

**Mekong Economic Research Network
(MERN)**

**Managing Public Lands for Equitable and
Sustainable Development in Cambodia**

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List of Acronyms

ELC	Economic Land Concession
LASED	Land Allocation for Social and Economic Development
LWD	Life With Dignity
MAFF	Ministry of Agriculture, Forestry, and Fisheries
MEF	Ministry of Economy and Finance
MLMUPC	Ministry of Land Management, Urban Planning, and

	Construction
MOE	Ministry of Environment
ODC	Open Development Cambodia
RGC	Royal Government of Cambodia
SLC	Social Land Concession
WB	World Bank

Abstract

Managing public lands, which accounted for 80% of the country area until a decade ago, has understandably proven a formidable task for a relatively young government like the Royal Government of Cambodia (RGC). It has been one of the hotly debated policy issues in the past 20 years, as Cambodia was emerging from three decades of civil war and internal strife. After granting more than 10% of the country area or 50% of the cultivatable land as large scale concessions to private companies, mostly foreign owned, RGC reversed the trend in 2012 by drastically distributing 1.2 million hectares of the approximately 11 million hectare public lands to more than 710,000 smallholders. The process has generated lessons learned not only for Cambodia but also the other countries of late opening up.

The fact that private companies could have free access to using a large chunk of productive land for 70 years or more was quite appealing to numerous candidates from all over the world. More than 250 applicants were successful in getting a long term contract for a total of nearly 2 million hectares under the name of economic land concessions (ELCs), mostly in a rigged process. This was met with fierce protests by local residents including indigenous people, often aided by environmentalists and human rights NGOs, as their livelihoods were negatively affected by the operations of the investment projects. Land disputes became almost a permanent headline in the local press and a hot issue on human right reports. In May 2012, RGC issued a moratorium on granting ELCs and enforced the terms and conditions in the ELC agreements to cancel or downsize at least 40 ELCs releasing 231,000 hectares from them.

The paper suggests that in retrospect Cambodia would have been better off taking a different approach to managing public lands. A master plan should have been constructed to make zoning in the country, identifying where to preserve the biodiversity, wildlife, watersheds and cultural sites, and where to be released for agricultural purposes, instead of inviting applications for anywhere in the country and conducting patchy assessments before the concessions were made to the applicants. Adequate measures were needed for the regulations on ELCs to be respected. Then, an auction system should be considered for the best use of the cultivable areas. There is no reason why productive land is granted for free to investors. A transparent, easily verifiable system should be employed to generate revenue from the lands. An area based system, such as an amount of leasehold fee per hectare per year would serve this purpose.

Moving forward, it calls for continuous review of the existing concessions against the agreements between the companies and government. Non-performing projects should be canceled, as some already so done by government in the past two years. Land reallocation and redistribution to smallholders, which has taken place in the recent past, are favourable for both equity and efficiency reasons. For the operational projects, application of the Investment Law, the Labour Law and Immigration Law is needed to ensure the success of ELCs as intended. In addition, an incentive system should be formulated to ensure adequate supply of labour in the ELC areas, while annual tax on unused land should be extended into the ELC areas.

Managing Public Lands for Equitable and Sustainable Development in Cambodia

I. Introduction

In managing the public land, which spread 80% of the country until 10 ago, the Royal Government of Cambodia (RGC) has granted large lands for agriculture investment under the name “*Economic Land Concessions*” (ELCs) up to 10,000 hectares often for 70 years per company. The stated purpose of such decision was to turn under-utilised public lands, such as degraded forest areas, into a more productive use so that it creates employment and income for Cambodia’s citizens. The concessions were commonly for large scale investment proposals in agro-industrial plantation, processing and export. As of June 2012, the total land area of 1,204,750 hectares was granted to 118 companies in the form of ELCs by the Ministry of Agriculture, Forestry and Fisheries (MAFF). Including the ELCs granted by the Ministry of Environment and other government agencies, various sources have the total figure at around 2 million hectares under ELCs.

Such numerous ELCs appear excessive, covering more than 10% of the country area or 50% of cultivable land. In addition, there are other large scale concessions of state-land for mining and development concessions. These often have adversely affected the livelihoods and land use tenure rights of local residents. Furthermore, such practices threatened Cambodia’s rich biodiversity as well as future agricultural land access by the increasing population. To make matters worse, most of the approved projects have not been operational for various reasons. In some concession areas, conflicts occurred over the land that has not been used and thus encroached by villagers and outsiders, and this appeared constantly in the public media

within and outside the country, creating huge political pressures on the government or the ruling party.

RGC therefore reversed the trend of granting numerous economic land concessions by issuing a moratorium on granting new ELCs in May 2011, though still approving projects in the pipelines for a few more months, and providing a very large amount of land titles to smallholders residing within the ELC areas. Furthermore, in the past two years following a huge setback in general elections, RGC moved to cancel a number of ELCs that had been inactive or not operated according to the agreements. These actions are well applauded. However, there is still a need to review more ELCs, draw lessons learned, re-approach the public land management before and after the concessions. This will be not only useful for Cambodia but also other countries that have opened up large public lands for large scale investment opportunities.

The overall policy research question is “What should be the approach to manage public lands for equitable and sustainable development in Cambodia?” This policy question will be elaborated by the analysis of efficiency of land use by size, based on both the technical and ethnical aspects. Lessons learned from the past 20 years in Cambodia will shed light on better processes in land use policy at the national level. For on-going large scale projects, the question is how to ensure the best interest from the lands be maximised and fairly distributed in a sustainable manner.

It is expected that a round table will be conducted with policymakers in the Ministry of Land Management, Urban Planning and Construction, Ministry of Agriculture, Forestry and Fisheries, and Ministry of Environment, Ministry of Mines and Energy, Ministry of Planning, the Council for Development of

Cambodia, and key stakeholders for validation and discussions before the paper is possibly printing for consumption by national and international community.

