This review and comment concerns the entire above-mentioned draft, with a special focus on “Chapter V Management and Use of Agricultural Land”. The review/comment’s main inquiries arose from the Mekong Region Land Governance Project’s long term goal to support family farmers—especially those belonging to ethnic minorities—to have secure and equitable access to and control over agricultural land, forest, and fisheries, and to protect those rights in the long term. The review/comment was also focused on issues of effective management and monitoring of ELCs, and on conflicts between the draft and existing legal texts. The final section of the review/comment is a list of suggestions that might be made to MAFF regarding the draft.

Thinking about agricultural land in Cambodia today from the standpoint of the needs of family farmers including indigenous communities (ICs), it would seem a major need is for more land, with the related need of being safe from loss of land.

In 2014 a consultant report was prepared for the GIZ Cambodia Land Rights Programme that was based on extensive surveying of inhabitants of 20 rural, farming villages in 10 provinces. The surveys tested whether objectives had been met of the mass land titling campaign initiated in 2001 by the Ministry of Land Management, Urban Planning and Construction (MLMUPC) with donor support: Had food security improved in the 16 titled villages as compared with the 4 untitled, control villages? Had investment using land as collateral increased? Had income increased? Had land conflicts decreased? One of the survey tools involved interviews with the chiefs of all 20 villages. Besides the chiefs being asked pointed questions about GIZ’s specific concerns, they were also asked an open-ended question along the lines of

1 “Legal texts” is used here to refer to all manner of laws, subdecrees, prakas etc.
“What is the general land situation in your village?” Nineteen of the 20 chiefs, coming from all 10 provinces, answered this question by saying what amounted to “Not enough land for farming”. For 11 of the 19 this was the only point they raised in answering this question. For 5 of the 19 there was only one other point they raised besides “Not enough land for farming”.²

The continual steep population increase in a country in which a large percentage of the population are family farmers would seem to have made inevitable what those 19 village chiefs said. Besides the increase being a factor in the large outmigration of workers from Cambodia, it’s also a major factor in the persistent internal migration from the old, long-settled rice-growing areas such as where the above-mentioned 20 villages are, to increasingly remote parts of the country where the migrants try to farm. These internal migrants’ looking for unoccupied land in remote, often upland, areas is not going to stop.

A great deal of professional thought clearly went into the draft concerning how to improve and increase agricultural production, which Cambodia surely needs. Looking at the draft, however, with the above points in mind about family farmers needing land leads to serious concerns. The draft proposes protections of local communities from harm by ELCs that are no stronger than existing provisions in an ELC subdecree, and these existing provisions have generally failed to protect communities. While the 2001 Land Law forbids long-term uses of state public land, the draft explicitly allows ELCs on such land. The major type of state public land taken for ELCs so far is forest land including in protected areas. Frequently this has included lands for which ICs have the right to titles, and on which ICs as well as non-IC communities have gathering rights essential to their livelihoods.

Other concerns are that the draft says nothing about the distribution to the poor of the apparently large amount of land that the government has recovered from cancelled ELCs. It proposes no legal provisions that would explicitly block the taking of ICs’ lands by ELCs and others. It also proposes no explicit provisions banning evictions of family farmers from ELCs. The draft proposes requirements for registration with MAFF of somewhat vaguely defined agricultural lands—perhaps all land classified as “permanent agricultural land estate”—which in any event could include family farmers. Registration could be open to corruption, depending on how it’s done. In general the draft would significantly increase the amount of government control that family farmers would have to deal with.

Particular points of review and comment are as follows:

“Chapter V Management and Use of Agricultural Land”

1. Draft law “Section 4 Agricultural Concessions”\textsuperscript{3} would constitute the 5th principal source of law that I’m aware of that would be currently in force on granting and/or managing ELCs. The first is parts of Title II Chapter 5 of the 2001 Land Law, the second is the 2005 Subdecree on Economic Land Concessions, the third is the Civil Code, that took effect in 2011, and the fourth are numerous prakas, decisions etc. that now exist.\textsuperscript{4}

The Land Law articles mainly describe what an ELC is in a legal sense, but they also contain some specific, significant provisions on what a Cambodia ELC is, such as that its term may be up to 99 years, its size may not exceed 10,000 ha, it may only be on state private land, and its land must be registered by MLMUPC.\textsuperscript{5}

The subdecree is vastly more detailed and contains several provisions that in theory should provide some protection to the poor, in particular Articles 4 and 5 on criteria for evaluating an ELC proposal and for granting an ELC.\textsuperscript{6} The subdecree also contains a good deal of material that is probably irrelevant today, in particular on there being ELC proposals that are both solicited by MAFF and that are unsolicited. The reality has been that most/all proposals

\textsuperscript{3} Glossary definition 22: “Agricultural concession refers to a concession by the State through a long or medium-term agreement of State public or private land for use in the form of social land concession or an investment in the form of economic land concession for the purposes and framework of agricultural production and agro-industry development.”

