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**COMMUNE-BASED LAND ALLOCATION FOR POVERTY REDUCTION
IN CAMBODIA**

**ACHIEVEMENTS AND LESSONS LEARNED FROM THE PROJECT:
LAND ALLOCATION FOR SOCIAL AND ECONOMIC DEVELOPMENT (LASED)**

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Abstract

Land distribution to the poor is discussed in the broader context of the Cambodian land reform which is considered to follow a liberal approach based on the re-introduction of private property rights in land following Cambodia's socialist period. This approach has produced good results for providing private land titles for existing land use on state private land but has turned out to be quantitatively ineffective in the distribution of state public land for the poor through social land concessions. Experiences from the ongoing donor-funded project on land allocation for economic and social development (LASED) show the necessity for a more complex political, legal and spatially-planned approach and for a mix of new instruments that include the regularisation of unauthorised land use by the poor and partnerships between big and small holders.

Key words: land reform, land distribution, rule of law, human rights, poverty reduction, Cambodia

Land reform for poverty reduction in Cambodia: an introduction

The need for land reform and poverty reduction is reflected in all of the important national strategies and policies of the Royal Government of Cambodia (RGC)¹ and in the Government's Land Reform Program. Those documents are written in the spirit of a liberal and market-oriented economic order intended to overcome the legacy of the crude agrarian communism of the Khmer Rouge (1974-1978), the Soviet socialist economic order prevailing during the Vietnamese dominated period (1978-1989), and the civil war inflicted-transition period thereafter which came to an end only in 1997.

The import of (neo-) liberal economic ideas to Cambodia through western donors came with the inherent contradiction that economic liberalism and free (land-) markets may create economic growth but will not *per se* respect the needs of the poor. This is especially true for the land sector where the administration, management and distribution of land cannot be simply left to the forces of the market. Being aware of this imbalance, development partners are supporting the establishment of a socially-balanced land-related policy and legal framework, and based on the latter, creation of effective, transparent administrative

¹ The Cambodian Constitution (1993) guarantees the right to private property, including full ownership of land to Khmer citizens. The Land Law (2001) provides the legal basis for the key mechanisms to achieve legal recognition of ownership rights to land. The 2002 *Interim Paper on Strategy of Land Policy Framework*, the 2003 *Policy Paper on Social Concessions in the Kingdom of Cambodia* and the 2009 *Declaration of the Royal Government on Land Policy* underline the importance of distribution of state lands to landless and land poor households. The Royal Government of Cambodia's national development strategy, the *Rectangular Strategy for Growth, Employment, Equity, and Efficiency* recognizes land reform as a priority for growth in the agricultural sector, and targets for land reform and distribution are set in the *National Strategic Development Plan 2009-2013*.

procedures and people-oriented government services. However, the results in the different subsectors of the land reform are quite uneven. Good results in the privatization of state private land are paralleled with deplorable results in the distribution of state public land. We can say today that the legally-based distribution of state land to the landless and land poor has virtually failed.

There is outstanding progress in the formalization and individualization of the land rights of the rural poor through ownership titles for the state private land they already used. First registration currently happens for over 1000 parcels every day in a process called systematic land registration where 2.5 Mio land parcels were surveyed and registered so far into the land book as private ownership titles. *De facto* use of state private land is thus being legally transformed and formalised as *de jure* private ownership of mainly agricultural and residential parcels. In this way land tenure security has been provided to 3.5 million mostly poor and rural citizens – 24% of the total Cambodian population - in participatory, transparent and cost-effective ways. This is an excellent result in combating poverty, protecting vulnerable groups and realizing human rights to food and shelter. Germany, Finland, Asian Development Bank, World Bank, Canada and others joined their forces to support this good result brought about by the Cambodian Ministry of Land Management, Urban Planning and Construction (MLMUPC). This great success is realized above all in the rural low-lands where an increasing rural population has to gain their livelihoods from very small lands of in average 0.8 ha of land, split in 3 to 4 agricultural parcels. Systematic land registration was successful in solving land conflicts over this state private land. However the systematic registration process was not constituted to resolve conflict on and around state public land and hence those areas were often excluded from registration².

State land for distribution comes from the public domain. State public lands mostly lie in the highlands and are under the management of the Forest Administration which claims 57% of Cambodia's lands to be forest land. Distribution of these lands is happening in huge proportions, but in an extremely unbalanced way, neglecting the land needs of the poor. Whereas 1.7 million ha have been officially reported³ to be distributed as economic land concessions (ELC) for about 200 rich and powerful investors, only 6 thousand ha were made available for 1614 rural poor households as social land concessions (SLC) by the end of 2011 through the donor-supported commune-based approach. In addition a few thousand retired military staff and their families received land through a so-called “national SLC program” without donor support. As a gross summary it has to be stated that 99% of the distributed public state land was handed

² See chapter below on avoidance of exclusions in the future.

³ See chapter below on estimations on official land distribution.

over in long-term leases of up to 99 years to national and international investors to the detriment of the rural poor who got only a 1% share.

The concentration of land in the hands of the rich and powerful is criticized publicly through a discourse referring mostly to a missing implementation of the rule of law and the violation of human rights. This article analyses how far this distribution failure can be attributed to a lack of rule of law, and how far to incomplete or inadequate policies, legal regulations or missing instruments that would provide realistic chances to legally-secured access to additional land for the poor.

Implementing the rule of law in land distribution

The legal framework for land distribution in Cambodia prescribes essentially three steps. First the state public land has to be reclassified to state private land, second the reclassified land has to be registered in the land book, and third the land is leased for a long period of time in the case of ELCs and is provided permanently in the case of SLCs; SLC recipients are entitled to a full private ownership title after a period of 5 years of use. Investors are legally entitled to receive ELCs of up to 10,000 ha. The landless and land poor strata are entitled to receive SLCs of up to 5 ha in size. The legal framework also provides rules on who qualifies as an investor for ELCs and as a land recipient for SLCs. It is illegal to transform ELC land into private land. The legal provisions referred to here were drafted at MLMUPC with support of TA from an ADB project and were widely consulted among the donor community. The final version adopted by the Cambodian government was considered as international state-of-the-art.

