4. Addressing asset inequality: a focus on land

Summary

- Without off-farm employment or self-employment alternatives, over half a million landless poor find it hard to improve their situation or participate in the economy. Levels of inequality in land ownership are high in Cambodia, and significantly higher than most other countries in Asia.
- As in other countries in Asia, small farms in Cambodia are more productive than large farms. In crude terms, a more equitable distribution of land will deliver higher agricultural yields and increase the rate of economic growth, with indirect as well as direct gains for the poor. In contrast, a process that concentrates land ownership with *de facto* redistribution from smallholders to very large plantation-type holdings (as has occurred under the economic land concession program) may slow the rate of growth.
- Two policy initiatives appear to offer ways to improve equity and efficiency. First, social land concessions (SLC) that redistributes to poor landless households unused land originally allocated as large commercial concessions would provide a basis for livelihood to a significant number of rural poor households. Drawing on the experiences of other countries, the SLC program would complement land distribution with a package of supporting measures to improve access to markets and social services.
- Second, systematic titling to improve tenure security would reduce vulnerability and uncertainty of those currently working land, reducing conflicts and encouraging productivity-enhancing household investments in agriculture. Although in much of Cambodia locally-accepted *de facto* ownership is adequate, ownership proof in any paper form is still extremely valuable. Empirical evidence suggests a robust and strong correlation between secure land tenure and investments in land. Even among poor farming households, the incentives to invest are as strong as the richer households' provided that they have secure land tenure, manifested in holding some paper proof of ownership.
- Structured contextual/qualitative research, combined with statistical analysis of economic and welfare outcomes associated with other forms of land title in the CSES 2004 data, indicate a number of benefits of secure land tenure. The challenge in the future will be to extend titling from the densely-settled, stable communities where it has operated to date (and where formalization of ownership is relatively straightforward) to more conflict-prone, marginal areas where titling will need to engage with carefully-managed reclassification of state land.
- Irrigation is extremely important for improving productivity and income. While policies such as systemic titling will promote private incentives to invest in capital inputs such as water pumps, public investments in irrigations are indispensable for improving the livelihood of an overwhelming 80% of the rural majority whose primary sector of employment is agriculture

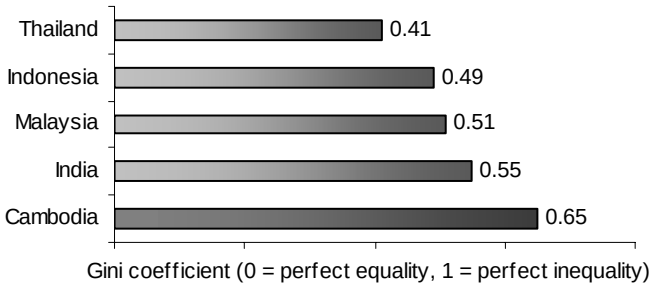
Why is land so important?

In looking at how individuals and households can or cannot command access to factors of production, and the implications of this for equitable development, land constitutes a special case (World Bank 2005 pp. 162-168). As land is to all intents a finite resource, the distribution of land ownership and access rights is particularly sensitive to the operation of formal and informal institutions. The importance of land is exaggerated in a primarily agrarian society such as Cambodia in which the majority of the population makes a living as small-holding farmers, meeting the majority of their food and income needs directly from the land. With low levels of education and constrained access to capital, rural Cambodians have limited off-farm employment or self-employment opportunities. This is changing with economic growth and diversification, but for the near and medium term land will remain a critical resource for the poor, 91 percent of whom live in the countryside.

Indeed, economic growth, and the necessary long-term structural transformation from an economy dominated by subsistence-oriented, land-based agricultural self-employment to a more diversified economy in which manufacturing and services play major roles, entail some considerable risks of their own. With investment and growth since the early 1990s, land has for the first time begun to acquire significant market value. In the past, a low population density and limited economic potential of land underpinned a traditional "legal" framework based on principles of usufruct: that is, a popular understanding that someone who cleared land and cultivated it was assumed to enjoy title. Since the 1990s, however, population growth and market integration have resulted in increasing competition for land, bringing this traditional concept of usufruct into conflict with commercial, state and environmental interests and claims.

These processes help to explain in part the high levels of inequality in land seen in Cambodia. Surprisingly, given the near-zero inequality in landholding when land was distributed in 1989, the inequality of land distribution in Cambodia is very high in comparison to other Asian countries. This inequality reflects a skewed distribution in which there are a large number (an estimated 46 percent) of rural households that are landless or land-poor (that is, own less than 0.5 hectares); and a very small number who control vast areas of land (Figure 4.1, Box 4.1).