\textsuperscript{4} Of current importance among such legal texts is the 2007 SUB DECREE 114 ON THE MORTGAGE AND TRANSFER OF THE RIGHTS OVER A LONG-TERM LEASE OR AN ECONOMIC LAND CONCESSION. As well there is No: 125 SSR (2014), Decision on The Creation of Inter-Ministerial Commission to Inspect, Demarcate and Assess the Economic Land Concessions. There were a number of texts or provisions in texts that were adopted for the D01 titling campaign, but the campaign is apparently over and those texts probably have no application now.

\textsuperscript{5} The 99-year term is provided in Land Law Article 61, the 10,000 ha limit is in Article 59, the state private land requirement is in Article 58, and the registration requirement is in Article 53.

\textsuperscript{6} Article 4 is: “An economic land concession may be granted only on a land that meets all of the following five criteria: 1. The land has been registered and classified 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. 2. Land use plan for the land has been adopted by the Provincial-Municipal State Land Management Committee and the land use is consistent with the plan. 3. Environmental and social impact assessments have been completed with respect to the land use and development plan for economic land concession projects. 4. Land that has solutions for resettlement issues, in accordance with the existing legal framework and procedures. The Contracting Authority shall ensure that there will not be involuntary resettlement by lawful land holders and that access to private land shall be respected. 5. Land for which there have been public consultations, with regard to economic land concession projects or proposals, with territorial authorities and residents of the locality.”

Article 5 is “Evaluating Economic Land Concession proposals shall be based on the following criteria: o Increase in agricultural and industrial-agricultural production by using modern technology; o Creation of increasing employment; o Promotion of living standards of the people; o Perpetual environmental protection and natural resources management; o Avoidance or minimizing of adverse social impacts; o Any linkages and mutual support between social land concessions and economic land concessions; o Processing of raw agricultural materials, to be specified in the concession contract.”
submitted since adoption of the subdecreed have been unsolicited and surely this will go on being true. Also, a good deal of the subdecree is about review of ELCs that were granted prior to the adoption of the subdecreed 11 years ago. Such reviews as were going to take place have probably taken place.

The Civil Code (CC) has numerous articles that concern ELCs. It has an article that nullifies any CC articles on concessions to the extent that they are provided for by “special law”, meaning laws such as the Land Law. What this means concretely is at times a matter of opinion.

Finally there are the many legal texts including prakas, decisions etc. that have been adopted over the years concerning the granting and managing of ELCs. Probably only MAFF knows what these all are and which are considered to be in force now and which aren’t. I have about 10 such texts not including those adopted as part of the Prime Minister’s D01 campaign.

Besides these four existing sources of law there are also whatever have been the practices of MAFF, MOE and the government in general regarding ELCs, which might at times be different from what’s contained in the legal provisions.

Into this situation now comes the draft Law on Agricultural Lands section on Agricultural Concessions. The section contains several important points that either clearly differ from the Land Law and ELCs subdecreed, or might differ: 1. In the draft the maximum term of an ELC is 50 years with a possible extension of 50 more years, whereas in the Land Law it’s 99 years with no right of extension; 2. In the draft there is no mention of an ELC size limit whereas the Land Law has one, and 3. Although the draft requires social and environmental impact assessments as well as public consultations, it’s not clear whether all this comes before or after approval of the ELCs.

ELC subdecreed Article 4 requires the assessments and consultations to come before approval of the ELC.

The draft’s concluding provision reads “All provisions contrary to this law shall be abrogated.” This would seem to mean that all provisions not contrary will continue in force. As well on this subject of abrogation there is what the CC

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7 307. “(Rights created by concession) The provisions of the Civil Code relating to perpetual leases shall apply mutatis mutandis to land rights created by concession, within the scope of the conditions applying to such concession, except where otherwise provided by special law.” For other CC articles concerned with ELCs see Book 3, Chapter 4 “Perpetual Leases”, and Book 5 Chapter 5 “Lease”.