II. Evolution of ELCs and Public Land Management

2.1. Trend and Profile of Economic Land Concessions

The awarding of ELCs is a mechanism that allows the government to grant the state private land through a specific land concession contract to a concessionaire to utilize for agricultural and industrial-agricultural exploitation, which includes cultivation of food crops or industrial crops, raising animals and aquaculture, construction such as a plant or factory and facilities for the processing of domestic agricultural raw materials, or a combination of some or all of the above activities (Sub-decree No. 146, 2005).

According to the Sub-decree, ELCs shall be granted to achieve the following purposes:

1. To develop intensive agricultural and industrial-agricultural activities that require a high rate and appropriate level of initial capital investment,
2. 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,
3. 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 system,

4. To encourage small as well as large investments in economic land concession projects, and
5. To generate state revenues or the provincial or communal revenues through economic land use fees, taxation and related services charges.

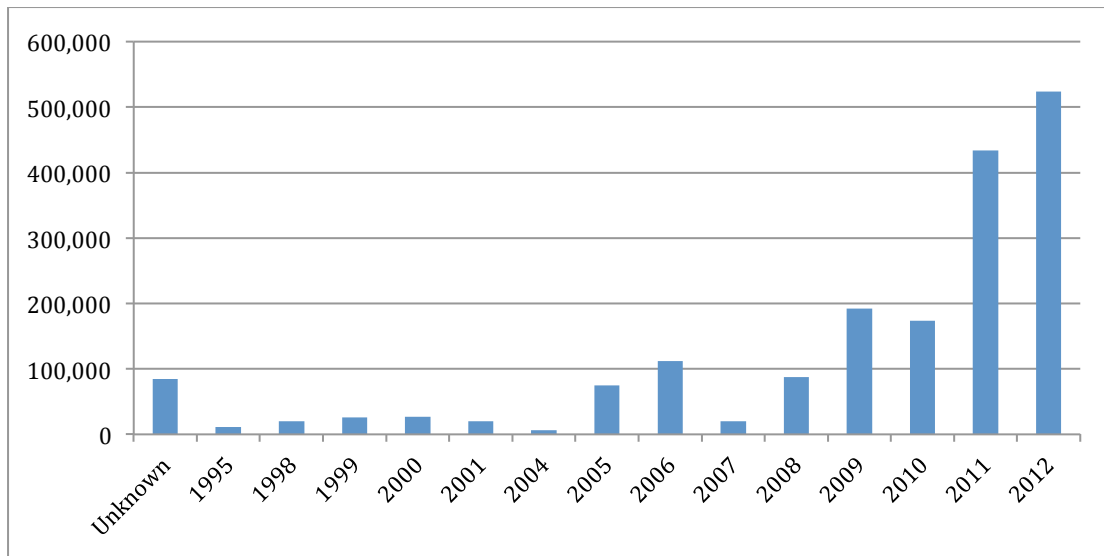
Although the Land Law 2001¹ allowed the government to grant economic land concessions to either a natural or a legal person up to the maximum of 10,000 hectares for the period of up to 99 years, the government's Sub-decree on the procedure for granting ELCs was not developed and adopted until Dec 2005.² Nonetheless, the practice of providing ELCs, as shown in Figure 1.1, could be traced back to 1995. The Land Law 2001 acknowledges such facts anyway and requires that those already granted ELCs abide by new regulations.

Since 1995, RGC has granted a total of approximately 200 ELCs. In the process, a number of ELCs were cancelled and then re-granted to different applicants. Figure 1.1 illustrates that quite a large amount of ELCs was awarded during 2011 and 2012, before the government's moratorium on granting new ELCs issued in May 2012. ELCs granted in the two years represent more than half of the total ELCs granted.

Figure 1.1: Trend of Granting ELCs

¹ Chapter 5, article 48-62.

² Sub-decree #146 on economic land concession.



Source: Author, based on data available from Open Development Cambodia (30 Mar 2015)

The official data on ELCs is incomplete and thus has been controversial. According to the Sub-decree on ELCs adopted in 2005, MAFF is the only ministry authorized by RGC to grant ELCs to investors. However, the Ministry of Environment (MOE), which is tasked to manage about three million hectares of protected areas, and the ministry of economy and finance (MEF) have also been involved in awarding ELCs, although in reality the Prime Minister was requested to endorse the concessions. MAFF has made ELC data available on its website³, but the data appears incomplete and does not represent all the ELCs that have been granted by RGC. Prominent NGOs⁴, through their networks and collaboration with partners, collect information and investigate land cases across the country and try to make complete data available to the public.

The data mismatch is huge and worth discussing. MAFF reported⁵ that “the

³ www.elc.maff.gov.kh or www.maff.gov.kh/elc

⁴ For instance, Licadho, ADHOC, NGO Forum, CHRAC, CCHR, and CLEC

⁵ The figure does not include those granted by MOE although it counts 24 ELCs granted by MEF. <http://www.maff.gov.kh/elc/> (11 April 2015).

Royal Government of Cambodia, as of 08 June 2012, has totally granted ELCs to 118 companies on the total land area of 1.2 million hectares”; while Licadho’s recent statement announced the total ELCs amounted 2.1 million hectares⁶. Open Development Cambodia (ODC) collected and verified information on ELCs from all sources available through public domains; then collated them and published on its website⁷.

For the sake of contributing to the generation of knowledge on ELCs in Cambodia, the analysis in this section is based on the data available from ODC website, but focusing on data from two major categories: government data complete⁸ and government data partial⁹. Both types of data comprise 264 ELCs (191 and 73 respectively) out of 300 ELCs in the database.¹⁰ The 264 ELCs include the ones whose sizes are both less than and over 1,000 hectares. The two types of data are chosen for the analysis because they have evidence with reference to the government documents while data from other types appears less credible.