- Good results in implementing the rule of law under the LASED project

For the distribution of state public land to the needy poor strata, the most important legal texts are the 2001 land law, the sub decrees on sporadic and systematic land registration (2002), the sub decree on social land concessions (2003), and the sub decree on state land management (2005).

Implementation of the rule of law for SLC was trained and monitored under the project for Land Allocation for Economic and Social Development (LASED), planned and supported both by Germany through GIZ and the World Bank in three pilot provinces of Kratie, Kampong Cham and Kampong Thom. (See table 1). Implementing the land law and these sub-decrees guaranteed an inclusive and transparent process of selection of beneficiaries and a fair allocation of residential and agricultural plots. Having trained government staff on provincial and district levels as well as the concerned commune councils, and transparently providing new livelihood opportunities for the limited number of land recipients, the project can be considered a success in the implementation of the legal framework.

Implementing the rule of law for the allocation of SLC was not an easy task for the local authorities in charge. During the lengthy legal processes land was encroached by individuals and state institutions. In Kratie, wealthy and powerful private persons tried to grab land from the already registered SLC land⁴. A solution was found in taking back the agricultural land from these persons and offering them small residential plots, in such a compromising way gaining back farmland for the poor. No solution could be found for 14.4 ha for a military person, though, whose land was cynically declared to be a military training area. In addition the forest administration occupied 6 ha for a tree nursery, provincial agriculture department 6 ha for an office, and the tourism administration took 6 ha for a bus area out of the land registered as social land concessions for the poor. No such non-compliance with the rule of law has been reported from the two other pilots. Despite these losses to state authorities, since the areas occupied by them made up only a small percentage of the total area of 6894 ha reserved for the poor, there is still relatively high justification to qualify the project as successfully implementing the rule of law.

Analysing the reasons for the encroachment the project found that the legal processes took too long. The different processes of land identification, land reclassification, land registration and the land recipients selection were implemented one after the other and stretched over 2 – 3 years until the land could be allocated to the individual beneficiaries. The encroachers took advantage of their knowledge that an area was taken out from the forest domain and was not guarded. The local communes were interested to protect the areas for their commune members but had no legal position to do so because SLCs are state (private) land, not commune land. Boundary demarcations of the SLC land were regularly destroyed until the project paid some guards. The only effective protection against encroachment turned out to be the actual use of the land. Once the land is registered and thus ready for distribution it must be immediately allocated to the individual households. The households must take their land parcels into possession without delay and must visibly start farm works to show that it is possessed already.

Most land recipients had severe difficulties in working their land. This was because the selection process required that recipients be poor and being poor meant having no capital for the investment that is needed for land clearing, preparation and farming. Many of the land recipients could not even use their own labor to till their land because they had to go to work for others to gain their daily living (working with ELCs, gold mining or working with other farmers). Very few families were able to acquire small loans or in-kind support to allow them to fully engage in working their plots. GIZ then changed its project approach and

⁴ Ironically, in a report by the local NGO CHRAC (*Losing Ground - Forced Evictions and Intimidation in Cambodia*) released in September 2009, the project and local authorities were criticized for reclaiming the land for the poor, describing the locally powerful encroachers who illegally began using the land as having been arbitrarily excluded from the SLC program because they were „not poor enough”.

cleared up to 0.5 ha for each household and provided some cash for work activities for clearing access roads etc. World Bank followed later and improved the access roads and provided food for work. This improved process was implemented on the pilots in Kompong Thom by GIZ. It obviously helped to limit encroachments and of course created an excellent starting point for the small agricultural businesses of the poor.

At this technical level the implementation of the rule of law is linked to synchronizing the three processes of land allocation, beneficiary selection and land preparation. In addition the land must be practically made ready by the project to allow the land recipients to start farm work. Putting together these processes creates a situation that limits the probability of encroachment and increases the probability that rule of law will be followed. However the simple implementation of the rule of law did not provide for sufficient land to be allocated to the poor.

In spite of an intensive campaign led by MLMUPC in 2007 that resulted in requests for SLCs from 44 communes in the three pilot provinces, and after LASED proceeded with SLC planning in 17 communes, there was no land allocated by the government for this additional batch. The quantitative objectives of 10,000 households (GIZ objective) or 10 communes (WB objective) during the long years of piloting (through GIZ from 2005) were underserved with land allocation to only 1614 households in 4 communes (cf. table 1). In the commune-based approach of LASED the communes lost in the competition for land against the private investors who were greatly successful during this time. As the private investors did not figure as stakeholders in the LASED project design, GIZ next worked on a new instrument, the partnership approach, which is detailed below.

- “Ambiguous” results in the implementation of the rule of law for economic land concessions

For the distribution of ELCs the legal framework described above was poorly implemented. The sub decree on state land management section on reclassification of state land and the sub decree on economic land concessions which deals with transparent processes and land conflict resolution prior to the establishment of the concession contract, both enacted in 2005, were widely ignored. Registration of the ELCs in the land book through the cadastral system was so far done only in some exceptional cases. However ELC contracts were not established completely outside the legal framework. Special sub decrees were written for each individual ELC that legalised the reclassification of state public land to state private land.

Cambodian newspapers report on land conflicts over ELCs almost every day. Some of them take violent forms from both concessionaires and existing land users. The appropriate legal mechanism to avoid and solve land conflicts is land registration. When the legal requirement of land registration is skipped, there is no legal clarification of the land rights of the occupants prior to the contracting out as ELCs and thus creates an ambiguous legal status for both sides. The sub decrees for land registration provide for public display and complaint handling mechanisms for the land registration results. In case occupants have no legal rights they still may have human rights to the land. The latter can be regularized as formal ownership or use rights to the land following the Cambodian legislation called Circular 02 for rural areas or Circular 03 for urban areas. (See chapters on new instruments below.) To date the implementation of these circulars is only piloted but not regularly implemented yet.