Figure 4.1 Land distribution in Cambodia ranks amongst the most unequal in Asia

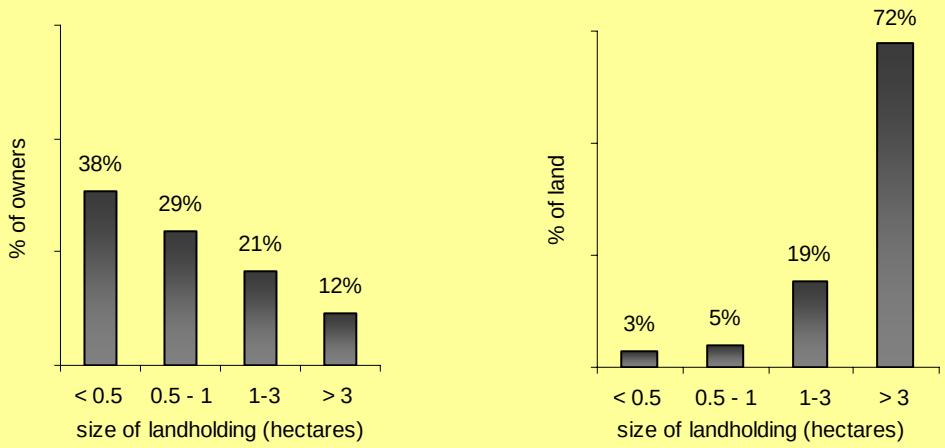


Source: WDR, IFAD

Box 4.1 Patterns of landholding: findings from a land survey

The inequality of landholding is underestimated by household sample surveys, as much land may be held by companies or individuals (generally very rich households not necessarily present in the community) who are unlikely to be covered by a survey. Oxfam GB recently conducted a survey of landholding patterns in 433 villages, selected through a multi-stage process. Although the sampling design means that results cannot be taken to be nationally representative, the findings are still interesting, in that they suggest that in many localities a large proportion of "normal" land (that is, privately-owned land, not including state land allocated as an economic land concession) is held by powerful individuals generally not resident in the community. In each sampled village, the researchers sought to identify the owners of all land. The finding was a high degree of inequality: 12 percent of owners with holdings of greater than 3 hectares each owned a total of 72 percent of the land.

a. 67 percent of owners holdings under 1 ha… b. …collectively own < 8 percent of all land



The report also found that, as would be expected, intensity of land utilization was related to size of holdings: while on average 98 percent of holdings under half a hectare were worked, only 71 percent of holdings larger than 3 hectares were under cultivation. Amongst those owning more than 500 hectares each, 31 percent were described as businesspeople; 23 percent as high-ranking officials bearing the title "His Excellency", 23 percent were *okhna* (a social title conferred by the Government in recognition of financial contributions of US$100,000 or more); 15 percent were military officers referred to as Generals; and 8 percent were members of the National Assembly. These figures should be taken as broadly indicative only, in part because there is presumably considerable overlap between these social and occupational categories.

Source: Oxfam GB 2007.

In respect to land management as in many other aspects, development policy issues in Cambodia must be worked out in the context of both dramatically uneven power relations and a pronounced legal pluralism (a concept developed further in chapter 8). Land policy issues in Cambodia are complex in part because of the importance of land to a variety of actors pursuing a variety of goals. Cambodia currently has no real consensus on the principles on which land claims should be based. This makes it hard to establish and sustain strong institutions for land management that command legitimacy and compliance

from all actors. To a significant degree, this situation is a legacy of Cambodia's protracted conflict and political turmoil: Cambodia has gone through radically different political regimes, each associated with markedly different principles and institutions for allocating land property rights (see Box 4.2).

Box 4.2 Competition and confusion in land management reflects Cambodia's turbulent history

The current era of land administration began with the emergence of a land market in the late 1980s and early 1990s (Ashley 1999; Cooper 2004; Oxfam 2005). Prior to this, Cambodia experienced a rapid succession of radically different regimes of land administration. Before 1970, a mixed system of traditional usufruct and French-style administration predominated; between 1975 and 1979, private property rights were abolished by the Khmer Rouge; and from 1979, Vietnamese-style low-level collectivization was introduced and then gradually disappeared. As collectivization began to break down in the mid-1980s, the Government passed a sub-decree allowing land to be occupied and farmed by individual families. In 1989, as the shift from a socialist to a market economy accelerated, a partial return to private land rights began in April 1989 with a sub-decree allowing ownership rights over residential property. This was followed soon after by Instruction No. 3, which formally ended the collective farming systems and reconfirmed household possession rights over agricultural land.

The 1992 Land Law consolidated the market for land, providing for a system whereby ownership could be conferred upon legal possessors of land. However, it was not long before the Government, influenced by spiraling land values, uncontrolled encroachment on state lands and widespread land conflict, decided that a new land law was necessary (Williams 1999). Prospects of increasing economic growth and investment on the one hand, and social pressures on the other, created incentives to modernize land management systems. Donors also played a role in the development of the new law, signaling that large scale support for land administration was contingent on the development of a satisfactory legal framework.

Work began on re-drafting the land law in 1996, with technical assistance from the ADB, and the new land law was passed in 2001. Some of the major changes included extending private ownership rights to residential land and agricultural land; establishing a system for the systematic titling of land under the control of the Ministry for Land; creating an administrative system for the resolution of disputes over unregistered land (the Cadastral Commission); and bringing to an end the possibility of legally entering into possession of vacant state land.

This chapter examines land issues and possible policy responses through the lens of equitable development. Firstly and importantly, it notes that there appears to be a strong complementarity between equity and efficiency considerations when it comes to land management: smallholdings are more productive than are large holdings. Secondly, the chapter looks at the magnitude of poverty and landlessness, and the case (both in terms of growth and equity) for a carefully-managed program to redistribute unused land to the landless poor. Finally, the chapter examines the issue of land title and the growth and distributional outcomes that might be expected from a program of systematic titling.

In respect to land distribution, equity and efficiency are fully complementary

Analysis of CSES 2004 data shows—as in many developing countries—a clear *negative* relationship between size of household landholding and a number of desirable

economic outcomes (including crop output / hectare and crop income / hectare). In other words, small farms are clearly more productive, and generate more wealth, than do large farms (Figure 4.2).

