterprises. Although these corporations are generally not considered as subjects of international law, there is an increasing recognition of their human rights responsibilities. In 2011, the UN Secretary-General's Special Representative on the issue of human rights and transnational corporations and other business enterprises submitted 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework', which were subsequently endorsed by the UN Human Rights Council. These guiding principles represent the new centerpiece for a framework to govern the relationship between businesses and human rights. These guidelines consist of the following three pillars (abbreviated summary):

I. The State Duty Protect Human Rights: States existing obligations to respect, protect and fulfill human rights and fundamental freedoms.

- a. *Foundational Principles: (i) States must protect against human rights abuse within their territory by third parties, including businesses; and (ii) States should set out clearly the expectation that all business enterprises domiciled in their territory respect human rights throughout their operations.*
- b. *Operational Principles (selection):*
 - i. *Enforce laws (domestic and/or international) requiring businesses to respect human rights;*
 - ii. *Ensure that other laws and policies governing business enable respect for human rights;*
 - iii. *Provide guidance to business on how to respect human rights throughout their operations;*
 - iv. *Encourage businesses to communicate how they address their human rights impact.*

II. The Corporate Responsibility to Respect Human Rights: The role of business enterprises as specialized organs of society performing specialized functions, required to comply with applicable laws and to respect human rights.

- a. *Foundational Principles: Businesses should respect human rights as expressed in recognized international human rights law and avoid infringing on the human rights of others and address adverse human rights impacts with which they are involved.*
- b. *Operational Principles (selection):*
 - i. *Businesses should express their policy commitment to respecting human rights that is approved by the most senior level of the company, requires the respect of human rights from business partners, is publically available, and is practically embedded in operational policies.*
 - ii. *Human rights due diligence-businesses should assess and track potential and actual human rights impact, and address them appropriately through remediation.*

III. Access to Remedy: The need for rights and obligations to be matched to appropriate and effective remedies when breached.

- a. *Foundational Principles: States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.*
- b. *Operational Principles (selection): State-based judicial mechanisms, and non-judicial grievance mechanisms.*

Adapted from: Report of the SRSG on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, UN doc. [A/HRC/17/31 of 21 March 2011], Annex.

SPECIFIC RECOMMENDATIONS TO CIVIL SOCIETY

- (1) Build effective networks and coalitions to advance joint positions on land issues.**
- (2) Continue efforts to consolidate the various data collections among NGOs (such as currently under way in collaboration with Open Development Cambodia or the Land Observatory).**
- (3) Conduct further evidence-based research into the economic land concessions scheme as well as into alternative forms of agricultural development.**
- (4) Continue and expand support to community-based networks, capacity-building and other empowerment activities.**
- (5) Make more use of national and international grievance mechanisms and international human rights complaints.**
- (6) Expand the scope of activities to cover companies in the land sector, including monitoring and possibly human rights training for company staff.**
- (7) Build effective regional civil society alliances, in particular in view of the fact that most foreign investors come from the wider region.**

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ខ្លឹមសារសង្ខេប

របាយការណ៍ស្រាវជ្រាវ ស្តីពី

គោលនយោបាយលើកកម្ពស់
ការវិនិយោគខ្នាតធំលើវិស័យដឹកសិកម្ម
នៅក្នុងព្រះរាជាណាចក្រកម្ពុជា

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បោះពុម្ព និងរក្សាសិទ្ធិដោយ: គណៈកម្មាធិការប្រព្រឹត្តិកម្មនៃអង្គការសមាគម ការពារសិទ្ធិមនុស្សកម្ពុជា (CHRAC)