- Missing implementation of the rule of law for encroachments on state public land

The appropriation of concession land by an investor through an official contract may be an authorized use, but can be still called an “encroachment” or even “land grabbing” for those cases where the rights of the poor that use these lands are not respected (BMZ 2012). And those cases are many in Cambodia, if we consider both the legal and the human rights of the poor. They comprise cases of both international investors (mostly Chinese or Vietnamese) and national investors. Also, unauthorised land use by military commanders, partly former Khmer Rouge, is tolerated or even arranged by the authorities.

Most encroachments are estimated to happen with no or with dubious authorization by a state body (cf. chapter on quantitative estimations below). There is massive encroachment on forest land (legally: state public land) be it based on simple need for survival purposes by the poor and landless or on rent-seeking purposes by investors and speculators⁵. There is an important migration to forest lands to clear and thus claim this land. The poor do this mostly with support of their extended families or on account of investors or speculators based on a per hectare payment. “Employed” poor encroachers often are allowed to stay on the land for some years to protect it against competing encroachers whilst waiting for the time when their landlords decide to invest or sell. Both the needy poor and the investors and speculators are highly vulnerable during the first years. More powerful strata might decide to encroach on this land or the land might fall into a new ELC area that is contracted from the national level. The first but dubious authorization will happen mostly when the land is sold. The transfer will be laid down in a contract and this contract will be stamped by a local authority, often a commune chief. Legally the local authority acts as a notary, which solely authenticates the identity of the buyer and the seller. But from public perception

⁵ On economically rational behaviour of land speculators in Cambodia see Dirk Löhr (2012).

this contact is considered like a (soft) title on this land. As most transactions of private or state private land still happen in this way, people simply hope it works also on state public land.

Another push-factor for encroachment on forest-land for agricultural use is represented by agro-industrial groups from Thailand and Vietnam. They are not interested in owning the land but in the purchase of annual cash crops like maize, soybean, cassava or sesame. They provide inputs in the agricultural production of encroachers through seeds, fertilizers, pesticides, technology etc. This kind of somehow contractual agriculture controlled by foreign investors is best exemplified in Bavel district, Battambang province, close to the Thai border in Cambodia's west. Map 1 on land use change elaborated by the spatial planning team in Battambang shows that the forest cover decreased in Bavel from 50% in 2002 to 5% in 2010. One ELC only is involved in this area. This massive loss of forest cover is an indicator of the fact that illegal encroachment on land is also the work of small and medium land holders. In the Bavel case the latter are combined in a complex network of old Khmer rouge commanders, new business people, commune and village authorities, all grossly "encouraged" by Thai and Vietnamese investors (Diephardt, J.-C. 2010). However to date there is no comprehensive data available to quantify those practices on the entire territory of Cambodia.

Estimations of the availability of state land for distribution

When LASED was prepared in 2005 a representative of the Ministry of Agriculture, Forestry and Fisheries (MAFF) stated, that no land would be available for SLC. Development partners took this as a lack of willingness from this side. Today in 2012 this statement looks rather like a matter of fact.

In the absence of a comprehensive geographical state land inventory⁶, our attempt in this article at an estimation of land availability is based on combing geographical features, land use and legal status of the land. We have only the official figures: total area of Cambodia 18.1 million ha, forest land 10.9 million ha, agrarian land 5.6 million ha, small scale farm land 3.8 million ha (FAOSTAT 2009).

The geography of Cambodia shows a clear bi-section between low-lands and high-lands. The land use map reflects this bi-section. (See map 2, low-lands are indicated in pink, high-lands in green). The low-lands are the well-watered lands traditionally used for small-scale agriculture (mostly rice). These traditional agrarian lands are legally state private lands and are in the process of being privatized to their possessors through systematic land registration (cf. introduction above). The low-lands are very densely populated and today all this land is used for agricultural or other purposes. The low-lands are mostly

⁶ There is a state asset inventory with Ministry of Economy and Finance that is mostly void of geographical coordinates on state public land.

composed by one huge block that surrounds the Tonle Sap Lake and extends to the Mekong Delta and the Gulf of Thailand. But low lands can be found also inside the block of the high lands in smaller stretches along the Mekong River, its tributaries and other rivers and depressions (see map 2, small pink areas inside the green block).

The second block is the high-lands which are roughly identified with the so-called forest land. Forest land is a legal category of state public land that was geographically fixed in the 2002 forest land map. This map is based on aerial and satellite photos from a number of years before 2002. Based on this map and some recent rectifications, national forest administration claims that the forest land covers 57% of the Cambodian territory or 10.9 million ha. However, recent (incomplete) satellite imagery shows that the actual forest cover has decreased drastically. The forest land category has important legal relevance but does not describe the current forest cover.

- Estimations on official land distribution

According to data from MAFF, as of February 2012, 169 companies had been granted ELC licenses, of which 51 had been revoked due to breaches in the contracts (Ith Nody 2012). The surface was said to be reduced from 1.7 million hectares to 1.2 million hectares. A Cambodian NGO, Licadho, which based its calculations on official government documents, found that 227 plantation firms, several special economic zones and former state rubber plantations cover almost exactly 2 million hectares (Vrieze, P & Kuch, N. 2012), (see map 2, ELC boundaries in red color)⁷.

Taking into account the 10.9 million ha forestland from where the land for ELCs was cut out, huge areas of land would be still be ready for distribution, however this does not seem to be the case. Availability of state land seems to be very limited both for ELC and SLC. Again, this estimation can just be based on indicators, not on factual data.

For commune-based SLC distribution (through LASED) we saw only 6,894 ha allocated in a period of 7 years. A special Government mission was fielded in 2009 in 16 provinces to find available state land for the nationally-initiated SLC program for retired poor soldiers and policemen and their families. The result was only ca. 133,000 ha of land that theoretically could be used for SLC, mostly land of cancelled ELCs. As these lands are heavily encroached already, staff from the land ministry estimated that only 40,000-50,000 ha could be made available. By December 2011 only 13,595.5 ha were distributed in the national program, mostly near the Thai border in the north (Council of Land Policy 2011). How can politically

⁷ Geographical data on ELC data are generally taken from sub decrees that certify the transfer to the concessionaire. As cadastral registration has been avoided for most ELCs, these geographical data may not reflect their actual size.

weak communes get SLC land if even for the politically well linked soldiers the result is so meager? As a matter of fact the mission found no state public land available for this type of distribution. The land they identified was former ELC land, which is per definition state private land.