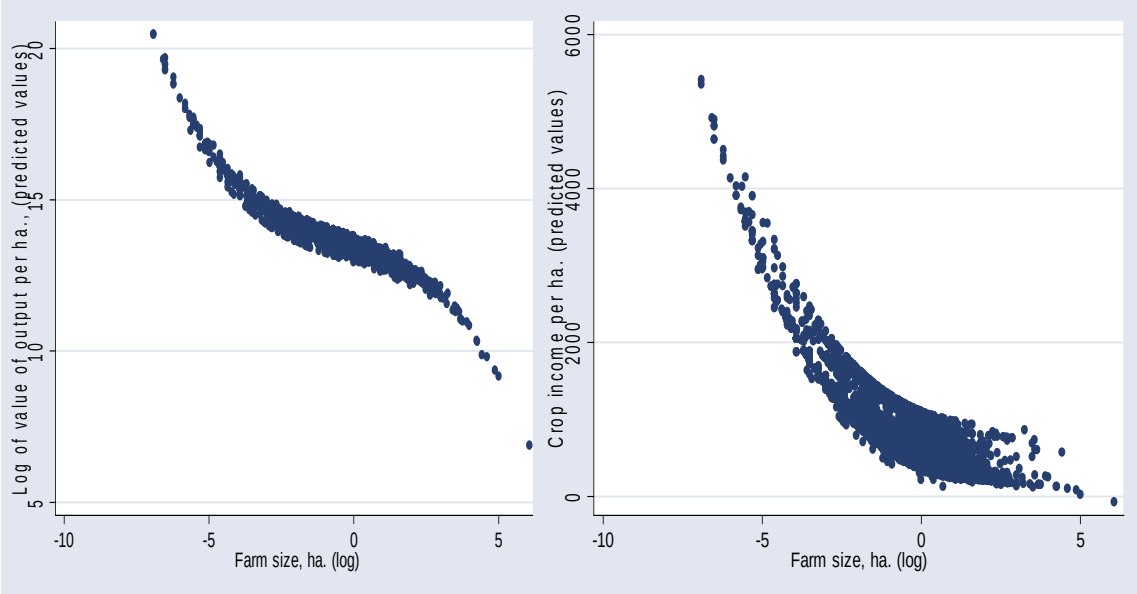
Figure 4.2 Small farms are a better economic proposition than large farms

a. Small farms have higher outputs per hectare…

(y axis plots log of output value / ha.)

b. …and higher crop income per hectare

(y axis plots crop income / ha.)



Source: CSES 2004.

This analysis, and other land analysis based on the CSES data, is complicated by a number of other considerations. Firstly, it is important to remember that the CSES is based upon a sample of households; it does not necessarily represent the full picture of land ownership. Very large plots (in theory, limited to 10,000 hectares each, but in practice often exceeding this limit) allocated as economic land concessions (ELCs) are not captured in the CSES data. In the particular case of concern here, however—that is, the case of land-productivity relationships—the inclusion of the ELCs would only further strengthen the case for smallholdings, as the vast majority of these concessions have not been planted since they were allocated, strongly suggesting that they are being held as speculative rather than productive investments, and currently make no contribution to the economy.

A further qualifying observation would be that an observed inverse relationship between plot size and productivity does not automatically lead to the conclusion that smaller is always better, and smallest is best. Higher productivity notwithstanding, there is a minimum size of landholding below which it cannot support a family. High productivity in this case reflects in part a lack of viable household alternatives: in a process sometimes described as "self-exploitation", additional unpaid family labor is invested in agricultural work even as diminishing returns set in (and a commercial farmer

would cease to invest further in paid labor), simply because the family lacks other, more profitable sources of food security and income.

Thirdly, while smallholdings tend to be more efficient in production, large farms tend to be more efficient in marketing, where there *are* returns to scale. There are several ways in which smallholders can overcome this scale disadvantage—for example, through contract marketing arrangements or organizing themselves for collective marketing—but in the absence of these institutions, they do face difficulties translating productive efficiency into improved incomes and accumulation.

With these qualifications in mind, the point nonetheless remains that small farms enjoy a considerable advantage over large farms in productivity. This implies that in aggregate, a national distribution of agricultural land dominated by smallholdings is likely to deliver significantly higher agricultural yields and agricultural contribution to GDP than is a distribution in which landholding is concentrated in a small number of very large plantation-type holdings. A redistribution of land from large holdings to small will increase the rate of economic growth, with indirect as well as direct gains for the poor; a process that concentrates land ownership with redistribution from smallholders to large holdings will *slow* the rate of growth.

Landlessness and poverty

Numbering over half a million, the landless rural poor are a significant concern

It needs to be remembered that not all rural poor are landless, and not all rural landless are poor. In 2004, the incidence of poverty in Cambodia was higher for rural households with land (35.2 percent) than those without (25.3): see Table 4.1. This pattern is seen in each zone by urban and rural sectors, except that in rural Plains region, poverty rates were similar between landless and landed households.

However, the static picture of landlessness being associated with higher living standards may give an erroneous picture of trends over time. It is possible that the very poorest farmers are forced to sell their land because of debt or catastrophic illness, and that joining the ranks of the landless leaves them worse off with fewer income earning opportunities. Alternatively, a proportion may become landless by choice in order to pursue better income opportunities through migration and wage work. However, we can examine whether the landless are worse off in other respects.

Table 4.2 shows that on average the landless poor in Cambodia are not necessarily worse off or more disadvantaged than landed poor. The landless poor were not worse off in terms of access to primary and secondary schools or availability of amenities in their villages (e.g., bank, permanent market). Furthermore, the landless poor and landed non-poor seem to have similar likelihood of renting in land for cultivation.

Table 4.1 Poverty and land-holding status in Cambodia by zone and urban/rural sector in 2004

	Households with land			Households without land		
	%	Mean daily consumption per capita	Poverty rate (%)	%	Mean daily consumption per capita	Poverty rate (%)
National	72.2	2,794.8	34.8	27.8	5,191.7	19.4
Total Urban	32.6	4,033.8	28.6	67.4	7,593.7	8.9
Urban Phnom Penh	5.1	13,477.2	2.6	94.9	10,445.6	2.0
Urban Plains	41.2	3,902.7	19.9	58.8	7,333.6	4.7
Urban Tonle Sap	40.6	3,646.0	35.4	59.4	5,245.3	16.2
Urban Coastal	44.2	3,746.2	28.5	55.8	5,036.3	10.6
Urban Mountains	56.8	3,082.0	28.8	43.2	4,391.2	23.4
Rural Cambodia	79.0	2706.7	35.2	21.0	3,861.3	25.3
Rural PP	8.4	6,129.5	3.1	91.6	6,553.2	7.5
Rural Plains	80.9	2,957.7	28.7	19.1	3,154.8	28.2
Rural Tonle Sap	79.6	2,447.5	42.0	20.4	3,346.9	30.7
Rural coastal	90.6	2,772.3	29.4	9.4	4,492.0	7.9
Rural Mountains	89.5	2,117.6	51.1	10.5	3,229.6	40.4

Source: Van de Walle, "Land inequality in Cambodia," unpublished manuscript, the World Bank, 2007.