ឧបសគ្គសេដ្ឋកិច្ច

ចំពោះមុខស្ថានភាពទូទៅនៃកិច្ចពិភាក្សាដ៏តឹងតែងដែលកំពុងកើតមាន ស្តីអំពីសម្បទានដីសេដ្ឋកិច្ចនៅក្នុងប្រទេសកម្ពុជា ឯកសារនេះមានបំណងចាប់យកស្ថានភាពបច្ចុប្បន្ន ដែលមានរយៈពេល ជាងដប់ឆ្នាំបន្ទាប់ពីការអនុម័តនៃច្បាប់ភូមិបាលថ្មី និងស្ទើរតែជាងប្រាំពីរឆ្នាំបន្ទាប់ពីការប្រកាសឲ្យប្រើ អនុក្រឹត្យដែលពាក់ព័ន្ធនឹងសម្បទានដីសេដ្ឋកិច្ច។ រហូតមកដល់បច្ចុប្បន្ននេះ ការវាយតម្លៃនៃគោលនយោបាយនិងការអនុវត្តន៍នៃសម្បទានដីដែលមានលក្ខណៈដូចជាការវាស់ស្ទង់ទាំងនេះត្រូវបានសង្ឃឹមថានឹងជួយភាគីពាក់ព័ន្ធនៅក្នុងប្រទេសកម្ពុជា ក្នុងការអភិវឌ្ឍការឆ្លើយតបថ្មីៗនៃគោលនយោបាយចំពោះបញ្ហាសំខាន់ៗដែលបានជួបប្រទះរហូតមកដល់សព្វថ្ងៃនេះ។ សំណួរគឺដើម្បីគិតពិចារណាថា តើអាចកំណត់គោលការណ៍មូលដ្ឋានទូទៅថ្មី មួយដែរឬទេ។ ការចេញគោលការណ៍មូលដ្ឋានទូទៅនេះ និងការកំណត់អត្តសញ្ញាណមេរៀនដែលបានរៀនពីបទពិសោធន៍អតីតកាលអាចជួយបង្កើតការឆ្លើយតបនៃគោលនយោបាយចំពោះបញ្ហាសម្បទានដីសេដ្ឋកិច្ចបច្ចុប្បន្ន និងអាចបង្ហាញទិសដៅថ្មីៗសម្រាប់ការធ្វើគោលនយោបាយ។ ដោយគិតអំពីចំណុចនេះ ឯកសារនេះនឹងផ្តោតលើគ្រោងការគោលនយោបាយទូទៅ ដែលជាគោលដៅមូលដ្ឋានដែលបានត្រួសត្រាយការធ្វើសេចក្តីសម្រេចនៅក្នុងវិស័យសម្បទានដីសេដ្ឋកិច្ច។ ក្នុងការធ្វើដូច្នោះ ការផ្តោតនោះនឹងត្រូវបានធ្វើទៅលើការភ្ជាប់គោលនយោបាយនេះជាមួយគោលដៅដើមរបស់វាឡើងវិញ ជាពិសេសលើការកាត់បន្ថយភាពក្រីក្រ នៅតាមជនបទ និងការអភិវឌ្ឍន៍ជនបទ ព្រោះគោលបំណងទាំងនេះបង្កើតបានជាចំណុចគោលសម្រាប់ការវាស់ភាពរីកចម្រើនប្រហាក់ប្រហែលនៃគោលនយោបាយទាំងនេះ។