9 Draft Articles 51 and 52 provide for social and environmental assessment reports. Article 52 requires “prior participatory consultation with local communities and relevant stakeholders in line with the provisions of this law and existing relevant regulations.” It’s not clear at what point in the whole process of approving an ELC that such a report must be made and when these consultations must take place.

10 Article 121
says about its articles on concessions not being valid if they conflict with “special law”.

With this abrogation provision in mind, how should one read parts of the subdecree’s Articles four and five in light of parts of the draft law’s Article 45? Article 45 says “The government shall ensure that agricultural land use under concession agreement is not involved in conflict of interest with local communities. The use of agricultural land under concession agreement shall be involve local communities and stakeholders in consultation and shall comply with national policy on agricultural land estate, Strategic Plan for management and use of agricultural land estate, as well as provisions in the law and other relevant existing regulations. Procedures for consultative process on the use of agricultural land under concession agreement shall be determined by a Prakas of the ministry in charge of agriculture.”

Subdecree Articles 4 and 5 contain these provisions: “An economic land concession may be granted only on a land that meets all of the following five criteria: 4. Land that has solutions for resettlement issues, in accordance with the existing legal framework and procedures. The Contracting Authority shall ensure that there will not be involuntary resettlement by lawful land holders and that access to private land shall be respected. 5. Land for which there have been public consultations, with regard to economic land concession projects or proposals, with territorial authorities and residents of the locality. Evaluating Economic Land Concession proposals shall be based on the following criteria: o Promotion of living standards of the people; o Perpetual environmental protection and natural resources management; o Avoidance or minimizing of adverse social impacts; o Any linkages and mutual support between social land concessions and economic land concessions”.

Rather than ending up after adoption of the Law on Agricultural Lands with important legal provisions on the granting and management of ELCs in at least five different places, and with at times uncertainty as to what provisions in the other four places still have force, I suggest the following:

That it be proposed to MAFF that the draft law’s section on agricultural concessions be amended by taking all Land Law and ELC subdecree and CC articles, and articles of other legal texts that would not be clearly abrogated by the draft as it’s now written, and that are not out of date, and integrate them into the draft. If this would be agreed to, then I also suggest that the draft’s concluding provision be amended to note that absolutely all articles on ELCs in the Land Law and in the CC are cancelled, and that the ELC subdecree is cancelled in its entirety as are all other legal texts identified as cancelled. I also suggest that MAFF write an appendix to the draft law listing all prakas etc. that still have force. Once all of that is done, a new public consultation could take place on just the agricultural concession section of the draft law.
2. As mentioned above, the draft explicitly allows state public land to be used for agricultural concessions.\textsuperscript{11} In order to do so, the land must first be reclassified by MAFF.\textsuperscript{12} It is not yet possible to know clearly what factors will be considered and what procedures will be followed in the reclassification because these are yet to be developed.\textsuperscript{13}

In principle, present legal provisions tend to oppose the use of state public land for ELCs. 2001 Land Law Article 16 limits the use of state public land as follows: “State public property may ... be the subject of authorizations to occupy or use that are temporary, precarious and revocable ...” The Land Law in effect doesn’t allow state public land to be used for ELCs unless it’s reclassified to state private land based on a showing that the land has lost its “public interest use”.\textsuperscript{14}

In practice for years now state public land has routinely been reclassified to state private in order to award ELCs. Indeed it has not been unusual for ELCs to be awarded even before reclassification from state public to state private.

\textsuperscript{11} Glossary definition 22 reads that “Agricultural concession refers to a concession by the State through a long or medium-term agreement of State public or private land for use in the form of social land concession or an investment in the form of economic land concession for the purposes and framework of agricultural production and agro-industry development.” (Bold added.) Draft Article 85 states that “The Royal Government shall have the rights to transfer state land, regardless of jurisdiction of any ministries or institutions they may be under, into agricultural land estate for the purpose of agricultural production development via concession agreement or long-term agricultural development projects in compliance with provisions in this Law and existing relevant regulations. State land, which is transferred for the purpose of this Article, shall have its original classification reversed into agricultural land estate classification under the jurisdiction of management of the Minister in charge of agriculture and shall get registered as agricultural land for use in accordance with provisions under this Law.” While this article doesn’t specifically mention state public land, such land would seem to be included in light of the above-mentioned glossary item.