Table 4.2 Landless poor are not more disadvantaged than the landed poor

	Poor		**Non-poor**	
	landless	landed	landless	landed
Village characteristics				
% with Primary school in village	54.63	48.55	59.97	54.43
Distance to primary school (km)	1.48	2.49	1.44	1.90
% with lower secondary school in village	10.32	8.01	17.98	11.59
Distance to lower secondary school (km)	5.70	7.30	3.73	5.28
Distance to bus stop (km)	15.72	25.87	12.3	23.31
% with all weather road in village	78.54	69.68	81.8	74.84
Distance to all weather road (km)	2.86	4.62	2.7	3.58
% with a Bank in village	11.05	9.27	12.0	11.25
% with Agricultural extension agent in village	7.49	5.64	8.2	6.67
% with Permanent market in village	12.42	4.90	26.4	7.33
% with Development project in village	41.17	39.64	37.4	38.88
% with Land available for rent	82.00	74.18	69.70	76.33
Household characteristics				
Head's years of education	2.97	3.03	4.84	3.97
Spouse's years of education	1.41	1.63	2.75	2.29
Number of children	2.89	2.75	1.37	1.75
Number of elderly	0.13	0.18	0.43	0.24
Number of able bodied adults	2.48	2.81	2.56	2.60
observations	650	3303	1908	6120

Source: Van de Walle, "Land inequality in Cambodia," unpublished manuscript, the World Bank, 2007.

Landholding data from the MOPS research confirms this finding at the local scale, and seems to confirm the obvious explanation: the rich typically have more profitable and dependable sources of livelihood than farming. By extension, it is true that land distribution is not necessarily the best solution for *all* landless poor households: some,

like the rich landless, may have identified more promising non-land employment or livelihood opportunities. Finally, it is recognized that Government development strategy can and should seek to facilitate the gradual long-term transition of the population out of agriculture and into higher value-added manufacturing and service sector activities, and not seek to set in stone a pattern of subsistence-oriented low-input smallholder farming.

With all these considerations in mind, there remains a very strong case for using redistributive policy to improve the welfare of the rural landless poor (and, based on the evidence of smallholder productivity, to boost aggregate agricultural production). While the share of landless poor in the total population seems relatively small at 6 percent, in absolute terms the problem is considerable, and a serious challenge for Government. There were about 11 million people in rural areas, and therefore, over 600,000 people were in the ranks of the landless poor. Cambodia faces a tremendous challenge in ensuring productive employment for its rapidly expanding labor force. With rapid growth in the working age population as the post-Khmer Rouge and post-PRK baby booms grow into adulthood, and to date limited growth in non-agricultural employment or livelihood opportunities, the involuntarily landless are likely to suffer from much reduced opportunities and much increased vulnerability to poverty. Regional experience suggests that even under very favorable conditions, the growing off-farm economy absorbs labor only slowly. The share of employment in agriculture in Thailand and Indonesia in the 1970s was similar to that in Cambodia today (c. 65 percent). After thirty years of rapid (if variable) growth that has fundamentally transformed these economies, agriculture still employs 40-50 percent of all workers (Butzer *et al* 2003).

Government strategy recognizes the need for land redistribution

In attempting to bring land ownership and land management within the rule of law, the Government recognizes the need for a redistributive component, including in the Land Law a provision for "social land concessions" (SLCs) by which the Government would allocate state land to the poor for housing and agricultural use, with ownership rights granted after five years of continuous occupation and use. The design of the SLC program attempts to build on key lessons learned from previous international and Cambodian experiments in land distribution (see Box 4.3).

Are SLCs the best use of state lands for growth and employment?

Social land concessions have the potential to be an important component of Cambodia's overall agricultural development strategy. There is a strong rationale for redistribution from the perspective of employment generation and equity. Given increasing competition for land resources, particularly in the areas most suitable for agricultural development, it is then reasonable to ask how social land concessions can contribute directly to agricultural growth.

The first issue to be addressed is the potential for small farms to produce efficiently and profitably relative to larger farms. As mentioned above, overwhelming international evidence suggests that there is no dichotomy between growth and poverty reduction when it comes to defining preferable outcomes in terms of land distribution: in fact, small- and medium-sized family run farms are generally more efficient in terms of productivity per hectare than large commercial enterprises (see Heltberg 1998 for a review). The observed

predominance of large farms in developed countries is generally a consequence of the high costs of labor relative to capital compared to developing countries (Hazell 2001). In some developing countries, particularly in Latin America, the relatively large proportion of large farms reflects the legacy of policy distortions from the colonial and post-colonial periods which favored *haciendas*—creating the basis for continuing social unrest in a number of countries, such as Columbia (Binswanger, Deininger and Feder, 1995).

Box 4.3 Lessons learned and applied in Cambodia's land distribution program

*Lesson 1: Objectives need to look beyond just the transfer of land: for land to be effective in improving livelihoods, it requires complementary interventions (*access to basic services and infrastructure).

Lesson 2: Mechanisms for identifying land need to be based on local context and work efficiently. The decision to focus on redistributing state land presents several challenges: much is unsuitable for cultivation, under forest, already distributed as economic concessions, or informally occupied. For SLCs to succeed requires finding ways to recover illegally-claimed tracts and reach consensus on reallocation of specific state lands. Policy documents provide the basis for recovery, mapping and allocation of state lands, but it is not yet clear if these mechanisms can be implemented in a manner that meets all the desirable process criteria.