ជាបឋម ឯកសារនេះចាប់ផ្តើមដោយការបរិយាយពីបញ្ហាភាពក្រីក្រនៅតាមជនបទនៅក្នុងប្រទេសកម្ពុជា ដែលជាបញ្ហាចម្បងដែលគោលនយោបាយទាំងនេះបានមានបំណងលើកឡើងដំបូង។ បន្ទាប់មក ឯកសារនេះស្ថាបនាដំណើរការគោលនយោបាយនោះឡើងវិញ ដែលតាមរយៈដំណើរការនោះ សម្បទានដីសេដ្ឋកិច្ចត្រូវបានដាក់បញ្ចូលជាវិធានការមួយសម្រាប់ដំណោះស្រាយ ដែលត្រូវបានស្នើឡើងមួយចំពោះបញ្ហានេះ ជាពិសេស ដោយទាមទារផ្តល់នូវសេណារីយ៉ូ ឈ្នះ-ឈ្នះ មួយ សម្រាប់រដ្ឋ សេដ្ឋកិច្ច និងប្រជាជនដែលរងផលប៉ះពាល់។ បន្ទាប់មក ឯកសារនេះប្រៀបធៀបសំណើដំណោះស្រាយនេះជាមួយនឹងតថភាពនិងការអនុវត្តន៍នៃសម្បទានដីសេដ្ឋកិច្ច និងផលប៉ះពាល់របស់វាទៅលើប្រជាជនក្នុងតំបន់។ ប៉ុន្តែ ឯកសារនេះសង្ខេបផងដែរនូវការអភិវឌ្ឍន៍ថ្មីៗ ដែលមានទំនងជាការចង្អុលបង្ហាញការកែតម្រូវសំខាន់ៗ ចំពោះគោលនយោបាយដើមនៃសម្បទានដីសេដ្ឋកិច្ចដែលត្រូវបានបង្ហាញឲ្យដឹងតាមរយៈការផ្អាកបណ្តោះអាសន្ន ដែលត្រូវបានប្រកាសនៅក្នុងខែឧសភាសម្រាប់សម្បទានដីសេដ្ឋកិច្ចក្នុងពេលអនាគត។ បន្ទាប់ពីកំណត់បានការរួមយោបល់គ្នាប្រសើរជាងមុនមួយអំពីការកំណត់ព្រំដែននៃគោលនយោបាយ និងការអនុវត្តន៍បច្ចុប្បន្ន ឯកសារនេះព្យាយាមសាកល្បងធ្វើការវិភាគមេរៀនខ្លះៗ ដែលបានរៀនពីបទពិសោធន៍អតីតកាលជាមួយគោលនយោបាយនិងការអនុវត្តន៍នៃសម្បទានដីសេដ្ឋកិច្ច ជាពិសេសដោយសំដៅទៅលើ (១) ការពិចារណាមិនគ្រប់ជ្រុងជ្រោយមួយនៃបរិបទរួម (២) ការវាយតម្លៃទាបពេកមួយចំពោះបញ្ហានិងតម្លៃឱកាសដែលពាក់ព័ន្ធនៅក្នុងការវិនិយោគនិងការផ្ទេរដីកសិកម្មទំហំធំ (៣) ការកើនឡើងនៃហានិភ័យ ដែលពាក់ព័ន្ធនៅក្នុងកំណែទម្រង់ដីធ្លី និងទំនិញរូបនីយកម្មដីធ្លី (៤) ការវាយតម្លៃខ្ពស់ហួសមួយចំពោះរចនាសម្ព័ន្ធអភិបាលកិច្ចដែលមាននៅក្នុងការដោះស្រាយសម្រួលការវិនិយោគទាំងនេះ និង (៥) ការយកចិត្តទុកដាក់មិនគ្រប់គ្រាន់ចំពោះជម្រើសផ្សេងៗនៃគោលនយោបាយអភិវឌ្ឍន៍ជនបទនិងកសិកម្ម។