Figure 1.2: Proportion of ELCs granted by different government ministries

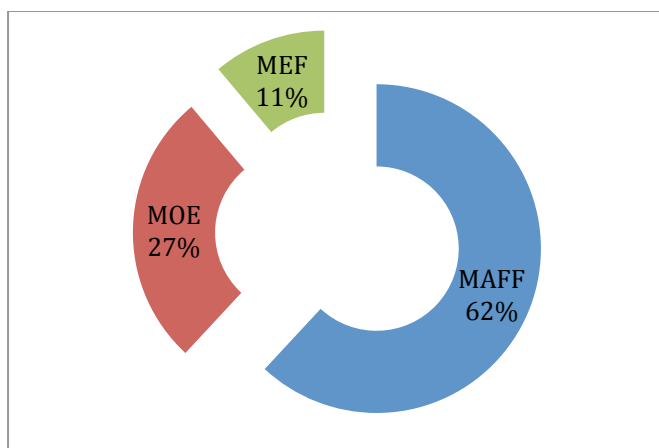
⁶ LICADHO (2015) Opens up its Land Concessions Data, Urges Full Transparency from the Government, <http://www.licadho-cambodia.org/pressrelease.php?perm=380>

⁷ www.opendevdevelopmentcambodia.net

⁸ information obtained from official government sources with official legal documentation in the following identification fields: company name, location, GPS coordinate and/or analog map, and purpose (rubber, corn, etc.)

⁹ information obtained from official government sources with official legal documentation but missing one or more of the following identification fields: company name, location, GPS coordinate and/or analog map, and purpose (rubber, corn, etc.)

¹⁰ 1 ELC obtained from secondary source, other 35 ELCs obtained from other sources.



Source: Author, based on data available from Open Development Cambodia (30 Mar 2015)

All the 264 ELCs with information obtained from the government sources cover a total area of 1.8 million hectares, which is about 85% of all 300 projects recorded in the ODC database or of 2.1 million hectares reported by Licadho. If the 1.2 million hectares reported by MAFF representing ELCs approved by MAFF and the proportion of 62% of all ELCs granted by MAFF in Figure 1.2 is reflective of the reality, the total area of ELC could be around 1.9 million hectares. On the other hand, data from the central government agencies may not be exhaustive. For instance, the provincial government in Kampong Thom province report a total land concession area for rice cultivation of 26,800 hectares¹¹, but the data available from ODC show only 12,900 hectares dedicated for rice purpose. **All these help explain that the total ELC area could be between 1.8 and 2 million hectares.**

As shown in Table 1.1, the ELCs are spread across 18 out of 23 provinces¹² in Cambodia, but concentrated in just five provinces, where pubic land, essentially forest, was more abundant. One particular ELC was the largest,

¹¹ Exploring the trade pattern and developmental implications of land concessions: the case of Cambodia, Lao people's democratic republic and Thailand.

¹² Phnom Penh capital is not included because it is mainly urban and thus not within the subject of ELCs.

sizing 315,028 hectares, cutting across three provinces of Kampong Chhnang, Pursat and Kampong Speu. This size is 31.5 times above the legal permit but it was granted well before the Sub-decree on ELCs was produced and approved. The distribution of these ELCs could be visually viewed from Figure 1.4, which is based on Licadho's report.

Table 1.1: Geographical Distribution of Granted ELCs

No.	Province	# ELCs	Hectare	% of Total
Kampong Chhnang (including Pursat and				
1	Kampong Speu)	1	315,028	17%
2	Kratie	60	280,312	15%
3	Mondulkiri	31	208,510	12%
4	Ratanakiri	29	192,347	11%
5	Preah Vihear	26	182,113	10%
6	Kampong Thom	27	112,407	6%
7	Kampong Speu	17	110,847	6%
8	Oddar Meanchey	17	110,219	6%
9	Stung Treng	13	101,241	6%
10	Kampot	5	45,306	3%
11	Siem Reap	7	39,835	2%
12	Koh Kong	9	38,573	2%
13	Battambang	4	21,852	1%
14	Kampong Cham	5	18,850	1%
15	Preah Sihanouk	7	16,658	1%
16	Banteay Meanchey	2	9,000	0%
17	Pursat	3	7,219	0%
18	Svay Rieng	1	1,200	0%

Total	264	1,811,517	100%
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Source: Author, based on data available from Open Development Cambodia (30 Mar 2015)

Table 1.2: Purpose of Production (Land Use) on Granted ELCs

No.	Crops	# ELCs	Size (ha)	% of
				Total
	Rubber and other agro-			
1	industrial crops	175	988,383	55%
2	Tree plantation	1	315,028	17%
3	Industrial tree plantation	21	154,481	9%
4	Sugarcane	14	73,186	4%
5	Animal husbandry	8	50,550	3%
6	Cassava	8	41,967	2%
7	Oil palms	4	40,279	2%
8	Cashew	3	16,853	1%
9	Eco-tourism	2	16,556	1%
10	Rice	5	12,904	1%
11	Corn	1	9,800	1%
12	Agro-tourism	1	4,280	0%
13	Aquaculture	1	63	0%
14	Other	20	87,187	5%
			1,811,51	
Total		264	7	100%

Source: Author, based on data available from Open Development Cambodia (30 Mar 2015)

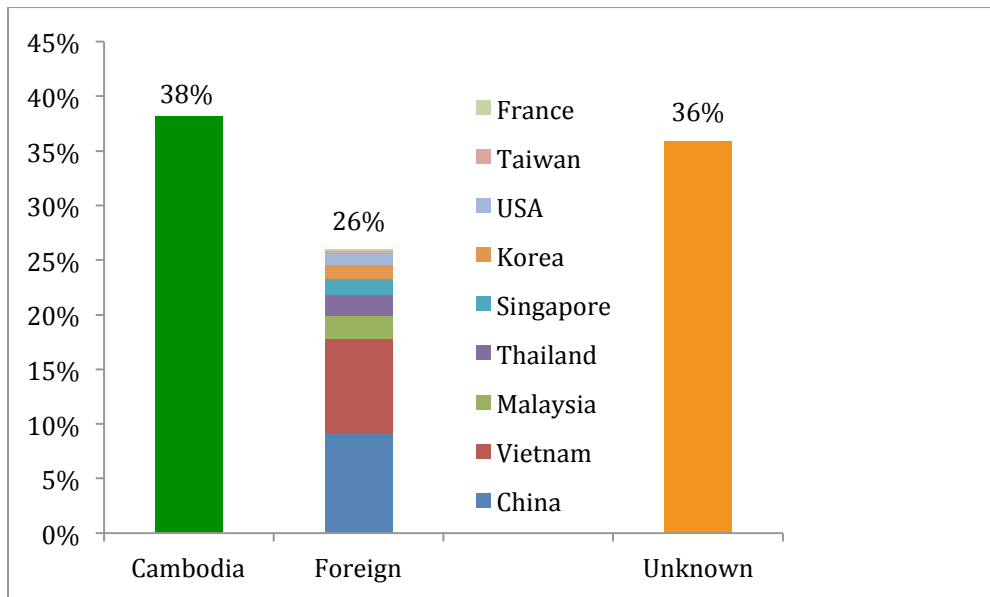
Most of the ELCs are meant for non-food production. The ELCs for food production purposes such as rice, corn, cashew, and aquaculture account for