Lesson 3: Information, transparency and participation are essential in identifying land recipients. The credibility of land distribution depends largely on its integrity in selecting recipients (who must be both poor and landless or near-landless). This requires clear and relatively simple selection criteria, and engaging communities in a transparent process. Engaging third parties (farmer organizations, NGOs, religious authorities) can help. Finally, dispute resolution mechanisms are needed to deal with inevitable disagreements. The program can draw on mechanisms, developed in respect to other programs in Cambodia, to address these challenges.

Lesson 4: Let beneficiaries take the lead in the allocation of plots and land use planning.
The allocation of specific plots to households can be a source of conflict. The SLC approach to land reform requires groups, rather than government agencies, to take responsibility for the selection of land and how it is allocated amongst group members through a participatory land use planning process.

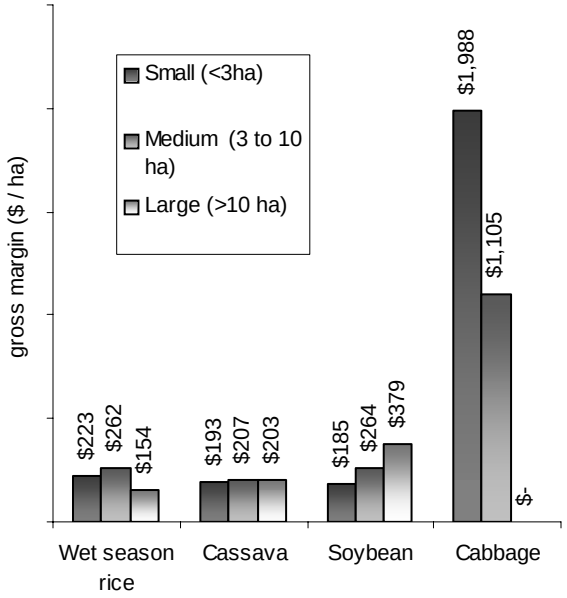
Lesson 5: Focus delivery of services and infrastructure at the local level
As with beneficiary selection, provision of complementary livelihoods investments and services is best organized at the local level through locally-based, participatory planning and delivery. For many complementary services, ensuring economic and political sustainability suggests that the best approach is one which emphasizes a proactive guarantee of inclusion and universalism, rather than narrow targeting to beneficiaries of the land redistribution.

Source: World Bank 2002; van den Brink *et al* 2006; Habib 2002, cited in Schonberger 2007.

There is limited systematic assessment of the issues or evidence related to farm size and productivity and broader agrarian structure in Cambodia. Initial results from enterprise models commissioned by the World Bank with MAFF indicate that even under very difficult conditions for factor markets (e.g. for credit on good terms), for most crops grown in Cambodia there are limited if any economies of scale in terms of land productivity (see Figure 4.2 above). When economies of scale are apparent in profitability for some crops, they are quite small (Figure 4.3), and outweighed in importance by significantly lower rates of employment utilization. Small farms can generate as much as five times more employment per hectare at similar levels of

productivity and profitability (MAFF). This holds true not only for traditional smallholder crops such as rice and vegetables, but also for a number of rapidly expanding cash crops such as cassava.

Figure 4.3 For most crops, there is no significant economy of scale effect



Source: CSES 2004

The primary challenge to a small farm-based approach is to improve the linkages of small farmers to the rest of the supply chain. Agriculture is increasingly moving towards higher value-added products based on closely integrated supply chains to control quality and timing of production. Small farmers have been able to integrate into these supply chains when they have been effectively organized through farmer associations and/or through contracting arrangements with processors or aggregators. Cambodia has limited but important experience with contract farming, and extensive experience with informal aggregators supplying processors across the Vietnamese and Thai borders. In addition, increasing attention is being focused on developing farmer associations which can reduce the cost for processors and marketers to engage with small farmers, as well as to better defend the interests of farmers in contracting negotiations and accessing input markets (ibid).

Social land concessions alone cannot provide the basis for improved agricultural growth and employment, but neither can economic land concessions. Both social and economic land concessions are simply mechanisms for intensifying land use: one is based on labor and the other on expected capital investments (see Hiyami in SNEC 2005). In both cases, their success will depend largely on their ability to integrate into higher value supply chains. These, in turn, require improvements in the investment climate and infrastructure which will attract additional investment into the downstream links such as processing, transport and marketing. Experience from numerous countries, particularly in Southeast Asia, has demonstrated that either a small or large farm approach can work when the downstream investment is in place (Swinnen). Government may therefore wish

to focus, as have several countries in Southeast Asia, on facilitating domestic and foreign capital investment into agricultural processing, transport and marketing, rather than focus almost exclusively on primary production (which can be implemented as efficiently by small farmers). Alternatively, or as a complement, Government can prioritize investments in transport and communications infrastructure in order to better integrate into the expanding regional production networks which can improve linkages between Cambodian farmers and processors and markets in East Asia.

To summarize, the allocation of land for social land concessions over other, more extensive approaches to intensification of land use is not a trade-off between growth and poverty reduction. Rather it is a choice between prioritizing the use of Cambodian employment relative to imported machinery and labor in improving land use for agricultural growth. As the review of international experience with land distribution programs highlights, to obtain both the additional employment benefits and growth through land redistribution requires that the Government take a much more proactive role in supporting investment and service delivery (particularly during the initial years of redistribution) than would be required if the Government opted instead for leasing land for plantations. However, if complemented with improvements in the investment climate and linkages to regional production networks for processing and marketing, social land concessions can support the effective integration of land recipients, along with the other 90 percent of Cambodia's farmers with less than three hectares, into a growing agricultural sector, with significantly greater effects in terms of growth, employment and poverty reduction.