ដោយពិចារណាលើមេរៀនទាំងនេះពីបទពិសោធន៍អតីតកាល សំណួរនៅតែថា តើ ការអភិវឌ្ឍថ្មីៗ ដែលបានកើតមាននៅក្នុងកំឡុងឆ្នាំ២០១២ ផ្តល់នូវកម្លាំងចលករគ្រប់គ្រាន់សម្រាប់ ការរួបរួមគំនិត ប្រសើរជាងមុនមួយក្នុងចំណោមរាជរដ្ឋាភិបាល សង្គមស៊ីវិល និងម្ចាស់ជំនួយ ពាក់ព័ន្ធនឹង ការកំណត់ ព្រំដែននៃវិធីសាស្ត្របច្ចុប្បន្នចំពោះសម្បទានដីសេដ្ឋកិច្ចដៃរបៀបយ៉ាងណា។ យ៉ាងហោចណាស់ វាបង្ហាញ ឲ្យឃើញថា អ្នកធ្វើគោលនយោបាយដឹងច្រើនជាងមុនអំពីផលប៉ះពាល់អវិជ្ជមានពីការអភិវឌ្ឍថ្មីៗទាំងនេះ។ ការផ្អាកដីសម្បទានសេដ្ឋកិច្ចជាបណ្តោះអាសន្ន និងការផ្តួចផ្តើមថ្មីៗដែលមានជាប់ ជាមួយនោះ ដូចជា ការផ្តល់កម្មសិទ្ធិដីធ្លី គឺជាការផ្លាស់ប្តូរសំខាន់មួយបើប្រៀបធៀបជាមួយការឆ្លើយតបនៃគោលនយោបាយ មុនៗ។ រាជរដ្ឋាភិបាល ម្ចាស់ជំនួយ សង្គមស៊ីវិល និងភាគីពាក់ព័ន្ធផ្សេងៗទៀត អាចប្រើប្រាស់ជា ពិសេសនូវឱកាស ដែលផ្តល់ដោយការផ្អាកដីសម្បទានសេដ្ឋកិច្ចជាបណ្តោះអាសន្ននាពេលថ្មីៗនេះ ដើម្បីបង្កើតបានជាការដកឃ្លាមកគិតពិចារណាអំពីមេរៀន ដែលបានរៀនពីបទពិសោធន៍អតីតកាល ជាមួយសម្បទានដីសេដ្ឋកិច្ច។ មេរៀនទាំងនេះ មានសារៈសំខាន់ណាស់សម្រាប់បង្កើតជាការ ឆ្លើយតបថ្មីៗនៃគោលនយោបាយ ដែលលើកឡើងដោយគ្រប់គ្រាន់នូវហានិភ័យដែលមានជាប់ជាមួយ ការវិនិយោគធំៗលើដីធ្លីកសិកម្ម និងដែលតម្រង់ទិសការធ្វើគោលនយោបាយម្តងទៀតឆ្ពោះទៅរក ការសម្រេច ឲ្យបាននូវគោលដៅអាទិភាព ដែលទាក់ទងទៅនឹង ការកាត់បន្ថយភាពក្រីក្រនៅតាម ជនបទ។ ដោយមាននូវគំនិតនេះ ឯកសារនេះធ្វើសេចក្តីសន្និដ្ឋានដោយផ្តល់នូវអនុសាសន៍សម្រាប់ រយៈពេលខ្លីនិងរយៈពេលវែងមួយចំនួនសម្រាប់ធ្វើការពិចារណា នៅក្នុងដំណើរការពិគ្រោះយោបល់ មួយ ដែលនាំឆ្ពោះទៅរកការធ្វើសេចក្តីព្រាងនៃផែនការអភិវឌ្ឍន៍យុទ្ធសាស្ត្រជាតិថ្មីមួយ នៅក្រោយ ឆ្នាំ២០១៣។ ផែនការយុទ្ធសាស្ត្រនេះ អាចនឹងកំណត់ដំណាក់កាលសម្រាប់ ដំណោះស្រាយថ្មីៗ មួយ សម្រាប់កាត់បន្ថយភាពក្រីក្រនៅតាមជនបទ និងលើកកម្ពស់ការអភិវឌ្ឍន៍កសិកម្មនិងជនបទនៅក្នុង ប្រទេសកម្ពុជាបន្តពីគោលដៅអភិវឌ្ឍន៍សហស្សវត្សរ៍២០១៥។

សេចក្តីសន្និដ្ឋាន

“ដំណោះស្រាយថ្មី” សម្រាប់ការកាត់បន្ថយភាពក្រីក្រតាមជនបទ និងសម្រាប់លើកស្ទួយការអភិវឌ្ឍន៍ កសិកម្ម និងអភិវឌ្ឍន៍ជនបទនៅប្រទេសកម្ពុជា