about 40,000 hectares or only 2.2% of the total ELC area granted. The prominent feature of non-food crop production on the ELC is rubber plantation. As shown in Table 1.2, 175 ELCs were granted on around one million hectares (or 55% of total ELC area) for this purpose of rubber production.

According to ODC, a large proportion of the ELCs does not display information on the nationality of the investors. As shown in Figure 1.3, the nationality of investors who obtained 36% of the ELCs is unknown due to missing data. From the known data, Cambodians possess 38% of the ELC area, of which an outstanding case in Kampong Chhnang alone represent 17%. Other 26% were granted to foreign investors, in which China and Vietnam enjoy almost an equal share of 17% each. Other countries of investors include Malaysia, Thailand, Singapore, Korea, USA, Taiwan, and France. The missing data complicates the analysis. However, data from Ngo and Chan (2010) indicates that 60% of the ELCs granted during 1995-2009 was given to Cambodians, leaving the rest 40% to foreign investors. On the other hand, a recent report by Licadho (2015) shows more than 50% of ELCs was awarded to non-Cambodian investors (see Figure 1.4), with Chinese and Vietnamese companies received roughly 350,000 hectares each¹³.

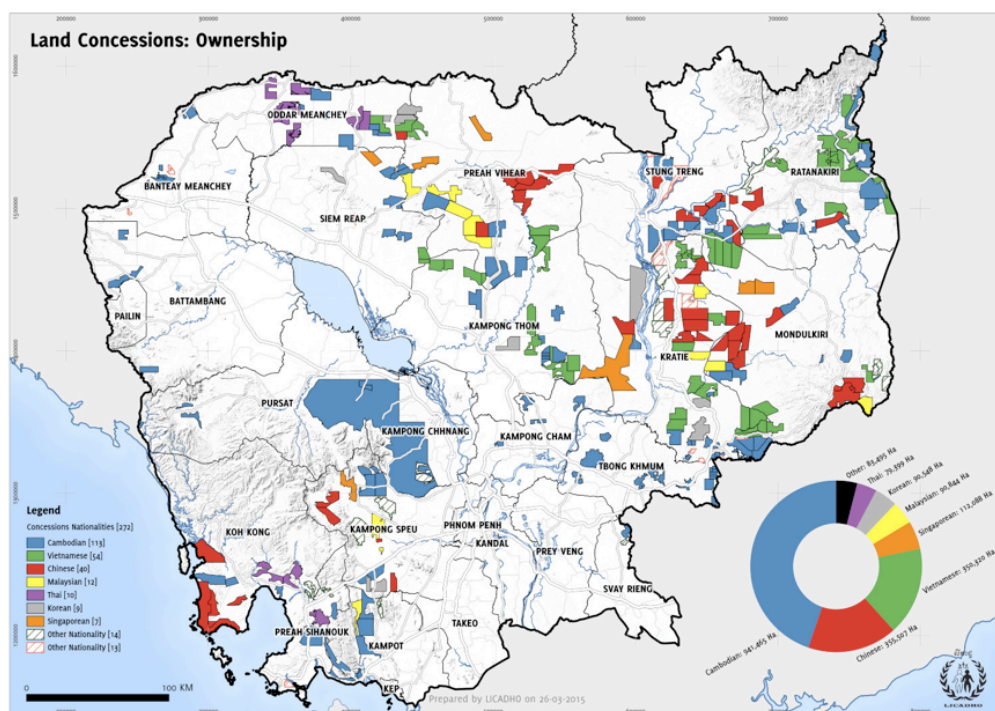
Figure 1.3: ELCs classified by nationality of investors (1995-2012)

¹³ By [Zsombor Peter](https://www.cambodiadaily.com/news/rights-group-asks-govt-to-disclose-true-land-figures-81072/), March 31, 2015 (Cambodia Daily), <https://www.cambodiadaily.com/news/rights-group-asks-govt-to-disclose-true-land-figures-81072/>.



Source: Author, based on data available from Open Development Cambodia (30 Mar 2015)

Figure 1.4: Distribution of Economic Land Concessions by nationality of investors



Source: Licadho (2015), http://www.licadho-cambodia.org/land_concessions/ (9 April 2015)

2.2. Cancellation of Economic Land Concessions

Following the issuance of the moratorium in May 2012 on granting new ELCs, the government formulated an inter-ministerial committee to conduct a nationwide review of ELCs with an aim to cancel the projects that do not abide by the law and ELC contracts. Since then, MOE and MAFF have cancelled and downsized many ELCs. There has been some specific information released about the cancelled or downsized ELCs, but not all of them yet at the time of the current report writing, and there is no single source of information on the status of ELCs that have been reviewed, as well as the ones that were cancelled or downsized.

Based on the information released by the Council of Ministers and press releases, and conferences by MAFF and MOE covered by the media, **RGC has so far cancelled and downsized at least 40 ELCs on a total area of 231,000 hectares.** MOE withdrew 117,000 hectares back from 26 ELCs¹⁴ in 2014, and took back an additional 9,000 hectares¹⁵ during early 2015 and placed 14 companies on its watch list for further review. During a press conference on 22 January 2015, MAFF announced that it had cancelled eight ELCs on a total area of 50,000 hectares¹⁶ since the national election in July 2013. On top of that, the ministry reported four ELCs were reduced by a total area of nearly 100,000 hectares.