Distribution for ELC created a lot of conflicts, which were reported widely in the local and international media in the last years. This indicates that the ELC land that is made currently available is not really free but used by others. Recently the Prime Minister demanded from ELC owners to keep these people in place and design the ELCs in a “leopard skin” pattern, leaving the people where they are (PM speech at cabinet meeting, Aug 26, 2011) and just using the rest for the concession. Another indicator for scarcity of land resources may be that even protected areas are transformed in concession land. In 2011 alone 251,000 ha concession land was taken from national parks and wildlife sanctuaries (Vrieze, P. & Naren, K. 2012, p.7).

- Estimations on encroachments by migrants

Migration is a striking feature of Cambodia’s development. 26% of the total population were undergoing permanent internal migration i.e. change of residence in 2008 (Royal Government of Cambodia 2009). This corresponds to more than 3 million people. Out of this number only 27.5% migrated to urban agglomerations in Phnom Penh, Kandal, Sihanoukville, Siem Reap and Battambang. The southern provinces (Takeo, Kampot, Prey Veng, Svay Rieng) and Kampong Cham in the east had almost zero population growth, losing their gains from births to outmigration. Migration flows were directed mostly to the central areas around the Tonle Sap Lake and especially to the sparsely populated areas of the seven provinces bordering Thailand, Laos and Vietnam, namely Pailin, Battambang, Banthey Meanchey, Oddar Meanchey, Preah Vihear, Mondul Kiri and Rattana Kiri. Population growth in these provinces reaches more than 10% and the proportion of migrants reaches more than 50% (Diepart 2011)! Compared to 1.54% national demographic growth between 1998 and 2008, the growth in the highlands, mostly through rural to rural migrations, is spectacular!

Rural to rural migrations are mostly about finding land for agriculture. They account for 50.8% of the total migrations in Cambodia (Royal Government of Cambodia 2009) which corresponds to around 1.5 million people. The seven above-mentioned border-provinces fall almost completely in the state public forest land category with the exception of Battambang. Nobody knows how many people out of this group have encroached on forest land. But their number must be very large.

New instruments: the regularization of unauthorized use of public state land (circulars 02 and 03)

Royal Government of Cambodia (RGC) realized years ago that a solution had to be found to bring encroachers back to the legal system. 2007 Circular 02 was issued by the Prime Minister for the “regularization of illegal settlers on state land” without any consultation with development partners or civil society organisations. This circular (para 2.6) provides for “...preferential treatment in obtaining appropriate size of land for making their livelihood based on their actual situation” for “...illegal state land holders who are poor families and landless or lack of land or disadvantaged person...”. RGC considers Circular 02 as a political instrument for a social domain cadastre.

MLMUPC drafted a manual for the implementation of Circular 02 that include provision of ownership, usufruct, long- and short-term lease, social land concession, and confiscation of state land. Land rights will be provided according to the social status of the occupants. Here the Circular 02 manual reads: “Based on Land Law and Circular 02, the solution shall depend on the situations as follows:

- Poor people: social land concession shall be granted to them with continuous holding for a period of 10 years in order to be eligible to apply for ownership.
- Medium-class people: they have the right to usufruct or rent only, dependent on the size of land currently in use.
- Well-off people:
 - For those that have cultivated the land, the same solution as the medium-class people should be applied, but the rent shall be at a higher price.
 - Those that have willingness to produce should get some time to show their full willingness and if they fail to do so, they shall be fined or the land shall be confiscated.
 - Land of speculators must be confiscated according to Articles 43, 18 and 19 of Land Law 2001.”

The specification that SLCs can be granted legally implies that private ownership can be granted. Recently this came under discussion on the Cambodian side. Two arguments were brought forward against the possibility to transform SLC to privately-owned land: To avoid speculation and to keep the land in the possession of the poor (by not allowing them to sell).

Ministry of Land Management, Urban Planning and Construction (MLMUPC) was initially reluctant to implement Circular 02, giving the reason of not wanting to encourage further encroachments. But MLMUPC is now ready to pilot Circular 02 this year after research and other preparatory work that was done in 2011. The first pilot will be in Kampong Speu province where an institutional investor from Denmark is planting timber on a 10,000 ha ELC. The investor has already anticipated the “leopard skin” feature of the Prime Minister. He demarcated and surveyed the land of the local occupants (more than 200 households) already and cut out those lands from his concession contract with MAFF.

Circular 03 piloting is ongoing in the municipality of Battambang with the support of NGOs that help settlers in community building and onsite-upgrading. In Phnom Penh the pilots are under preparation only.

New instruments: avoidance of exclusions from the systematic land registration process

MLMUPC is currently working out a concept and operational plan on how to avoid exclusions from the systematic land registration process. Avoiding exclusions is part of human-rights-related requirements for the establishment of a modern land registration system. RGC strives to accomplish country-wide first registration during the next 10 years. Germany has committed additional funds to support the speeding up of land registration. German support will include procurement of new technologies and support to the restructuring of the land registration teams. The concept of avoiding exclusions overcomes the previous limitations of the systematic land registration (SLR) process in resolving land conflicts over state land through integrating Circulars 02 and 03 into SLR. Conflict areas on state land will no longer be (temporarily or forever) put aside but will be put for public display. Occupants that are considered to be illegally on state land can complain against what was publicly displayed and can stay in the registration process until their complaint is handled and a resolution is found. The systematic land registrations teams will be complemented by special teams that run the Circular 02 and Circular 03 processes. Land users who are not found to be illegally occupying state land will be granted ownership rights as prescribed by the land law. Illegal occupants will also be granted land rights which will be formalized based on the circulars. With TA-support from Finland and Germany the concept is expected to be ready by June 2012⁸.