\textsuperscript{12} Article 46: “State land under concession agreement within the purpose of agricultural production have it original use classification transferred to agricultural land estate classification under jurisdiction of ministry in charge of agriculture and shall register agricultural land for use in line with the provisions of this law.” Glossary definition 22 explicitly allows an ELC to use state public land.

\textsuperscript{13} Article 7: “Under the scope of this Law, the unit in charge of agricultural land estate affairs shall carry out the following missions and tasks: 4. Study and identify agricultural production areas and cultivation land areas as well as determine classification criteria for agricultural land estate in order to develop an agricultural land use map as a technical basis and as a legal instrument for enforcing this Law in collaboration and coordination with relevant ministries, institutions, and sub-national administrations;” Article 23: “Procedure for classification of agricultural production areas and agricultural land estate shall be defined by a Sub-Decree. Agricultural production areas, classification of agricultural land estate, agricultural crop productivity in agricultural production areas, and proxy maps shall be defined by a Prakas of the Ministry in charge of agriculture.”

\textsuperscript{14} 2001 Land Law Article 16: “When State public properties lose their public interest use, they can be listed as private properties of the State by law on transferring of state public property to state private property.” At this time no such law exists. ANKr.BK No. 29, Sub-Decree On Rules and Procedures on Reclassification of State Public Properties and Public Entities (2006) is similar in terms of a reclassification from state public requiring a finding that the land in question no longer serves the public interest. (Article 41)
What the draft law’s explicit provision of state public land for ELCs really amounts to therefore is a recognition of a longstanding practice.

Regardless, from the standpoint of family farmers, best would be for the draft law to simply ban the creation of any more ELCs on land reclassified from state public land, because of the significant dependance of the rural poor including ICs on forests.

3. I suggest proposing articles for the draft on providing cancelled ELCs’ lands to family farmers.\textsuperscript{15}

Lands already containing ELCs as of when the draft would take effect would automatically be reclassified to PALE.\textsuperscript{16} Former ELCs, some of the lands of which might be provided to the poor, might also be so reclassified. The law could contain articles that say PALE lands containing cancelled ELCs are eligible for social land concessions (SLCs), also for land donations to the poor based on the same 2001 Land Law article 83 that was used in the Prime Minister’s Directive 01 campaign.\textsuperscript{17} Those people first in line for SLCs or Article 83 donations could be whatever family farmers might still be occupying the cancelled ELCs and/or were evicted from them. There could be a subdecree or prakas called for in the draft that would explain how all of this would work.

4. I also suggest proposing articles that would explicitly ban the loss of land by any family farmers now occupying already-existing ELCs, or any ELCs that might be granted in the future, but these people’s lands might be relocated within the ELC. Maps showing lands occupied by family farmers as cut out of the ELC area should be attached to and made a part of the ELC agreement. Protections existing in law since adoption in 2005 of the ELCs subdecree have generally failed to prevent such losses from happening.\textsuperscript{18} Protections now written into the draft law are no stronger than those contained in the subdecree.\textsuperscript{19}

\textsuperscript{15} It is possible that some amount of these lands are already being provided to disabled and retired soldiers.

\textsuperscript{16} Article 119: “After this Law enters into force, all state land that is occupied and used within agricultural production purposes under concession agreement, lease agreement or any development projects before this law enters into force, shall be transferred to fall under agricultural land estate classification and shall register as agricultural land for use in compliance with provisions and procedures under this Law.”

\textsuperscript{17} 2001 Land Law Article 83: “The State may only donate immovable property to natural persons and for social reasons in order to allow them to reside or carry out subsistence farming. The value of the immovable property donated must be limited in relation with the purpose sought and not allow scope for speculation, or disproportionate enrichment taking into account the social level of the beneficiary.”

\textsuperscript{18} Subdecree Article 4

\textsuperscript{19} Article 45: “Agricultural land under concession agreement refers to state land granted by the government as concession in the form of Economic Land Concession (ELC) agreement or other forms of concession agreement for a long-term use within the framework of investment of agricultural production, agro-industrial investment projects, or other development projects within the purpose of
Somewhat as suggested in point 3 above, such a ban could be written into the law describing what takes place in ELCs in the PALE. As with suggestions above concerning cancelled ELCs, family farmer occupants of these current and future ELCs could be eligible for SLCs or Article 83 donations.