Land titles and agricultural development

Conventionally, secure title to land is seen as very important for economic development. Clear property rights backed up by impartial courts are seen as critical underpinnings of a market economy. Without such security of tenure, it is argued, those working the land will be unwilling to invest in productivity-enhancing improvements (irrigation, land improvement such as leveling, etc.) or diversify production into more profitable cash crops, especially perennial crops such as fruit trees which require considerable investment and a lag of several years before yielding a harvest. There is also an argument that secure title makes it easier to use land as collateral: thus, formal title may make it possible to obtain a loan when one wouldn't have been obtained before, or it may improve the terms of a loan, as borrowers pay a premium to obtain money against un-titled land.

Amongst those owning land, the rich are more likely than the poor to possess papers—although undocumented ownership is high for both

Table 4.3 shows that the proportion of plots or percentage of operating area held with some forms of papers as proof of ownership increases steadily with wealth (per capita consumption). Amongst the poorest quintile, 40 percent of land is held with papers; amongst the richest quintile, just under 60 percent of is held with such papers. Thus, a significantly larger proportion of wealthier households enjoy the greater security of land tenure that comes with documentation. However, it is also worth noting the even amongst the rich, a significant proportion of land (40 percent) is held without papers.

Table 4.3 The richest are 50 percent more likely than the poor to possess papers supporting land ownership

- Distribution of paper proofs of land ownership, 2004

land held with some form of land paper as proof of ownership	Poorest	Next poorest	Middle	Next richest	Richest	All
% of operating area within each quintile	40.9	50.8	55.0	63.1	59.8	54.5

Source: CSES 2004 (15-month sample)

Note: papers refer to application receipts, land investigation papers, certificates/titles, contracts, others.

Land titles and legal pluralism

Greater tenure security for small farmers in Cambodia, in the form of universal possession of formal land titles, would undoubtedly be beneficial. However, the current baseline or control situation—that in which land title is available for only a proportion of all plots—may not be at present be as restrictive as theory would suggest. Tenure in Cambodia is arguably more secure than might be assumed given the fact that few households have formal title (Adler *et al* 2007 p.7). While land disputes are common and high profile, it is hard to substantiate a picture of general tenure insecurity (Box 4.4).

Box 4.4 In much of the Cambodian countryside, land markets appear to work reasonably—for now—despite weak or non-existent titles

In CSES 2004, only 1.8 percent of plots are reported as having ever been subject to a conflict. Of these disputes, two thirds would appear to be minor, having been resolved (presumably at the local level) within three months. Although only 49 percent of plots are reported as having any paper proof of ownership (including titles and receipts for title applications), 77 percent of plots are reported as being usable as collateral for a loan. These findings are supported by a variety of qualitative and quantitative sources which show that in much of the countryside, land is bought, sold, rented and used as collateral without formal title. Thus the Tonle Sap PPA found that in much of Cambodia, locally-accepted *de facto* ownership suffices under normal circumstances: *"In most villages, the traditional land titles over residential and farm land seems to be fairly well established and generally accepted as collateral for loans and for financial transactions, such as sale, lease or other. Many of the villagers do not have land titles, but this is rarely mentioned as an obstacle."* (CDRI 2007a p. 156)

Research suggests that, rather than constituting a general problem, tenure insecurity is concentrated among vulnerable groups, particularly poorer households who occupy lands outside of core residential or farming zones, such as those which are or were forests, flood plains, seasonal lakes, marshes and informal urban settlements—that is, land contested by the state (WB/CAS 2006a, 2006b; O'Leary 2005).

One of the key characteristics of these vulnerable areas—and the poor within them—is that land use here is subject to different, conflicting sets of principles and norms regarding land rights. Case study research suggests at least three sets of norms are at work. The first is that of *social norms*, or "living law": the historical concept of usufruct—namely, the idea that vacant land can be occupied and that the act of farming land gives rise to ongoing usage rights—is deeply embedded (despite civil war and changes in state law) in rural Cambodian perspectives and practices. Secondly, contested

land is often the object of *neo-patrimonial administrative conventions*, deriving from both previous regulatory regimes and from informal state practices that empower government officials at various levels to authorize transactions over lands within their administrative jurisdiction. Finally, lands that are under conflict are, as with all land in Cambodia, subject to *formal statute*, in the form of legal principles derived from the 2001 Land Law and other regulations currently in force.

Social norms of usufruct were both reaffirmed and limited by the 2001 Land Law which converted possession rights into ownership in certain cases. At the same time, however, the 2001 law restricted legal possession of other lands, most notably 'state public land' and lands which entered into private possession after the promulgation of the law. But the 2001 Law is far from being implemented systematically. As such, it is unable to take on the role which Law plays (theoretically) in a liberal democracy—that of establishing the meta-norm around which all other norms should harmonize. Instead, the Law becomes one of a number of competing norms and practices to which people may turn in their struggles to secure land rights (CAS/WB 2006a). Where these different sets of norms—social, administrative and statutory—line up, there is little conflict and efforts at formalization run smoothly. Where, however, these sets of norms compete, conflict arises, with conflicting parties basing their claims on different normative orders. Competing claims emerge even where none appear to be 'legal' in the narrow sense of the word. The problem, from an equity perspective, with the emergence of these sorts of 'competing (il)legalities' is that elites are often better able to 'forum shop'—that is, select the normative framework which is most likely to legitimize their claims[1].

Do titles promote investment in land?

One of the key arguments in the case for systematic land titling is, as outlined above, that households will invest in productivity-enhancing capital improvements if they have the confidence that their land is not at risk of appropriation. This section first examines levels and patterns of household investment in agriculture, before then examining whether it is possible to trace a link between this and possession of a land title.