¹⁴ Khuon Narim (Cambodia Daily, 7 Jan 2015)

¹⁵ Aun Pheap (Cambodia Daily, 10 Mar 2015).

¹⁶ Aun Pheap (Cambodia Daily, 22 Jan 2015)

2.3. Leopard Skin Policy (land titles for smallholders)

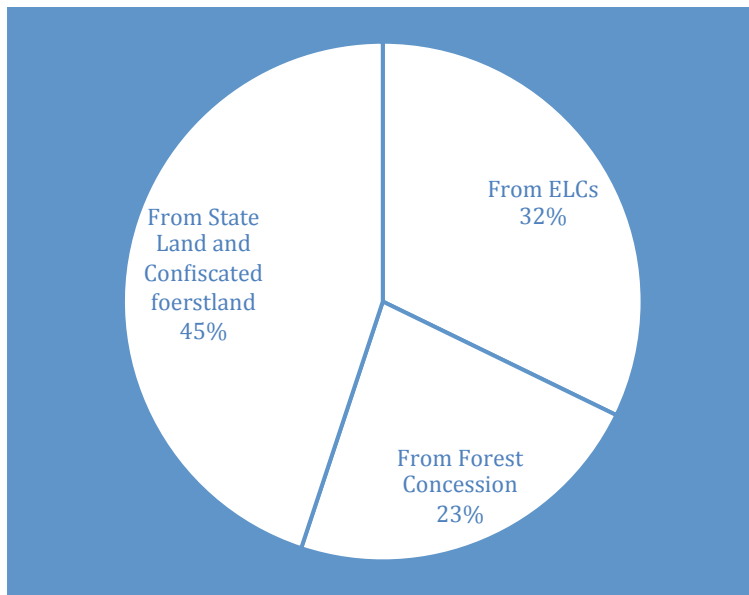
As part of the initiative implementing new action on old (existing) policy in land sector, the Prime Minister declared the decision (known as Order 01) to resolve land conflicts between the companies/concessionaires and affected people, and thus provided land titles to the people, particularly the ones locating inside the ELCs, which would then make the ELCs look like a leopard skin. The initiative aimed to provide around 1.8 million hectares¹⁷ to the local people. More than 1,000 youth volunteers (mostly university students) were recruited and deployed to work alongside concerned officials in different provinces in 2012 and 2013.

In effect, the mission of Order 01 has, as of 30 November 2014, concluded with more than 710,000 plots (1.2 million hectares) measured and publicly displayed across 357 communes¹⁸. The number of land titles that have already been handed to the people is very high, 610,000 or 86% of the measured ones. This level of achievement within a 16 month period is spectacular. Putting things in context, the number 710,000 plots issued within about a year is approximately 23% of the land titles issued through the systematic land titling over more than 10 years; while the coverage of 357 communes is about 22% of all communes and sangkats across Cambodia.

Figure 1.5: Sources of land for land titles under Order 01 [total 1.2 million hectares]

¹⁷ Ben Sokhean and Holly Robertson (Cambodia Daily, 1 August 2014)

¹⁸ MLMUPC's Announcement (dated on 17 Dec 2014), from http://www.mlmupc.gov.kh/mlm/imgs/scan0003_Page_2.pdf (retrieved, 12 April 2015)



Source: MLMUPC's Announcement (dated on 17 Dec 2014)

from http://www.mlmutpc.gov.kh/mlm/imgs/scan0003_Page_2.pdf (retrieved, 12 April 2015)

With regard to land size distributed under Order 01, the government had cut around 1.2 million hectares from three major sources: more than 380,000 hectares from 142 ELC companies; more than 270,000 hectares from 17 forest concession companies; and 530,000 hectares from state land and former forestland. This suggests an average land size per titled plot is around 1.7 hectares.

All these achievements are plausible; 1.2 million hectares is quite significant, especially in relation to the size of granted ELCs. However, no details of data have been made available to tracking and study purposes. Given just aggregate data available from MLMUPC, it is difficult to understand the number as well as characteristics and distribution of beneficiaries of the program.

2.4. Social Land Concessions

The government's policy to distribute land to the people for social purposes was reflected in a sub-decree issued in March 2003, Sub-decree No. 19 on Social Land Concessions (SLCs). SLCs may be granted for one or more of the following social purposes:

1. Provide land for residential purposes to poor homeless families,
2. Provide land to poor families for family farming,
3. Provide land to resettle families who have been displaced resulting from public infrastructure development,
4. Provide land to the families suffering from natural disaster,
5. Provide land to repatriated families,
6. Provide land to demobilized soldiers and families of soldiers who were disabled or died in the line of duty,
7. Facilitate economic development,
8. Facilitate economic land concessions by providing land to workers of large plantations for residential purposes or family farming,
9. Develop areas that have not been appropriately developed.

Under the framework of the Sub-decree on SLCs, there are two types of programs that a social land concession project could be initiated: local social land concession program and national social land concession program. Local social land concession could be proposed by commune councils; one or more citizens or organizations working with or on behalf of the citizens in the commune can also initiate the social land concession proposal but that has to be done through the commune council. On the other hand, the national social land concession program could be initiated by one or more concerned

ministries or institutions in situations that are not suitable for a local social land concession program.

As presented in Table 1.3, around 20,000 hectares of social land concessions have so far been distributed and more than 6,200 families. These social land concessions have been implemented through a few mechanisms. The government has provided approximately 10,000 hectares through its own funded projects to around 3,000 poor families including families of slum dwellers, families of demobilized soldiers and soldiers who were disabled or died in the line of duty. The social land concession was also distributed through a land allocation for social and economic development project called LASED¹⁹ (2008-2013), implemented by MLMUPC with support from the WB and GIZ. LASED provided more than 6,250 hectares to more than 1,600 families. Other two projects of social land concessions were implemented by two NGOs called LWD and Habitat for Humanity International.