5. Article 31 says that somewhat vaguely defined agricultural lands, which have been classified as such, must also be registered, and that a subdecree will be adopted on registration procedures. It might not become clear until the subdecree is adopted whether land owners/occupants would have the job of applying for registration, or anyway would be recipients of registration certificates, and also would be responsible for transfer of certificates when land ownership is transferred, all as is the case with the land register of MLMUPC. To the extent that any of this would be made the responsibility of land owners/occupants, this could be an opening for their having to make informal payments.

Particularly if any of the registration/transfer requirements would fall on owners/occupants, there might also be the question of why do all this since MLMUPC since 2001 has been rapidly placing all privately-occupied lands on its land register? Would the MAFF register be an unnecessary duplication, and one which would create extra costs for owners/occupants?

6. Various articles would cause family farmers to have to deal with a great deal of new government land use control. Farmers would be "obliged to implement sustainable agricultural practices". A person occupying classified land may use the land "only for agricultural production". Land of more than five hectares may not be left idle for more than three years. If such land is left idle, the government may somehow put the land to agricultural use for a period of time. MAFF land agents would have law enforcement powers that include to "Take measures to implement directives on agricultural land conservation, requiring land owners or users to accept and implement measures to improve land use or to repair damages, to restore agricultural

agricultural production. The government shall ensure that agricultural land use under concession agreement is not involved in conflict of interest with local communities. The use of agricultural land under concession agreement shall be involve local communities and stakeholders in consultation and shall comply with national policy on agricultural land estate, Strategic Plan for management and use of agricultural land estate, as well as provisions in the law and other relevant existing regulations. Procedures for consultative process on the use of agricultural land under concession agreement shall be determined by a Prakas of the ministry in charge of agriculture."

20 Article 31: "Agricultural production areas which has been classified and registered as agricultural land for use shall be determined by geographical and administrative location, borderline and specific land size and shall be decided by the for the purpose of long term and sustainable use of agricultural land. Procedures for registration of agricultural land for use shall be determined by a sub-decree."

21 Article 24

22 Article 28

23 Article 35
land, or to rehabilitate agro-ecosystem,24 and to “Take measures to suspend temporarily all natural persons or legal entities’ agricultural land use activities and agricultural operation that seriously affect agricultural land estate or causes harms to agro-ecosystem.”25 Persons in “family agricultural production in agricultural production areas” would be subject to very significant control.26

7. Chapter V Section 2 “Traditional Agricultural Land of Indigenous Communities” leads off in Article 37 with the statement that “The State shall ensure indigenous communities’ rights to traditional agricultural land use under provisions and procedures under this Law and existing laws.” There is a step that could be taken in the context of this draft law that, in theory at least, would far better ensure these rights than is currently the case. This would be to add an article saying the five types of lands identified in existing legal provisions as eligible for ownership by ICs are reserved for this purpose, and may not under any circumstances be put to any other use except that provided for in 2001 Land Law Article 26: “The provisions of this article are not an obstacle to the undertaking of works done by the State that are required by the national interests or a national emergency need.”

The Land Law does seem to have a provision reserving at least the three types of land identified there as eligible for titling to ICs, but the provision is vague, always needs to be explained and anyway is utterly ignored.27 If such

24 Article 95(4)

25 Article 95(5)

26 Article 109: “Three (3) written warnings, each for a six-month period, requiring to rectify agricultural operation and acceptance of instruction from the competent unit in charge of agricultural land resource affairs shall be issued before natural person or legal entity, agricultural land owner or users classified under this law for family agricultural production in agricultural development areas or under lease, who commits any of the following acts:

1. Use agricultural land in such a way that is contrary to the agricultural production purpose;
2. Fail to implement sustainable agricultural operation and directive on conservation of agricultural land, as required by this law.
3. Fail to take action to implement directive of unit in charge of agricultural land estate affair, required to improve or restore agricultural land to its original conditions.
4. Grow types of crops in contrary to the priority of agricultural soil quality classification for potential crop types;
5. Grow types of crops in contrary to the types required to grow on reserved agricultural land for special agro-ecosystem or for other functions or in contrary to classification of land productivity of crop types;
6. Lease agricultural land along Cambodia’s border to natural person or legal entity of a foreign nationality of bordering countries which share border with Cambodia.”