ដោយពិនិត្យឃើញ បញ្ហា ប្រឈមផ្សេងៗដែលប្រទេសកម្ពុជាកំពុង ជួបប្រទះ ទាក់ទិននឹង សម្បទានដីសេដ្ឋកិច្ច វាជាការចាំបាច់ណាស់ថា អ្នកធ្វើគោលនយោបាយ ដឹងពីផលលំបាកកើតចេញ ពីការវិនិយោគខ្ពស់ក្នុងវិស័យកសិកម្ម និងការវិនិយោគដែលទាក់ទិននឹងដីផ្សេងៗ ចំពោះប្រជាពលរដ្ឋ និងធនធានធម្មជាតិ។ ដូច្នេះហើយ នៅក្នុងការសម្រេចចិត្តណាមួយ អ្នកធ្វើគោល នយោបាយ ត្រូវតែ ពិចារណាឲ្យបានម៉ត់ចត់ពីតំលៃនៃបញ្ហា និងគុណប្រយោជន៍នៃឱកាស ដែលតែង តែកើតឡើងជាមួយ ការវិនិយោគបែបនេះ។ ដំណើរការនេះ បង្ហាញពីការពិចារណាជាប់លាប់លើ គំរូផ្សេងៗក្នុងការប្រើប្រាស់ ដី និងការវិនិយោគ។ យោងតាមការពិនិត្យឡើងវិញលើគោលនយោបាយសម្បទានដីសេដ្ឋកិច្ចដែល បានអនុវត្តក្នុងរយៈពេលជាង១០ឆ្នាំកន្លងមក យើងសង្កេតឃើញថា អ្នកធ្វើគោលនយោបាយហាក់ ដូចជាបានពិចារណាតិចតួចៗ ឬក៏មិនអើពើ ចំពោះបញ្ហាប្រឈមទាំងនោះ រហូតដល់ពេល (ដែលជា ហេតុ បណ្តាលឲ្យ) ស្ថានភាពគោលនយោបាយធ្លាក់មកដល់ស្ថានភាពទាល់ច្រកដូចគ្រាបច្ចុប្បន្ននេះ។ ដោយហេតុថាវាជាការចាំបាច់ក្នុងការពិចារណាឲ្យបានហ្មត់ចត់ និងសិក្សាឲ្យច្បាស់លាស់លើរាល់ ការផ្តល់សម្បទានដី វាគួរតែមាន ការសិក្សាវាយតម្លៃគ្រប់គ្រាន់ពីហានិភ័យ សង្គមនិង បរិស្ថាន និង ការប្រឹក្សា យោបល់យ៉ាងពេញលេញជាមួយប្រជាជនពាក់ព័ន្ធ និងសហគមន៍មូលដ្ឋាន។ ការមិនអើពើ ពីដំណើរ សំខាន់នេះនៅក្នុងគោលនយោបាយរបស់ខ្លួន អាជ្ញាធររបស់រាជរដ្ឋាភិបាលបានបំបិទខ្លួនឯង

នូវយន្តការ ដាស់តឿនជាមុន ដែលយន្តការនេះអាចទប់ស្កាត់ការកើតឡើងនូវស្ថានភាពទាល់ច្រកដូច ពេលបច្ចុប្បន្ន និងផ្តល់នូវការកែតម្រូវតាំងពីដំបូងទី ក្នុងការអនុវត្តគោលនយោបាយទាំងអស់នេះ។

ទាក់ទិននឹងហានិភ័យច្រើនដំបូងនៃដំណើរការកំណែទម្រង់ដីដីក្តៅគុក និងវែងឆ្ងាយ អ្នកធ្វើ គោលនយោបាយបានចាប់យកហានិភ័យខ្ពស់ នៅពេលពួកគាត់ចាប់ផ្តើមផ្សព្វផ្សាយ គោលនយោបាយ សម្បទានដីសេដ្ឋកិច្ចបែបការពង្រីកសេដ្ឋកិច្ច។ នៅក្នុងរយៈពេលខ្លី គោលនយោបាយនេះចាប់ផ្តើមធ្វើ ឲ្យប៉ះពាល់ដំណើរការទំណែនទម្រង់ដី ដែលរដ្ឋាភិបាល និងម្ចាស់ជំនួយនានាបានដាក់ទុនពេលវេលា និងធនធានជាច្រើន។ ជាពិសេស ការធ្វើអនុបយោគលើការប្រើប្រាស់ដី តាមរយៈគោលនយោបាយ សម្បទានដីសេដ្ឋកិច្ច ចំពោះធុរកិច្ចវិស័យកសិកម្ម និងអ្នកវិនិយោគបំប៉ោង បានបង្កើតជាលទ្ធផលផ្ទុយ ពី គោលបំណងជាច្រើននៃគោលនយោបាយរបស់រដ្ឋ ដែលមានចែងនៅក្នុងគោលនយោបាយដី ដូចជា ដើម្បីទប់ស្កាត់ការប្រមូលផ្តុំដី និងលើកស្ទួយការប្រើប្រាស់ដីឲ្យបានផលខ្ពស់ និងប្រកដដោយ ប្រសិទ្ធភាព។¹