Table 1.3: Implementation of social economic land concessions

Project/Implementing Agency	Size (ha)	Beneficiaries (hh)
Government-own SLC projects	10,000	3,000
LASED/MLMUPC	6,250	1,604
LWD (1)	3,847	1,293
Habitat for Humanity International		
(2)	2	334
	20,099	6,231

(1) Community Empowerment through Access to Land Project

(2) Strengthening Civil Society-Government Partnership to Deliver Land Tenure Security Project

Source: RGC, 2012 (*NSDP 2009-2013 Mid-term Review*) and interview with key

¹⁹ Land Allocation for Social and Economic Development

informants

The implementation of the social land concessions has so far proved a positive step. Currently there are no social land concession projects active either through LASED or other means, except the above-mentioned land tilting program for smallholders through Order 01, which can be well considered social land concession. The main difference between the recent vast distribution of land to smallholders and LASED is that the latter provides complementary infrastructure and services for the new settlers, while the former essentially recognizes the legality of the residents at the place.

It has been proven in various studies that small farms are more efficient than large farms. This lends support to the social land concession. Among many factors, smallholders tend to be able to get more out of one hectare of land, while the large holders suffer from challenge of managing many layers of labour. Anecdotes in Cambodia point well to this general occurrence at the production level. However, when it comes to processing and marketing, it stands to the fact that scale matters. It calls for better coordination of smallholders, which is often best in the form of cooperatives.

III. ELCs and SLCs in Practice

3.1. Economic Land Concessions in Practice

The consequence of the ELC implementation has been a mix of both positive and negative although there has been no robust study to weigh the gains and losses. On the positive side, the ELCs in full operations brought the inflow of foreign capital and technology; created jobs; increased productivity and domestic production including manufacturing; paid rents and taxes; and

fueled export of commodity and final goods for earning foreign exchanges. However, all these benefits are not properly accounted yet. Meanwhile, ELCs have proven negative implications on the livelihood and tradition and culture of the local people, especially the indigenous peoples. Often, the ELCs overlap the community people's lands, which include residential land, agricultural land, spirit forest and burial ground of the indigenous peoples. People lost their lands and thus protest against the companies. Moreover, ELCs were also accused to have negative impacts on the environment and the country's rich biodiversity since they generally have to clear the natural forests in order to grow rubber or other crops.

According to The NGO Forum on Cambodia (2014), there have been 405 cases of land disputes since 1994. The disputes involved 65,867 households (approximately 300,000 people) nationwide. Nonetheless, ELCs are responsible for 26% of the land disputes, which related to 145,000 hectares of agricultural and residential lands. As proportion to the total ELC area, this disputed land represent approximately just 8%. This is significant, but small enough for the government and the company to resolve them peacefully with the affected people without much sacrifice. Findings from 4 case studies by Ngo and Chan (2012) indicate that the disputed land was around 10-15% of the ELC area. Nonetheless, most, if not all, of these land conflicts should have been resolved as the government, through the implementation of Order 01, has cut off 380,000 hectares from existing ELCs and it represents about 20% of the total ELC area.

While ELCs are meant for intensive agricultural and industrial-agricultural development, many ELCs were held inactive, or their development progress has been minimal. Evidence from interviews with competent authorities at

the provincial level indicated that 15-20% of the ELCs in Kratie and Monduliri had any operation (Ngo and Chan, 2012). Development in some ELCs were not possible or as planned because of ongoing conflicts with the local people while some other ELCs were just held for speculation, thus unproductive. This usually resulted in encroachment by residents in and out of the areas. As part of the government's Order 01, MAFF and MOE have reviewed and evaluated the implementation of existing ELCs that have led to cancellation and downsizing of many ELCs as discussed above.

In general the design of ELC mechanism itself is not bad. It is meant to utilize the underdeveloped land, foster agricultural development and economic growth, generate employment for rural people and revenue for local and national government, bring in foreign investment and technology to overcome the local limitations as well as to establish links with international markets, and at the same time conserve the environment and ecological systems.

Moreover, the legal framework, particularly the Land Law 2001 and Sub-decree No. 146 on ELCs are good instruments for governing ELCs, but it is just a matter that all these legal provisions were not properly implemented. For instance, the legal permit of 10,000 hectares maximum per investor for up to 99 years is not at all impractical since there are instances of investment types that would need that large chunks of land and length of time for viable operation. The ignorance lies with the fact that the contacting authorities simply sign a uniformed deal with most investors toward the ceiling permit regardless of what type the proposed business is. Also, while the law permits 10,000 hectares maximum for an investor, many ELC cases violate that legal provisions. And the size limit was avoided by the setting up of multiple firms under the same investors in order to hold multiple land concessions.

Most irritatingly, the legal grounds were not even adhered to by the contracting authorities. They simply bypassed the lawful requirement when it comes to actually granting of ELCs. Such unlawful practice has resulted in rapid giving away lands to investors and from the legal perspective most, if not all, of ELCs in Cambodia are illegal. The practice has made the legal instruments nonsense and reinforced the view that Cambodia a country without room for rule of law. For instance, an essential criterion for granting ELC, the site in subject must have been classified and registered as state private land (in accordance with the sub-decree on state land management and the sub-decree on procedures for establishing cadastral maps and land register or the sub decree on sporadic registration), but the ELC agreements were just signed off and obliged investors to apply and register the land later with the competent authority as state private land (Ngo and Chan, 2012).

Another essential criterion is the environmental and social impact assessments must have been completed with respect to the land use and development plan for economic land concession projects. In practice, as in the case of land classification, the agreements were generally signed off while the assessment would be conducted later; often with poor quality or done when the ELC development was in progress or almost completed (Ngo and Chan, 2012). Moreover, there were no proper consultations with the local residents. The public was not informed and hence there were often erupted reactive protests from the local communities when ELC development started. Oldenburg and Neef (2013) also noted that provincial and local authorities were often not even aware of ELCs granted in their administrative area. This also suggests the provincial and local authorities were often not consulted or adequately consulted.