Registration will also include ELCs. The legally required registration of ELCs was reassured by Council of Ministers in March 19, 2012 (COM No: 298 SCN.OS) after an attempt by MAFF to cancel it. New surveying technology that was introduced and piloted by GIZ will be used for this purpose.

New instruments: partnerships between large and small holders

Partnerships between large-scale agriculture farms, mainly referring to ELCs, and smallholder farmers are embedded in various Cambodian Government policies and strategies, e.g. National Strategic Development Plan 2009 – 2013, Strategy for Agriculture and Water 2010-2013, and the Declaration of the Royal Government on Land Policy 2009. The concept has also been envisaged by Cambodian policy makers and is foreseen in various sub-decrees, such as the Sub-decree on Social Land Concessions (2003) (cp. Art. 3.7 and 3.8), the Sub-decree on Economic Land Concessions (2005) (cp. esp. Art. 3, 5 and 12)

⁸ RGC agreed with Germany in December 2011 on a milestone process that includes avoidance of exclusions. German support is being made contingent on the progress on these milestones.

and the Sub-decree on Contract Farming (2011) (cp. Art. 4). For example, the ELC sub-decree states that one evaluation criteria for the granting of an ELC is if there are “any linkages and mutual support between social land concessions and economic land concessions”(Art. 5).

The partnership approach seeks to secure land use rights for rural households and synergize the strengths of small farmers and large-scale companies. It is demand driven, focussing on the business case for the investment and underlining the importance of establishing long-term business relationships that build on trust and loyalty between smallholders and the investing company (GIZ 2011). The partnership approach is closely associated with contract farming schemes (Eaton / Shepherd 2011). Among the various contract farming models, the nucleus estate model might be of particular interest for the partnership approach in Cambodia. In this model a processing factory is usually located on or close to the estate plantation. The capital investment in processing facilities is considerable and the return on investment reaches the required profitability rate when the processing capacity is above a certain threshold. There is a considerable interest in increasing the production through out-grower schemes in order to reach this threshold, to secure a steady supply of raw material, and to achieve economies of scale. However, no clear framework for implementation has been developed yet, perhaps in part because no Government institution has felt fully mandated or responsible to initiate it.

Generally speaking, key aspects for the implementation of partnerships between ELCs and rural households are:

- Creation of an enabling environment for the development of partnerships through capacity-development of all actors (including local authorities), policy development, legal frameworks, farming contracts, partnership framework agreements, training curricula, human rights and environmental awareness raising;
- Access to land and securing land rights through registration/regularization of unauthorized settlers by implementing C02 and distribution of land for social and economic purposes inside or near the ELCs to landless or land poor households, e.g. by providing social land concessions land;
- Support to agricultural value-chains through development of agricultural technology and extension packages, trainings, support to the development of farmers' organisations, establishment of markets linkages;
- Technology and knowledge transfer, innovation and learning between companies and smallholders;
- Financing the partnership, particularly the settlement and farming activities of smallholders.

The Council for Land Policy has recently agreed to examine a strategy and the working structure for implementation of such partnerships. The most relevant government institutions involved are the Ministry of Agriculture, Forestry and Fisheries (MAFF), which has jurisdiction over all agricultural crops, livestock, fisheries and over the management of ELCs on land under its jurisdiction and the Ministry of Land Management, Urban Planning and Construction (MLMUPC) which has jurisdiction to govern and administer matters related to land, and is chiefly responsible for implementation of procedures for ELC registration, Circular 02 or provision of SLC. The Ministry of Interior (MoI) is another important state actor, as provincial governors play an important role in allocation of land use rights at provincial level and the commune authorities are crucial links to the local population. If the implementation of partnerships among small land holders and large-scale agricultural farms is to reach a meaningful dimension, strengthening inter-ministerial coordination and dialogue processes between private sector and local communities are essential.

New instruments: spatial planning for land distribution

The declaration of the Royal Government of Cambodia on Land Policy (1st July 2009) sets a clear vision on how Cambodian land shall be managed, which 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, ensuring food security, natural resources and environmental protection, national defense and socio-economic development in the context of market economy”. (Royal Government of Cambodia 2009b).

For land distribution, 4 fields of interlinked activities are presented in the Declaration on Land Policy:

1. To accelerate collection and establishment of State land inventory to reserve land for present and future land distribution.
2. To develop and implement medium and long-term strategies and frameworks of land distribution planning in order to use and distribute land for social and economic purposes in accordance with planning at national, capital/provincial, municipal/ district/ Khan and Commune /Sangkat levels by ensuring transparency and efficiency, and avoiding negative environmental and social impacts;
3. To foster land distribution for social purposes on due time in order to help tackle social problems and prevent illegal State land clearing;
4. To implement partnership between small and large-scale plantation holders, and corporations in agricultural production, and between economic land concessions and social land concessions in order to generate employment opportunities and creating market for local residents.

Currently there is a lot of discussion on the side of RGC on these fields of activities. Some preparatory work is being done, but practical implementation has been difficult to start, because one activity depends on the other and no one wants to go first. Clarifying stakes between involved stakeholders seems to be the strongest present need. Spatial planning would be a legally based process to solve this problem, although the legal basis is not complete yet.

Spatial planning is a strategic tool, which assists the decision makers to control development in their respective territory and which gives information about where development should or not take place. Specifically, it sets out a spatial development framework (aligned with development and investment plans) that can serve as a reference for all stakeholders: the population and their community-based organizations, governmental institutions, development partners and the private sector (cf. figure 1). Spatial planning has been successfully piloted with German support in the province of Battambang. Planning principles were applied that include (cf. Hammermann/Diepart 2011):

- Consistency with the law to ensure fairness and respect of human rights;
- Good governance, transparency and participation in the planning process and promotion of consensus;
- Consensus on planning hierarchy (national to sub-national) and methods of planning;
- Two-way approach (bottom-up / top-down, countervailing principle) for any decision making;
- Integration of sectoral plans (like for infrastructure, economy etc.) and land use plans;
- Balanced development and distribution of benefits to all regions.

The specificity of spatial planning lies in the fact that it is based not only on the Land Reform, but rests on a second pillar: the Democratic Development Reform (previously called the Decentralization and De-Concentration Reform).