សំខាន់បំផុត អ្នកធ្វើគោលនយោបាយហាក់បានបាត់បង់ចក្ខុវិស័យសម្រាប់គោលដៅអភិវឌ្ឍន៍ ជាចម្បងនៃការកាត់បន្ថយភាពក្រីក្រក្នុងប្រទេសកម្ពុជា។ ហេតុដូច្នោះ វាហាក់ដូចជាមិនចំគោលបំណង ដើម ហើយដែលយកវាយកធ្វើជាខ្នាតគំរូដើម្បីវាស់វែងការអភិវឌ្ឍខាងកសិកម្ម ឬជនបទនាពេល អនាគត។ ដោយសារតែការផ្តល់សម្បទានដីសេដ្ឋកិច្ច បទពិសោធន៍នៃឆ្នាំមុនៗស្នើថា បន្ទុកនៃភស្តុតាង បានប្តូរពីការរិះគន់ ដើម្បីបង្ហាញថា ការផ្តល់សម្បទានដីសេដ្ឋកិច្ចធ្វើឲ្យប៉ះពាល់ការអភិវឌ្ឍចំពោះអ្នក ប្រឆាំងនឹងការផ្តល់សម្បទានដីសេដ្ឋកិច្ចទាំងនេះ ដើម្បីបង្ហាញថាពួកគេផ្តល់វិភាគទាន និងផលប្រយោជន៍ ដែលបានសន្យាឆ្ពោះទៅ ការកាត់បន្ថយភាពក្រីក្រយ៉ាងពិតប្រាកដមែន។ ការស្រាវជ្រាវដែលជា ភស្តុតាងថែមទៀត គឺត្រូវការចាំបាច់ក្នុងតំបន់នេះ។

បទពិសោធន៍ប្រវត្តិសាស្ត្រជាមួយការអនុវត្តនៃគោលនយោបាយការផ្តល់សម្បទានដីសេដ្ឋកិច្ច របស់ប្រទេសកម្ពុជា បានបង្ហាញថា អ្នកធ្វើគោលនយោបាយបានប៉ាន់ប្រមាណយ៉ាងធំពីកម្រិត អភិបាលកិច្ច និងការប្រព្រឹត្តទៅក្របខណ្ឌស្ថាប័នដែលចាំបាច់សម្រាប់ការអនុវត្តគោលនយោបាយ នេះ និងដែលផ្ទុយទៅវិញបានប៉ាន់ប្រមាណហួសពេកលើសមត្ថភាពនៃស្ថាប័នដែលមានស្រាប់ ដើម្បី ធានាពីនិយតិកម្មដែលមានប្រសិទ្ធភាព។ លោក De Schutter បានកំណត់បាតុភូតនេះថា ជាបញ្ហា សាកលដោយអះអាងថា វានៅតែមានគម្លាតដែលគួរឲ្យពិចារណារវាងស្ថានភាពស្ថាប័នដែលមាន ស្រាប់ និងស្ថានភាពអភិបាលកិច្ចក្នុងរដ្ឋនានា និងក្របខណ្ឌដែលគួរត្រូវបានបង្កើត ដើម្បីវិនិយោគ ដីធ្លីជាទ្រង់ទ្រាយធំសម្រាប់ជាប្រយោជន៍យ៉ាងពិតប្រាកដដល់សហគមន៍ក្នុងស្រុក។² ក្នុងប្រទេស កម្ពុជា អភិបាលកិច្ចដែលមានប្រសិទ្ធភាពនឹងមានការតម្រូវជាមុន សម្រាប់ការសម្រេចគោលបំណង នៃគោលនយោបាយការផ្តល់ដីសម្បទានសេដ្ឋកិច្ច។ វាមិនគ្រប់គ្រាន់ទេ ចំពោះការព្យាយាមដើម្បី កសាងរចនាសម្ព័ន្ធអភិបាលកិច្ចដែលបានតម្រូវ ដែលរួមមានក្នុងវិស័យសុវត្ថិភាពនៃការកាន់កាប់ តាមរយៈដំណើរការនិងក្រោយការបើកគោលនយោបាយការផ្តល់សម្បទានដីសេដ្ឋកិច្ចឡើងវិញក្នុង ឆ្នាំ២០០១/២០០៥។ បន្ទាប់មក បញ្ហាជាច្រើនបានរឹតតែកើតមានខ្លាំងឡើងៗរួចទៅហើយ។