Another important aspect of ELCs is the way in which they were actually

initiated and granted. The sub-decree provides two permissible ways to initiate economic land concession projects. Solicited proposal is the way in which the contracting authority proposes a project for solicitation of proposals from investors; unsolicited proposal is the case where an investor proposes a project proposal to the state for approval. While solicited process is competitive and prioritized, the unsolicited proposal shall only be considered in circumstance where the investor promises to provide exceptional advantages to achieving the purposes of economic land concessions in situations such as: the introduction of new technology; exceptional linkages between social land concessions and economic land concessions; and exceptional access to processing or export markets. Despite so, Neef and Oldenburg (2013) did not observe any ELCs that were granted through solicited means; the unsolicited one had been the general practice.

All these unlawful practices and implication in the land sector are the complication of the political economy in Cambodia. Although MAFF manage the agricultural land and forestland, a large proportion of the country's territory, and was given the authority to sign ELC contracts to investors, it sought endorsement from the Prime Minister's Office, and other ministries have also granted the ELCs in the same manner. However, the interests in ELC business extend beyond all these contracting authorities. Military generals and local business tycoons are key players and drivers of such unlawful practices and rapid transformation of land allocation in Cambodia²⁰.

3.2. Social Land Concessions in Practice

Despite that positive step in SLC implementation, the scale of SLC coverage is far limited if compared to the issuance of ELC projects and the degree of

²⁰ Interviews with key informants

landlessness in Cambodia. Landlessness among rural households in Cambodia has become prevalent; increasing from about 13% in 1997 to 20% in 2004 (WB, 2006), and up to 28% by 2011 (Pann et al, 2015). While approximate 2.5 million Cambodian households reside in rural areas, it suggests around 700,000 households possess no agricultural land. If such, the current scale of SLC beneficiaries is just less than 1% of the rural landless households. Nevertheless, nearly 2 million hectares were granted to private investors through ELC projects. All these suggest that there is a pressing need to strike the balance of land allocation for ELC and SLC and to adequately respond to landlessness that can cause adverse impact on the overall development.

From the discussion with key informants, one of the explanation for a much slower progress of SLC implementation in relation to ELC one was the lawful implementation of the SLC project while ELC process ignore almost all the legal requirement. Another major factor is the political economy of land, in which eligible lands are usually under the jurisdiction of the other government entities, for instance, forest administration, and serve higher interest for economic concession, for example, than for social concession purposes. As such, it was observed that the sites for SLCs, when granted, are generally on less- or even un-fertile lands locating in far remote areas (lack of roads, clean water, electricity, school, and health centers), and sometimes even involved conflicts that need to be resolved.

The design of the SLC mechanism provides great opportunity for the local (bottom-up) initiatives by allowing the commune council as well as other key actors at the local level to propose the SLC project. However, the extent to which local people and commune councils are aware of such role is dubious. There haven't been any genuine SLC initiatives or proposals so far²¹, except

²¹ Interviews with key informants

ones facilitated by LASED and other NGO-implemented projects.

As reflected in the sub-decrees, both ELCs and SLCs are meant and encouraged for co-existence and complementarity, but there are not such cases possible although there have been ELC granted across the country. The Prime Minister²² was also aware of that and even requested the Council for Land Policy to the Public-Private Partnership” model which involves linking social and economic land concessions to create contract farming arrangements to benefit both the poor the recipients of SLCs and the concessionaires, but that has never been possible despite some tries by the Secretariat of the Council for Land Policy together with some development partners.

IV. Lessons Learned and Recommendations

The design of the ELC scheme together with legal framework for its governance was good given the need to develop underutilized land, foster economic development, and create rural employment, but the way in which ELC was granted in practice has been unlawful and overshadowed the attention to social land concession, especially in time when landlessness among rural households has become prevalent. In addition, the ELC has intensified the problem by creating conflicts and various negative impacts on society and ecological system although it has also provided positive impacts in many instances, which include the inflow of foreign investment and technology, job creation, increased domestic production and productivity, rents, and export.

The government’s decision to place a moratorium on granting new ELC in May

²² at the Official Inauguration of the New Building of the Ministry of Land Management, Urban Planning and Construction, Phnom Penh, 09 February 2012

2012 was the right step in time and was indicating the government's acknowledgement of its implementation failure. The moratorium has been accompanied by serious reform, providing land titles to affected peoples and cancellation and downsize of ELC. These efforts were great and should continue, but there is a legitimate question on how the cancelled ELCs should be reallocated. There are at least several options for the reallocation including community forestry or community protected areas, reserved forestland, protected forest, social land concession, and economic land concession. Should economic land concessions be part of the next consideration, the government must adhere to the principles and procedure under the legal provision and the following steps are highly recommended.

- 1) The government must have a clear classification, demarcation, and complete registration of both state public land and state private land. That will serve a foundation for the government to make the decision within the legal framework with regard to land allocation. At the same time, the effort should aim to have a complete registration of private land across the country including issuing the communal land titles for the indigenous peoples.
- 2) A comprehensive study be undertaken to develop national or regional land use and development master plan (s) giving highest values to i) ecosystem sustainability, ii) livelihoods and land use tenure rights of indigenous people and local residents, and iii) bio-diversity preservation. When areas are well marked for protecting or promoting these values, the rest of state land is left for deriving immediate and long-term desirable economic benefits such as commercial plantation, agro-industry, hydro power, mining, and large scale infrastructure projects. This process requires multidisciplinary approach and extensive

technical assistance and stakeholders consultations, thus may take a few years at least.