It isn’t clear what the penalty would be for failure by the family to take the action they’re directed to take.

27 Article 23 of the Land Law says “An indigenous community is a group of people that resides in the territory of the Kingdom of Cambodia whose members manifest ethnic, social, cultural and economic unity and who practice a traditional lifestyle, and who cultivate the lands in their possession according to customary rules of collective use. Prior to their legal status being determined under a law on communities, the groups actually existing at present shall continue to manage their community and immovable property according to their traditional customs and shall be subject to the provisions of this law ...” (Bold added.) The point of there needing to be a law on communities
an explicit reservation as I’m suggesting could be created in this draft law, then it might be good to add another provision about a relatively quick, cheap way to provisionally demarcate these lands, pending communal titling. If we were to go even further we might suggest a provision on guarding these lands.

8. Article 38 provides for a procedure by MAFF in cooperation with MLMUPC “to determine and classify agricultural land reserve for indigenous communities’ traditional agriculture,” and for these lands to be registered with MAFF.

2001 Land Law Article 25 states that “The lands of indigenous communities include not only lands actually cultivated but also includes reserved necessary for the shifting of cultivation ...” The 2009 subdecree on the Procedures for Registration of Land of Indigenous Communities says in Article 4 on definitions that “Reserved land necessary for shifting cultivation or reserved land for rotation agriculture or swidden farm land refers to land used previously by indigenous community as rice field or farm for traditional shifting cultivation.” Article 6 provides for titling these lands.

What if any relationship would exist between what MAFF proposes to do here and what MLMUPC does in implementing the Land Law and this subdecree? Will MAFF use some standard other than what is in the Land Law and that subdecree for deciding what the reserve lands are? If MAFF does that, will MLMUPC title as reserve lands all that MAFF so identifies? Will the MAFF and MLMUPC registrations, at times at least, involve different lands?

Note that the Ministry of Environment (MOE) is now drafting the Environment and Natural Resources Code of Cambodia that contains provisions for some kind of MOE-issued communal titles that would seem appropriate for ICs. It would seem that these titles would include what ICs consider as their reserve lands. How would all three of these ministries’ land registration provisions work together?

was that it was thought that without such a law, ICs could not be granted legal entity status by the Ministry of Interior (MOI) and therefore could not hold land titles.

All of the bold in this point was added.

29 Book 4, Chapter 3, Article 10: “Upon designation of a Collaborative Management Protection Zone according to Article ____, those communities located within the Collaborative Management Protection Zone shall receive a Collaborative Management Communal Land right. The communities also shall receive a Collaborative Management Communal Title, whose validity shall remain for the full duration of the Collaborative Management Protection Zone. Regardless of any additional registration or requirements, such Collaborative Management Communal Title rights may not be infringed by any public or private entity without the community’s free, prior informed consent … The rights in this Article are in addition to any rights that indigenous communities may receive in accordance with (indigenous peoples’ collective land titling procedures).”

30 Article 40 of the draft law reads that “Management of indigenous communities’ traditional agricultural land shall be defined by a Prakas.” Perhaps not until this prakas is adopted will we know how MAFF will deal with all of these questions.
9. Article 41 says “Agricultural land areas occupied and used by small/medium holder farmers for family agricultural production can be concentrated to establish an agricultural development area in order to promote development of agricultural production and to participate in effective and sustainable agricultural land use, in line with National Policy on Agricultural Land Estate.” (Bold added.) What does “concentrated” mean?

10. It is difficult to see what reserve agricultural land is. Would it be state land only? If private as well, what would that mean in terms of how the owner could use it? No mechanisms are mentioned to govern the allocation of reserved lands between the different forms of agricultural production (family farmers, ELCs, etc.) nor for petition by family farmers to obtain reserved land for their use nor to complain if such land is excessively allocated to ELCs.

All Other Articles of the Draft Law on Agricultural Land

1. Article 11 calls for adopting a National Policy on Agricultural Land Estate and Article 12 calls for adopting an Agricultural Land Estate Management and Use Strategic Plan in accordance with the policy. It is worth considering what is the best order in which to do things: a law followed by a policy followed by a strategic plan, or a policy then a plan then a law?