Household investments in agriculture

Amongst the poorest quintile, one third make substantial capital inputs in their land to improve quality and productivity through terracing, construction of ditches or bunds, planting perennial crops, or using better seeds, fertilizer, and pesticide. ("Substantial" is defined here as investment per hectare over the median average value.) Amongst the richest households, the proportion is roughly twice as high. Irrigation may be taken as an indicator of either long-term household-level capital investment in land (albeit a slightly less definitive one) and / or as willingness to pay for annual inputs (see Box 4.5). The disparity of access to irrigation among quintiles is apparent but not very significant: about 41 percent of households in the richest quintile, compared to 27 percent in the

[1] The "legal pluralism" seen in Cambodia is far from exceptional: see for example Wardell 2006 on how formal law provides a "significant, though not exclusive" reference point around which negotiations over rights and duties takes place in respect to forest law in Africa; or Moser *et al* 2001on interactions between levels in a hierarchy of "rights regimes" (pp. 21-31).

poorest quintile, irrigated at least half of their plots. This pattern of investments in capital inputs and irrigations mirrors the pattern of land tenure security as a result of some paper proof of ownership (Table 4.4).

Box 4.5 Interpreting household-level irrigation data

The cost of irrigation has both public and private components, and capital and recurrent components. In Cambodia irrigation structures such as canals are largely built by Government, donors or NGOs; as such, whether or not a household is located in usable proximity to a source of water may have nothing to do with household wealth or spending. (In fact, the causality may run the other direction: households fortunate enough to own irrigable land next to a water body are more likely to be non-poor.) However, getting water into fields often does require an additional household-level investment in a water wheel or scoop (and the labor required to use it) or a pump (and the petrol required to run it). Ownership of water pumps is four times as high amongst the non-poor (12 percent) than amongst the poor (3 percent: World Bank 2006 p. 90, based on CSES 2004).

Similarly, while purchase of a pump could be taken as a one-off and long-term investment, fuel and maintenance (or hiring a pump) would be regarded as a recurrent cost. Household data on use of irrigation may thus be taken as in part a capital investment (although, as a movable asset that can be rented out or sold if the owner cannot use it, a pump is not a very precise indicator of fixed investment in land); and in part as an indicator of ability and willingness to make recurrent investment.

Table 4.4 Secure land tenure is positively correlated with land investments

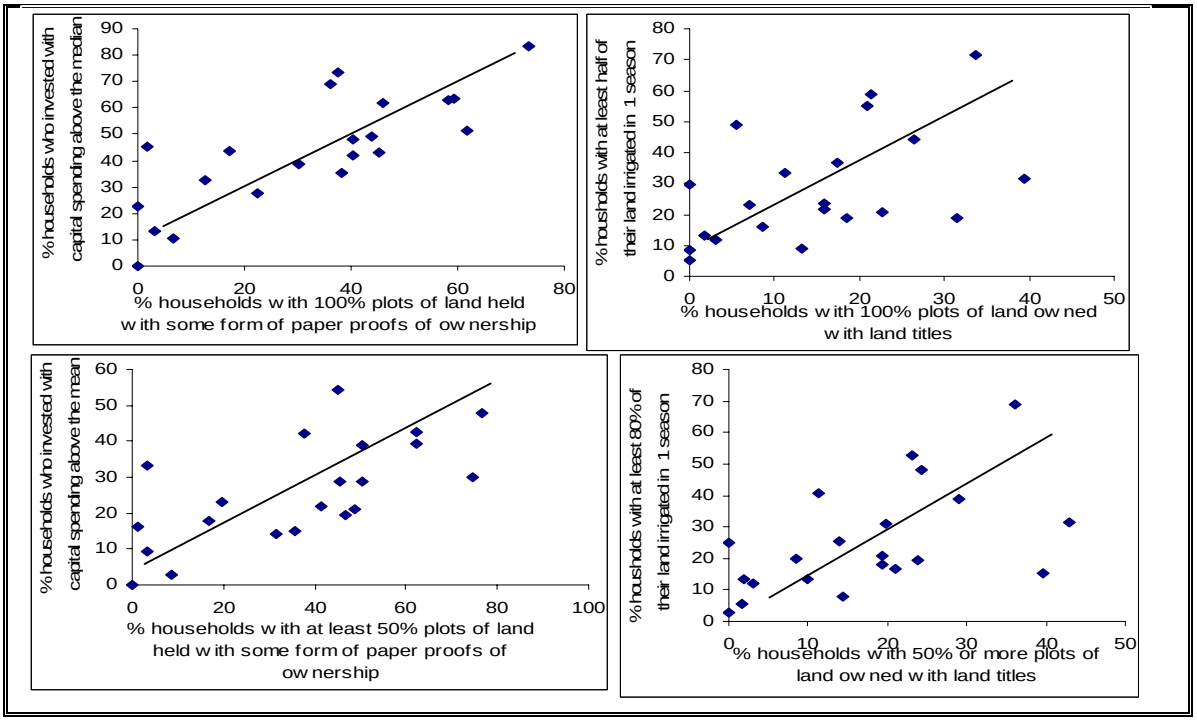
% rural households within each quintile with	Quintile of rural households					All
	Poorest	Next poorest	Middle	Next richest	Richest	
% of operating area held with some paper proof of ownership within each quintile	40.9	50.8	55.0	63.1	59.8	54.5
capital spending per hectare greater than the average (median) level within each quintile	35.6	43.4	51.0	59.5	67.0	51.3
at least half of the operated plots irrigated within each quintile	27.0	30.3	33.4	38.4	41.2	34.1

Source: CSES 2004 (15-month sample)

Two interesting findings emerge. First, the patterns are remarkably persistent in both measures of investment. Second, the differential likelihood of investment between the richest and poorest quartiles was only 30 percentage points. Specifically, the probability (67 percent) that a household in the richest quintile would invest at above-average rates was nearly twice the likelihood (36 percent) of a household in the poorest quartile. However, this is a much smaller gap considering that the consumption of the richest quintile is 5 times that of the poorest quintile. The contrast with wealth-based differentials in household spending on health and education (in economic terms, investment in human capital) is striking: households in the richest quintile are found to spend on average 19 times as much as the poorest quintile on health care, and 25 times as much on education (see Chapter 6 below).