- 3) The areas left for agriculture, mining or development shall then be studied and classified for different economic purposes according to natural endowments such as soil quality, moisture/climate conditions, elevation, water sources, and potential mineral deposits. A map of state cultivable land should then be produced. This process may also take a number of years or much longer depending on availability of technical and financial resources for such study.
- 4) The disposable state land aside from the protected or reserved for the values mentioned above, shall then be either allocated for i) land poor or landless households to use and then own free of charge (through social land concession programs) or ii) for perpetual leasehold by both smallholders and large scale investors (through solicited ELCs or other state land development schemes).
- 5) For the cultivable state land that is allocated for leasehold (but not free holding or social land concession) should be well marked in preferably small plots (a few hundred hectares or less each) and put up for public bidding before granting perpetual lease or economic land concession. Sub-lease to or contract farming agreement with smallholders or farming households (several or dozens hectares each) shall be allowed unrestrictedly and conveniently. This is to raise the accessibility of local investors/farmers *vis-à-vis* large ones or for equity reason other than social purpose. Tactically free economic land concessions to non-Cambodians or foreign investors should not be granted any further.

- 6) The state land lease or fee-based concession should be charged per unit of hectare (with variation by type of soil quality and types of crops) and on an annual basis whether the leasees/concessionaires cultivate it or not. This is to simplify the administration and collection of revenue from the state land and to encourage the leasees/concessionaires to optimize the land use and produces from the land. The annual lease/royalty rate is to be determined by public auctions or predetermined for every five years and adjustable at the end of the period. Under current legal regime, the rental fee of \$8-12 per hectare is too low and irrelevant while the market rate paid by smallholder farmers is much way higher. The amendment of the legal provision is thus necessary. The lease/concession duration can be 10 years, 25 years, 35 years, 50 years or longer depending on the life of the crop to be planted as per the provisions of the lease/concession contract or for desirable development purpose.

Given lessons from the ELC implementation thus far and for improving the management of the exiting ELCs, this paper would like to recommend as follow:

- 1) Reportedly, many of the existing concessions are not yet cultivated as planned or agreed in the contract between the concession companies and the government contracting authority. It is therefore recommended that a strict review is carried out and contract requirements are enforced in an attempt to revoke the concession contracts from those who materially breach the contracts or/and laws and return the unused or under-used or misused land to the State for conservation or redistribution purposes. In especially the past two years, the Ministry of Environment has cancelled a large number of

concessions under its jurisdiction, which is to be applauded. However, MAFF has not been able to meet the expectations and there should be more efforts in strictly implementing the contracts.

- 2) For the operational ELCs, there can be a risk of lack of labour to work in the areas, especially the remote ones. It is suggested that a minimum wage, which is to be above the prevailing market rate at urban areas, be set by the Ministry of Labor and applied on labor-intensive plantations such as rubber, oil palm, and black pepper, etc. This is to encourage adequate numbers of Cambodian workers in the remote plantations. Alternative to a minimum wage, concessionaire employers should be required to provide the workers with reasonable living conditions such as proper housing and healthcare.
- 3) The Labour Law should be strictly enforced in the plantations and other large farms. Foreign workers in the areas have to possess valid work permit and abide by the terms set in the immigration and labour laws. Additional regulatory and administrative measures may be needed to ensure that there will not be dominant immigrants to settle for long term or forever in the remote plantations, especially those near national border areas. The Ministry of Labour and the Ministry of Interior should undertake frequent and regular joint monitoring and control of the settlers in ELCs.
- 4) Annual property tax and unused land tax for underused/unused ELCs should be considered and imposed to promote productive land use. For transparent, predictable and convenient declaration and collection these two taxes should be imposed based on clear price zoning set by MEF after consulting with MLMUPC.

List of References

Aun, P. (2015) Government Cancels More Land Concessions, Phnom Penh: Cambodia Daily (January 22, 2015).
Aun, P. (2015) Plantations Lose Land for Encroaching on Farms, Phnom Penh: Cambodia Daily (January 22, 2015).
Khuon, N. (2015) Try Pheap Concessions Among 26 Canceled by Ministry in 2014, Phnom Penh: Cambodia Daily (January 7, 2015).
Licadho (2015) Media Statement: Licadho Opens up its Land Concessions Data, Urges Full Transparency from the Government (March 30, 2015).
MLMUPC (2014) Announcement on the Result of the Order 01 Implementation on 17 th December 2014, Phnom Penh: Ministry of Land Management, Urban Planning, and Construction (MLMUPC)
NGO Forum on Cambodia (2014), Statistical Analysis of Land Disputes in Cambodia 2013, Phnom Penh: NGO Forum on Cambodia.
Ngo, S. and Chan, S. (2010). Does agricultural investment benefit the poor?, Phnom Penh: Cambodian Economic Association.
Ngo, S. and Chan, S. (2012) Economic Land Concessions and Local Communities, Phnom Penh: NGO Forum on Cambodia.
Oldenburg, C. and Neef, A. (2013) Competing Frameworks and Perspectives on Land Property in Cambodia. Paper prepared for the 2013 Law and Development Conference: Legal and Development Implications of International Land Acquisitions (Kyoto, Japan, 30-31 May 2013).
Ou, V. (2012). Powerpoint Presentation on Public Private Partnerships

between Smallholders, ELCs and the RGC in Cambodia (by Dr. Ou Vuddy, Permanent Deputy Secretary General; General Secretariat of the Council for Land Policy, May 24, 2012)
Phann, D. et al (2015) Landlessness and Child Labour in Cambodia. Phnom Penh: Cambodia Development Resource Institute (CDRI).
RGC (2003) Sub-decree #19 on Social Land Concessions, Phnom Penh: Royal Government of Cambodia (RGC).
RGC (2005) Land Law 2001, Phnom Penh: Royal Government of Cambodia (RGC).
RGC (2005) Sub-decree #146 on Economic Land Concessions, Phnom Penh: Royal Government of Cambodia (RGC).
RGC (2012). Mid Term Review of the NSDP Update 2009-13, Phnom Penh: Royal Government of Cambodia (RGC).
UNESCAP (2014) Exploring the Trade Pattern and Developmental Implications of Land Concessions: The Case of Cambodia, Lao People's Democratic Republic and Thailand (working draft, December 2014)
WB (2006). Cambodia: Halving poverty by 2015? Poverty Assessment 2006, Phnom Penh: The World Bank Cambodia.