The Democratic Development Reform (D&D) is grounded on principles of democratic representation, participation of the people, public sector accountability, effectiveness, focusing on poverty reduction and aims to replace the management structure and systems of public institutions and to develop new management systems that rest on principles such as democratic representation, participation of people (in consultation and/or in decision making), public sector accountability and effectiveness (Royal Government of Cambodia 2005). The basic substance of this reform is to create unified provincial/ municipal and district/khan administrations and empower these administrations to prepare, adopt and implement development plans and budgets, manage staff and coordinate the development and delivery of public services within their territories as it is reflected in the Law on Administrative Management of the Capital, Provinces, Municipalities, Districts and Khans and the Law on the Management of Commune/Sangkat Administration, named shortly Organic Laws.

Spatial planning is dependent on the D&D reform and at the same time supports its implementation. The challenge lies not only in empowering the lower administrative levels but also in feeding up from the lower to the higher levels. In rural land distribution the bottleneck still seems to be with the national level of the forest administration that opposed a lot of distribution plans where legally the provincial levels

were mandated to decide. In December 2011 RGC agreed with Germany on the elaboration of a concept and operations plan to describe and define how state land will be distributed to the landless and land-poor groups of the population during the next ten years. The concept and operations plan will go beyond currently running programmes for municipality-based and nationally-initiated social land concessions, and will address the land needs of the population in general as well as the land needs of the landless and land-poor groups in particular. With the goal of a country-wide completion of the first registration of land over the next 10 years, the strategy and plan will clearly define the targeted objectives for land distribution for the next 10 years to come (cf. BMZ 2011, milestone 4, p 15ff).

Conclusion

Public discussion on the land reform in Cambodia focuses on the implementation of the rule of law and the realization of human rights. These topics are issues of good governance and go beyond the land sector, linking the latter to the public sector reform and related reforms thus making progress in land reform dependant on progress in the wider public sector and other sectors or fields that are supportive of this like the development and empowerment of civil society and their organisations.

Success in the first registration through systematic land registration can be described as a success of a sub-sectoral administrative reform. The whole land sector is not reformed yet, but in systematic land registration the teams work transparently and in close participation with the citizens. The third factor of success besides transparency and people's participation is a clear legally-based administrative process that clarifies the roles of other public sector institutions. Country-wide implementation of the land law and related legislation is possible, in case there is clear leadership of a government institution that is able to drive the administrative process in the respective field of the land sector forward.

Land distribution through LASED was successful in creating transparency. But LASED missed the participation of private sector investors who are important competitors for state land and it could not provide for a process for country-wide implementation, because the leadership in the process is not clear. Implementation of the existing legal framework obviously needs clear administrative processes with a clear leadership that would sort out the claims of different government and private stakeholders and respect the needs of the poor.

Germany bases its current support to the land sector on the successful parts of reform that have been achieved during the last decade in both administrative and land reform. Support to effective administrative processes will be increased. "Dormant" legal framework will be implemented through linkage to better established administrative processes. This will include the following mix of instruments:

1. Speeding up the already existing transparent and participatory process of systematic land registration to complete countrywide first registration during the next ten years. Speeding up will include the registration of indigenous people, the registration of poor and vulnerable groups that have been temporarily excluded so far and the registration of ELCs.
2. Regularisation of poor encroachers (transforming human rights to legal rights on land) through linking the Circular 02 and 03 processes to the systematic land registration process.
3. Avoiding exclusions from the systematic registration process thus profiting from the established transparent and participatory process with a clear leadership that enables step-by step country-wide implementation.
4. Promotion of partnership approaches between small holders and agricultural investors (ELC-holders) that transform conflict on land to win-win situations.
5. Spatial planning will provide orientations and rules for mid- and long-term use, distribution and development of land in socially balanced and ecologically sustainable ways. A sectoral 10-year plan on land distribution will have to be integrated in the spatial planning.
6. Strengthening civil society organizations for their roles in the participation in government processes on land administration, land management and land distribution and in supporting the interests of the local communities of the poor.
7. Completion of the legal and policy framework will focus next on a legally binding framework for spatial and land use planning results and the comprehensive land policy paper.
8. High level policy dialogue has turned out to be a necessary instrument to prioritize and speed up reform steps in the interest of the poor.

This mix of instruments seems to be currently implementable, even if it still incomplete. Strengthening the communes and the local communities for example would need further policy, legal and institutional support. Other instruments like land banking, land consolidation, land re-adjustment, land use planning safeguards for communes, pre-emption rights, taxation systems to avoid land speculation (Thiel 2010) or high investment and land distribution schemes like FELDA or FELCRA are being partly discussed from the Cambodian side but have not reached agreement for implementation. Even more demanding for all stakeholders in the land reform are discussions on the social obligations of ownership. The ongoing discussions on the Comprehensive Land Policy provide a forum where spatial planning can be given the function to steer the ownership of land (Thiel 2011) in a way that it is used to the maximum possible value for all citizens. This however seems even more challenging, as it would imply a reorientation from a liberal to a more social market economy system.