Concerning the current Land Law:

First, in 1998, the “National Land Titling Policy for Cambodia” was written by Lim Voan, the then Director of the Land Titles Department (LTD) within the Council of Ministers. This policy identified in historical terms the problems that needed to be addressed—it provided context—and then called for an array of concrete steps to be taken including adopting a new land law as well as cadastral subdecrees.

Next, in May 2001 came the brief “Statement of the Royal Government on Land Policy”. This also called for enactment of a land law as well as numerous other legal texts plus creation of a variety of land governance programs.

Next, in September 2001, came the 2001 Land Law.

In 2002 there was adopted “Interim Paper on Strategy of Land Policy Framework” which it said was “intended as a short-term guide to drafting legislation”.

I think of a policy as a general plan, or a general guide, that provides an overall context and then specifies what steps to take to remedy problems, improve things etc. The draft calls for all relevant ministries to take part in

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31 See Articles 19 and 21 among others.
32 The LTD was the predecessor to the current MLMUPC which after its creation in 1999 absorbed the LTD.
drafting the policy which will be a good occasion to consider what are all relevant sectors, and to work out roles and jurisdictions. I think it a good idea to make a policy before making a law.

2. As mentioned above, Article 121 of the draft law is “All provisions contrary to this law shall be abrogated.” This is a normal provision in Cambodian laws, subdecrees etc. This kind of provision is extremely vague and has led to a great deal of argument and confusion.

For example, the 2001 Land Law has a similar article: “Any provisions that are contrary to this Law are repealed.” There is a 1992 Land Law that has articles that cover areas identical to what certain articles in the 2001 law cover, for example defining state public lands: the 1992 law has Article 5 on this subject and the 2001 law has Article 15. Some of the types of land identified in the 1992 law as in effect state public are also in the 2001 law’s Article 15, some are not. Likewise Article 15 has some types that Article 5 does not.

The argument that this situation is one in which Article 5 is “contrary” to Article 15 would seem to be a strong one; in any event there certainly is an argument. Yet in MLMUPC’s adopting a decision in 2006 on how to classify state lands, the 1992 Land Law’s Article 5 was cited as one legal provision to use in classifying. The decision also extensively relied on articles in a 1994 law on land management that are clearly different from articles in the 2001 Land Law on identical points.

I believe the practice should stop of laws, subdecrees etc. ending with vague declarations that contrary provisions are cancelled, abrogated, null and void etc. Instead, specific legal texts, or specific sections within legal texts, should be identified as cancelled by a new enactment. As a corollary, the drafters of texts should pull into it all articles in all pre-existing texts that the drafters want to have continued application, so that any particular subject, such as agricultural concessions, is totally covered in one single legal text.

3. The draft Environment and Natural Resources Code of Cambodia would have major impact on the draft Law on Agricultural Lands’ “Chapter IV Conservation” if the agricultural law is adopted first and the environmental law when adopted has many of the kinds of provisions its draft now contains.

4. As seen from various articles in the draft, its full implementation requires adoption of one national policy, one strategic plan, five subdecrees, and 18

33 Article 10

34 Article 267

35 The Ministry of Land Management, Urban Planning and Construction, No. 52 DNS.SR Date: 25 December 2006, DECISION TO PUT THE TEXT ON CRITERIA FOR STATE LAND CLASSIFICATION AS AN ANNEX OF THE PRAKAS NO. 42 DNS.BK DATED 10 MARCH 2006 ON STATE LAND IDENTIFICATION, MAPPING AND CLASSIFICATION.
prakas.\textsuperscript{36} That means full understanding of the draft’s meaning, once it becomes a law, awaits quite some years of drafting and adopting altogether, as of now, 25 additional legal texts.

A related point is that neither MAFF’s website nor any other single online source nor any single publicly-available hardcopy source contains most/all legal texts ever adopted by MAFF or that apply to MAFF that appear to have current application.\textsuperscript{37}

5. Many draft articles concern water but the role of the Ministry of Water Resources and Meteorology (MOWRAM) in what the draft calls for is minimal. The only mentions of MOWRAM are that it would be on the committee to make the National Policy on Agricultural Land Estate,\textsuperscript{38} and with MAFF it would make a joint prakas on “the use and conservation of agricultural intake water in agricultural production areas”.\textsuperscript{39}

6. Article 7(12) speaks of illegal activities which leads to “clearance of new agricultural land”. Does this concern a person clearing land which he/she has no right to?