ទោះបីជាមានការប្រឈមទាំងនេះក៏ដោយ ក៏បញ្ហាចោទនៅតែមានថា តើការផ្លាស់ប្តូរក្នុងពេល ថ្មីៗនេះផ្តល់ភាពសំខាន់គ្រប់គ្រាន់សម្រាប់ការកើនឡើងនូវគំនិតរួមគ្នានៅក្នុងចំណោមរដ្ឋាភិបាល សង្គមស៊ីវិល និងម្ចាស់ជំនួយពាក់ព័ន្ធនឹងការកំណត់នៃវិធីសាស្ត្របច្ចុប្បន្នចំពោះការផ្តល់ដីសម្បទាន

1 RGC (2009) សេចក្តីប្រកាសរបស់រដ្ឋាភិបាលកម្ពុជា ស្តីពី គោលនយោបាយដីធ្លី
2 De Schutter (2011), 264.

សេដ្ឋកិច្ច។ វាជាការចាំបាច់ដើម្បីធ្វើឲ្យធ្វើឲ្យជឿជាក់ក្នុងចំណោមអភិជនសម្រាប់នយោបាយកែទម្រង់ ដីធ្លីប្រកបដោយចីរភាព ដោយសារថា ការតស៊ូរបស់ពួកគេនឹងប្រែជាធុរស្រាវជ្រាវ ប្រសិនបើសំណើ កំណែទម្រង់នេះត្រូវបានបង្ហាញឲ្យស្របតាម ប្រយោជន៍របស់ពួកគេ។³ អត្ថប្រយោជន៍ខាងនយោបាយ ជាភស្តុតាងសំខាន់បំផុតក្នុងទម្រង់ករណីជាច្រើន ដែលជាស្នូលចំពោះស្ថេរភាពនយោបាយនិងសេដ្ឋកិច្ច របស់ប្រទេស។ នៅក្នុងរបាយការណ៍ថ្មីបំផុត អ្នករាយការណ៍ពិសេសបានក្រើនរំលឹកថាប្រហែល ផលប៉ះពាល់ធំបំផុតនៃការអនុវត្តការផ្តល់ដីសម្បទានសេដ្ឋកិច្ចមកទល់សព្វថ្ងៃនេះ គឺស្ថិតនៅលើ ស្ថេរភាពរបស់ប្រទេស។⁴ ដូចគ្នានេះដែរ ទម្រង់ករណីដែលថា ការអនុវត្តការផ្តល់សម្បទានកាលពីមុន គឺកំពុងធ្វើឲ្យខូចខាតកេរ្តិ៍ឈ្មោះរបស់ប្រទេសរឹតតែកើនឡើង នៅក្នុងចំណោមអ្នកវិនិយោគអន្តរជាតិ អាចត្រូវលើកយកមកនិយាយ ឬដូចអ្នកសំភាសន៍ម្នាក់បានលើកឡើងថា អភិបាលកិច្ចមិនល្អ នឹង ទំនងជាសម្រាប់តែទាក់ទាញអ្នកវិនិយោគមិនល្អ។ អ្នកធ្វើគោលនយោបាយចាំបាច់ត្រូវយល់ដឹងថា ផលវិបាកទាំងនេះតំណាងឲ្យការគំរាមកំហែងជាក់ស្តែងទៅអត្ថប្រយោជន៍រយៈពេលវែង ទាំងចំពោះ ប្រទេស និងចំពោះការអនុវត្តគោលបំណងនៃគោលនយោបាយរបស់ខ្លួនផ្ទាល់។