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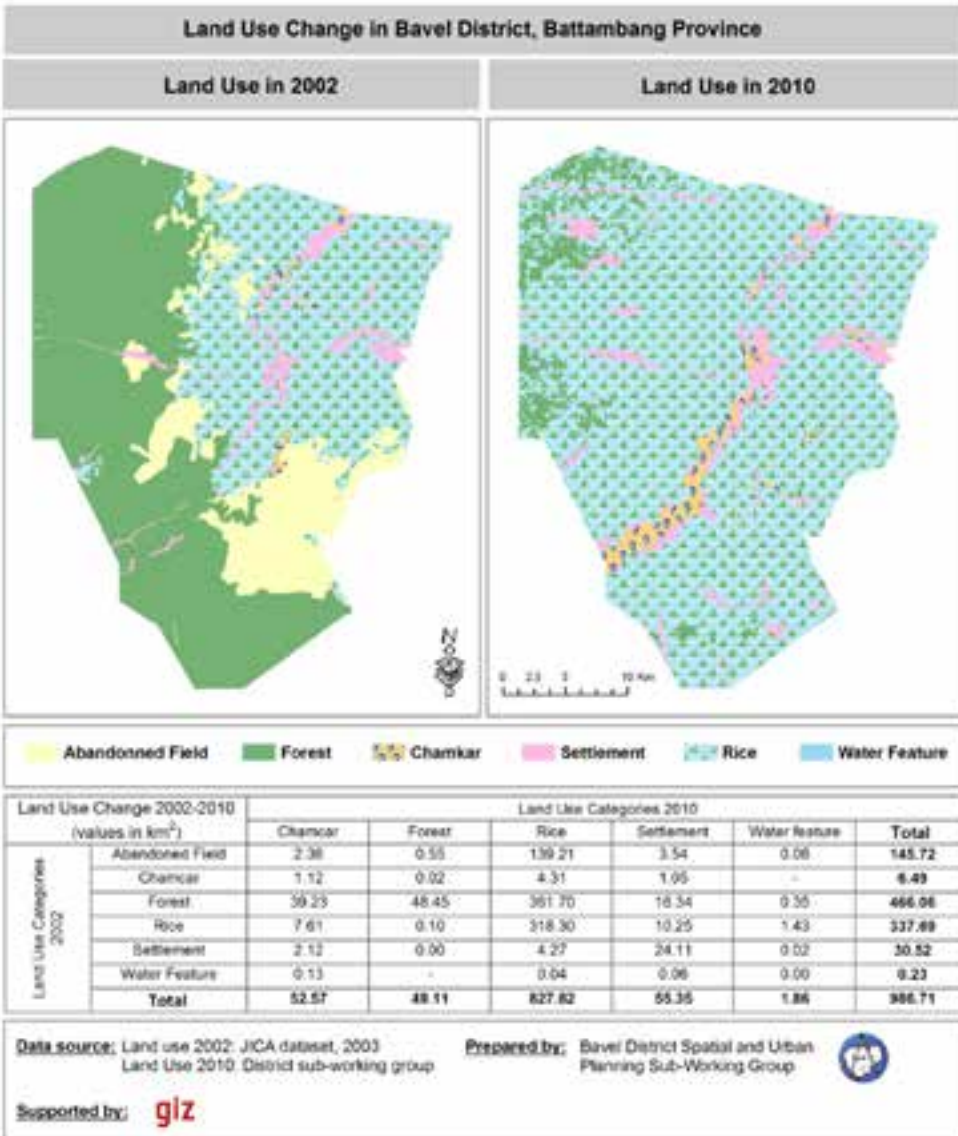
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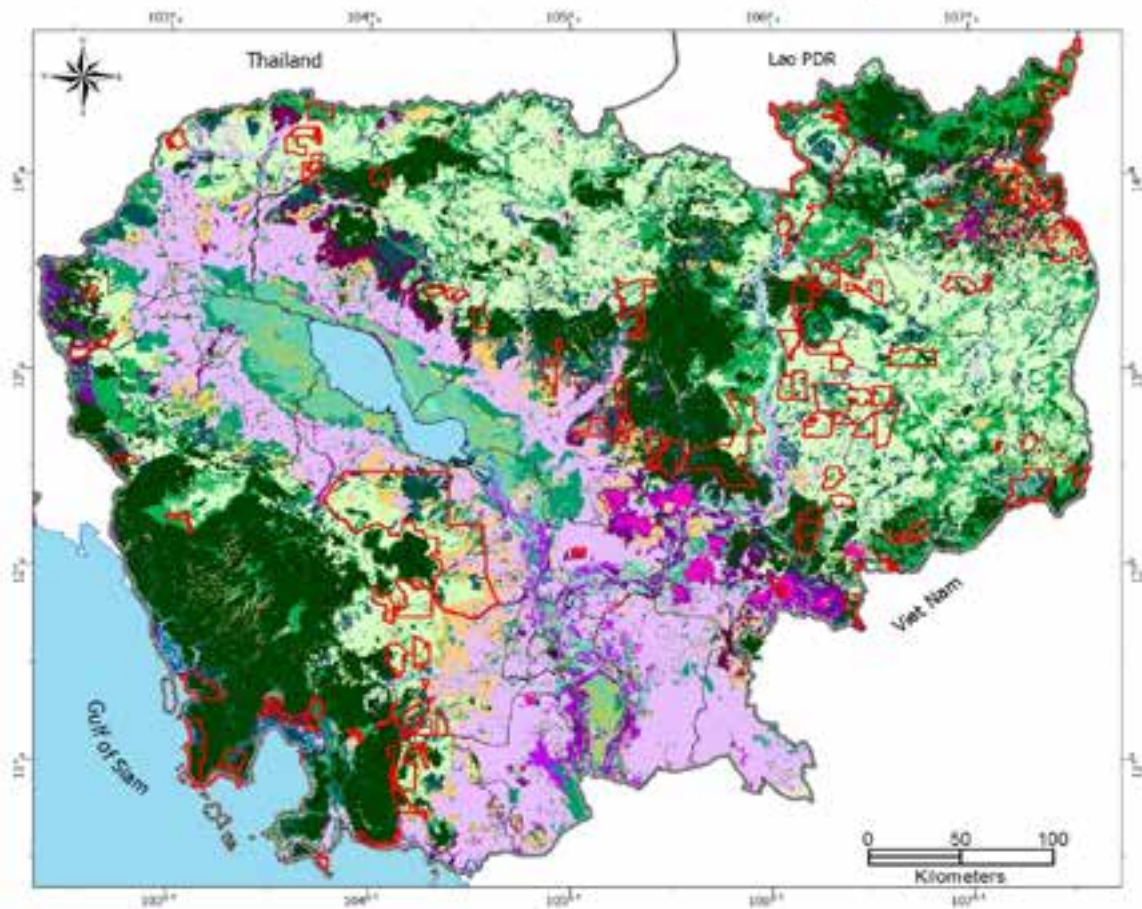
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MAP 1