7. Article 9 says that “Management of agricultural land estate shall sustainability for agricultural production through participation of relevant stakeholders in line with the Land Policies and National Policy on Agricultural Land Estate.” What “Land Policies” are being referred to here?

**SUGGESTIONS**

These are made in the order of which is considered most important.

1. Ban ELCs’ using land reclassified from state public land because this land is generally forest in which indigenous and other local communities have various rights which are of great importance to their subsistence ways of life.

2. Add an article to the section on indigenous communities (ICs) that says the lands identified in existing legal provisions as eligible for ownership by ICs are set aside and reserved for them, and may not be used for any other purpose whatsoever except for “works done by the State that are required by the

\textsuperscript{36} There might be some number of directives as well.

\textsuperscript{37} The sources I am aware of are Darwin.org, Open Development of Cambodia, National Assembly of Cambodia, and Parliamentary Institute of Cambodia. A small membership fee payment will allow access to online legal databases of the law firms BNG and BNO.

\textsuperscript{38} Article 10

\textsuperscript{39} Article 79
national interests or a national emergency need," as stated in 2001 Land Law Article 26. This would be an attempt to stop all taking of IC land by anyone other the government for public-interest use, for example for a public road or a public school.

3. Write new articles to provide family farmers with lands from cancelled ELCs, and that ban all evictions of family farmers from cancelled, from currently-existing, and from future ELCs.

4. MAFF consider adopting the National Policy on Agricultural Land Estate, and then the Agricultural Land Estate Management and Use Strategic Plan, before finishing and adopting the Law on Agricultural Land. This would be because it would seem better to set out in a policy on what Cambodia’s overall agricultural lands situation is, and what are all the steps that might be usefully taken to improve it, and then make a strategic plan to take all necessary steps, and then, once it’s clearer what an agricultural lands law needs to do, adopt the law.

5. Suggest to MAFF that the draft law’s section on agricultural concessions be amended by taking all articles from the Land Law, the CC, the ELC subdecree and all other existing legal texts concerned with ELCs that would not be clearly abrogated by the draft as it’s now written, and that are not out of date, and integrate them into the draft. This would result in it being absolutely clear what are all legal provisions regarding agricultural lands. If this is agreed to, then I also suggest that the draft’s concluding provision be amended to note that all articles on ELCs in the Land Law and the CC are cancelled, and that the ELC subdecree is cancelled in its entirety as are whatever other legal texts concerning ELCs are sources of articles for the draft law or are simply out of date. Once all of that is done a new public consultation could take place on just the agricultural concession section of the draft law.

6. Ask MAFF to clarify why it proposes to classify, and then to require indigenous communities (ICs) to register with MAFF, “agricultural land reserve for indigenous communities’ traditional agriculture”, since MLMUPC under the 2001 Land Law and a subdecree is already empowered to register and does register indigenous reserve lands? Will the MAFF classifications follow the definition of “reserve” lands given in the Land Law and the subdecree? .

7. Ask clarification from MAFF on what the land registration requirement in Article 31 might involve. Depending on whether owners/occupants would have any responsibility for applying for registration, and for receiving and transferring certificates when ownership is transferred, the registration requirement might be a burden on the poor, and might duplicate the land registration program of MLMUPC, which is already far along. Also ask for clarification of what MLMUPC’s role would be in the MAFF land registration program.

8. MAFF put on its website in a single place all legal texts that are adopted in connection with this law.
9. Analyze the draft law’s chapter on conservation in light of the law now being drafted by Ministry of Environment entitled Environment and Natural Resources Code of Cambodia.

10. What is the penalty for family farmers’ violating Article 109, which involves agricultural development areas and violations such as using the “land in such a way that is contrary to the agricultural production purpose”?

11. Write the entire law in the same way that it’s suggested to write the agricultural concession section.

12. Ask MAFF if there might need to be an expanded role for MOWRAM in carrying out the law?

13. Ask MAFF to elaborate on what is reserve land and will family farmers have any priority to obtain it?

14. Ask MAFF what is the meaning of “clearance of agricultural land” in Article 7(12)?

15. Ask MAFF what are the “Land Policies” that are referred to in Article 9?

16. Ask MAFF the meaning of “concentrated” in Article 41.