វាស្តែងចេញពីការអភិវឌ្ឍថ្មីៗដែលបានកើតឡើងក្នុងឆ្នាំ២០១២ ដែលថាអ្នកធ្វើគោលនយោបាយ កំពុងបង្កើតឲ្យផលប៉ះពាល់អវិជ្ជមានទាំងនេះកើនឡើងកាន់តែធ្ងន់ធ្ងរទៅៗ។ ការបង្អាក់លើការផ្តល់ សម្បទានដីសេដ្ឋកិច្ចថ្មី និងការផ្តួចផ្តើមថ្មីដែលពាក់ព័ន្ធ ដូចជា ក្នុងវិស័យការចុះបញ្ជីដីធ្លី ដែលតំណាង ឲ្យការផ្លាស់ប្តូរសំខាន់មួយ ក្នុងការប្រៀបធៀបជាមួយការឆ្លើយតបទៅនឹងគោលនយោបាយពីមុន។ រាជរដ្ឋាភិបាល ម្ចាស់ជំនួយ និងសង្គមស៊ីវិល និងជាពិសេសអ្នកពាក់ព័ន្ធនានា អាចធ្វើការប្រើប្រាស់ ឱកាសដែលបានផ្តល់ឲ្យដោយការបង្អាក់ការផ្តល់សម្បទានដីសេដ្ឋកិច្ចថ្មី ដើម្បីបង្កើតលំហសម្រាប់ ការឆ្លុះបញ្ចាំងអំពីបទពិសោធន៍ ដែលចេញពីបទពិសោធន៍ការផ្តល់សម្បទានដីសេដ្ឋកិច្ចអតីតកាល។ បទពិសោធន៍បែបនេះ គឺសំខាន់ចំពោះការរៀបចំគំរូការឆ្លើយតបនឹងគោលនយោបាយថ្មី ដែលអាច ដោះស្រាយយ៉ាងពេញលេញនូវហានិភ័យ ដែលទាក់ទងនឹងការវិនិយោគទ្រង់ទ្រាយធំក្នុងដីកសិកម្ម និងតម្រង់ទិសឡើងវិញនូវការធ្វើគោលនយោបាយឆ្ពោះទៅការសម្រេច គោលបំណងអាទិភាពពាក់ព័ន្ធ ទៅនឹងការកាត់បន្ថយភាពក្រីក្រ។ ការឆ្លុះបញ្ចាំង និងការពិភាក្សាទាំងនេះ នឹងបញ្ចូលយ៉ាងល្អវិសេស ទៅក្នុងដំណើរការពិគ្រោះយោបល់ដែលបានស្ថាបនា ដែលកំពុងនាំទៅដល់ការធ្វើសេចក្តីព្រាងផែនការ យុទ្ធសាស្ត្រអភិវឌ្ឍន៍ជាតិថ្មីមួយបន្ទាប់ពីឆ្នាំ២០១៣។ នេះ អាចរៀបចំជាដំណាក់កាលសម្រាប់ ការដោះស្រាយថ្មី មួយ សម្រាប់ការកាត់បន្ថយភាពក្រីក្រ និងការលើកស្ទួយការអភិវឌ្ឍខាងកសិកម្ម និងជនបទក្នុងប្រទេសកម្ពុជាហួសពីគោលដៅអភិវឌ្ឍន៍សហស្សវត្សកម្ពុជាឆ្នាំ២០១៥។

ហេតុដូច្នេះនេះ ឯកសារស្រាវជ្រាវនេះបានផ្តល់នូវអនុសាសន៍ជាច្រើន ក្នុងគោលបំណង ទី១ ដើម្បីជួយក្នុងការ បង្កើតលំហចាំបាច់សម្រាប់ការឆ្លុះបញ្ចាំង និងការពិគ្រោះយោបល់ (ការផ្តល់ អនុសាសន៍រយៈពេលខ្លី) ដោយរួមមានវិធានការការពាររយៈពេលខ្លះចន្លោះជាបន្តបន្ទាប់ និង ទី២ ដើម្បីផ្តល់គំនិតខ្លះៗ ដែលអាចសមនឹងយកចិត្តទុកដាក់នៅពេលធ្វើការរៀបចំគំរូគោលនយោបាយ និងគោលបំណងសម្រាប់ ការដោះស្រាយថ្មី មួយ ចំពោះការកាត់បន្ថយភាពក្រីក្រ និងធ្វើការលើកស្ទួយ ការអភិវឌ្ឍខាងកសិកម្ម និងជនបទក្នុងប្រទេសកម្ពុជា (ការផ្តល់អនុសាសន៍ពាក់កណ្តាលអាណត្តិ និងការផ្តល់អនុសាសន៍រយៈពេលវែង)។ លទ្ធផលនៃការពិភាក្សាបែបនេះ អាចត្រូវបានដាក់តំកល់ ក្នុងផែនការយុទ្ធសាស្ត្រអភិវឌ្ឍន៍ជាតិ បន្ទាប់ពីឆ្នាំ២០១៣។

3 So (2010), សិទ្ធិដីក្នុងប្រទេសកម្ពុជា: កំណែទម្រង់ដែលមិនទាន់បានបញ្ចប់, ៦.
4 របាយការណ៍អ្នករាយការណ៍ពិសេសឆ្នាំ២០១០, វាក្យខណ្ឌ ១៣២.



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