MAP 2

Landuse and Economic Land Concessions (ELCs) in Cambodia



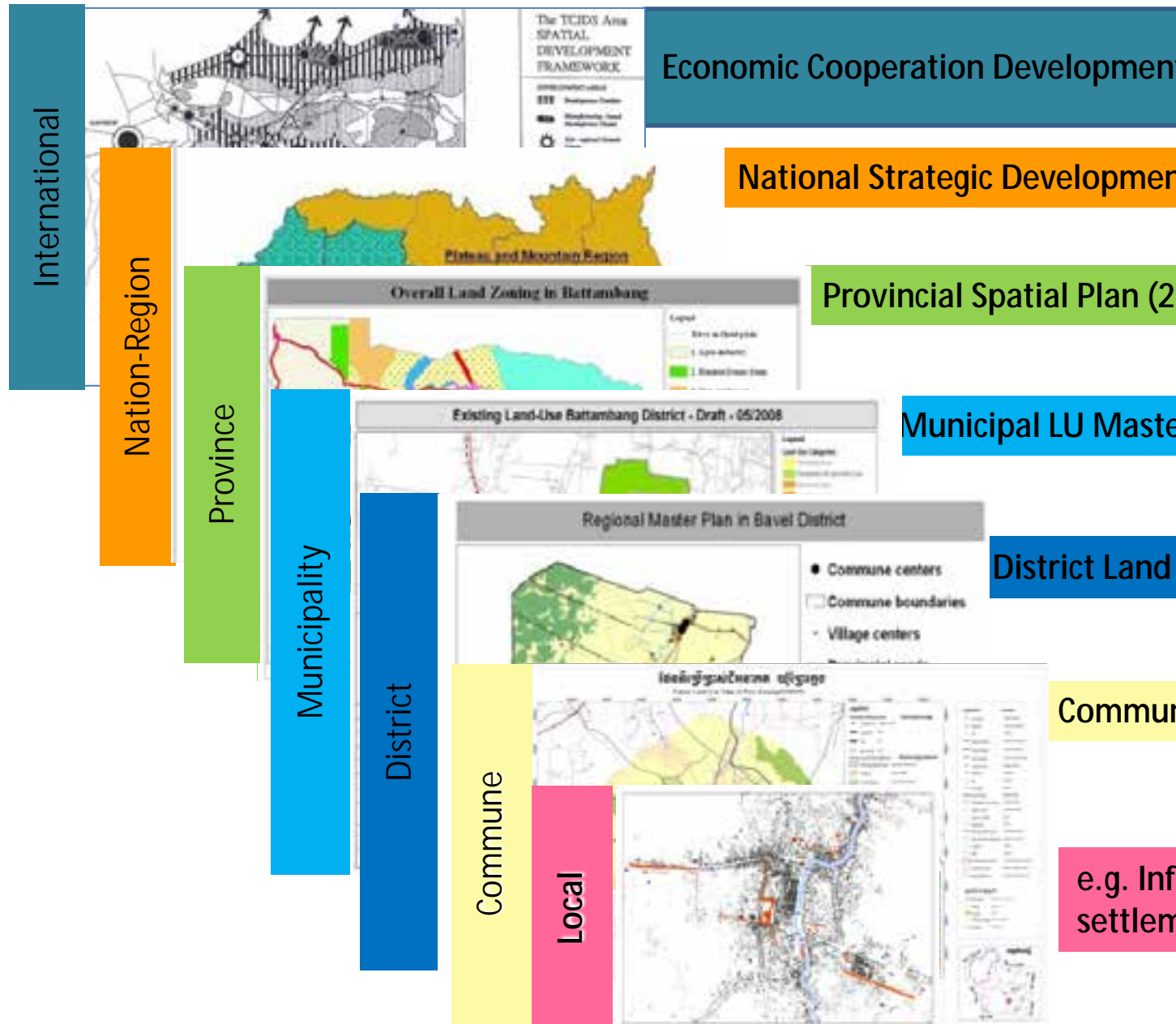
Legend

Landuse Type	Ha	Landuse Type	Ha	Landuse Type	Ha
Rice Field	3,163,000	Evergreen Broad Leafed Forest	3,922,638	Perennial Water Body	92,100
ELCs	1,530,493	Deciduous Forest	3,549,993	Mangrove	64,900
Field Crops	372,600	Mixed Forest from Evergreen and Deciduous Species	1,429,007	Marsh or Swamp	44,600
Scridden Agriculture	349,700	Woodland and Scattered Trees	1,266,100	Flooded Forest	20,600
Village Garden Crops	198,300	Shrubland	1,094,000	Water Body	
Receding Rice and Floating Rice Fields	194,000	Grassland	861,800	Provincial Boundary	
Rubber Plantation Colonial Origin	88,300	Flooded Shrub	533,200	International Boundary	
Urban, and Built-up Areas	18,100	Flooded Grassland	173,500		
Orchards	8,600	Bamen Land	27,200		
Salt Evaporator	6,100	Sand Terrain	7,500		
		Rock Outcrops	1,800		

Data Sources:

- Landuse: JICA Dataset 2002
- ELCs: Open Development Cambodia 2011
- International and Provincial Boundary : Department of Geography 2005
- Water Body: JICA Dataset 2002
- The Atlas of Cambodia 2006, Save Cambodia's Wildlife

FIGURE 1: Hierarchy of Spatial Plans in Cambodia



Source: Hammermann/Diepart 2011

TABLE:1 Overview of State Land Distribution in the LASED Project

	Province/Commune	Date of registration	Total area (ha)	Land allocation (lottery)	Agricultural land (ha)	Total number of HH
1	Kratie/ Sambok, Changkrang	July 2007	3906			

	Part 1		(1316)	November 2008	1287	525
	Part 2		(2590)	December 2010	510	360
2	Kratie/Dar	September 2010	617	N.A.	N.A.	N.A.
3	Kampong Cham/ Choam Kravien	August 2007	863	February 2009	543	250
4	Kampong Thom/ Tipou	May 2010	1508	November 2010	1099	479
	Total		6894 ha		3439 ha	1614

Source: LASED Project data.