That investment in agriculture is only weakly related to the spending power of households is somewhat counter-intuitive. One would expect that the marginal propensity to save and invest would be much greater among the rich, given the ratio in average consumption between the richest and poorest quartiles. On the other hand, this empirical puzzle is fully consistent with the hypothesis that secure land tenure is the primary incentive for land investments, regardless of one's wealth or income status. Using the variations across provinces, we find a significantly positive and robust relationship between security of land tenure and a number of investment measures. Thus, secure land tenure is positively correlated with land investments. In provinces with greater proportion of households holding some paper proof of ownership which is synonymous with secure land tenure, investments in capital inputs and investments in irrigations are significantly higher.

Figure 4.4 The relationship between investments and secure land titles



Source: Cambodia Socio-economic Survey 2003-04 (15-month sample)

A simulation of the potential impact of land titling

In this section, we carry out a simple simulation exercise to estimate the impact of land titling on poverty. We only allow the impact to work through increased productivity in crop agriculture, and is based on the effects of titling on agricultural productivity. We assume that land title enhances yields, measured by value of output per hectare, by 73 percent than plots without titles. We further assume that titling affects only income from crop agriculture. Details of the mechanics of the simulations are presented in Annex 3. Table 4.5 shows the estimated impact of titling programs of varying coverage or size. We consider a few scenarios for the progress of the titling program. The current

coverage or size of the LMAP is about titling 650,000 titles. The model estimates that the LMAP will lift about 280,000 people out of poverty, which is equivalent to reducing the national poverty rate by between one and two percentage points. Complete titling of 2.5 million would, according to the model, lift between a half and one million people out of poverty, reducing the national poverty rate by 4 to 8 percentage points. Naturally, these effects will not occur overnight. It is likely to take several years for the effects of titling to work their way through investment and access to credit and trade, through productivity growth, to increased income and consumption.

Table 4.5 Simulated effect of titling programs on poverty

Number of titles issued	*Number of households affected*	*Number of households escaping poverty*	*Number of individuals escaping poverty*	Change in national poverty rate, percentage point changes
650,000	361,988	50,135	284,924	-2.19
1,000,000	556,904	77,131	438,345	-3.36
2,000,000	1,113,808	154,262	876,690	-6.73
2,500,000	1,392,260	192,828	1,095,863	-8.41

Source: CSES 2004

The model in this simulation exercises is rather conservative (i.e., providing the lower bound of the effects) and ignores many potentially important and positive effects of titling, e.g., multiplier effects, effects on other non-crop income, network and general equilibrium effects (see details in the Annex).

The current pace and coverage of the LMAP would have only titled on average about 125,000 titles a year, and attained titling of 26 percent of total plots in the country by the Project's completion year at the end of 2007. The potential productivity and income gains are sizable that warrants a serious consideration of expanding the systemic titling program more intensively and comprehensively into every part of the country. Nonetheless, to maximize gains for the poor, incentives of land cadastral must be aligned to map, register, and title even in remote or isolated areas. It is also important to resolve the issue that a large tract of the land operated by the poor is deemed state land or illegal settlement, and therefore, is excluded from the systemic titling program.

Systematic titling appears likely to deliver significant benefits

The Royal Government is currently engaged in a large-scale program of systematic land titling under the Land Management and Administration Project (LMAP), supported by the World Bank and other donors[2]. Having contributed to strengthened policy and regulatory frameworks and institutional development in the land sector, LMAP began to

[2] LMAP is conceived as the first phase in the Government's 15-year Land Administration, Management and Distribution Program (LAMDP), which explicitly emphasizes equity goals in its three objectives ("strengthen land tenure security and land markets, prevent and resolve land disputes; manage land and natural resources in an equitable, sustainable and efficient manner; promote land distribution with equity").

distribute titles in 2004. In 2006, 300,000 titles were issued, bringing the cumulative total to almost 1 million.

It is too early to assess the impact of this systematic titling approach: the program only started in 2004, and the full extent of behavioral changes is likely to take more that two years to emerge. That said, it is possible to obtain some early insights into perceptions of impact, and perhaps some preliminary and suggestive indicators of emerging actual impact. The value of LMAP, and a more nuanced understanding of its likely effects in different places and over time, can be summarized in Box 4.6.

Box 4.6 Systematic titling has positive effects, which can be expected to increase with time and with the extension of the program into more remote and less densely-populated areas

At this relatively early stage in systematic titling and on the basis of a quick and light study, it is possible to draw some preliminary conclusions with regard to impact to date, likely effects over the longer term, and changes needed to increase the benefits to poor households. The LMAP titling process functions well in the villages it reaches, and appears to confer clear benefits:

- Titles are seen to reduce land conflict and increase tenure security for almost all respondents.
- Titles make it easier to sell land to buyers from outside the local community, although the high tax for registration is a major concern. Titles probably have a moderate, positive effect on land values.

Some other aspects of post-titling behaviour are not as anticipated, and some of the other benefits often attributed to the creation of property rights are not yet apparent:

- It is uncommon to register titled land with cadastral authorities following sale: rather villagers are selling property by physically handing over the title under cover of contracts witnessed by local authorities. The most important reason for the lack of registration is that households expect to pay a high and unpredictable tax for registering sales. It does not signal that households do not value titles or that titles do not affect behaviour.
- Even before titling and in areas still without titles, credit markets have been active, formal lenders play a significant role, and the practice of putting down land as collateral for loans is common, both with formal and informal lenders. Thus, receipt of title does not create credit markets where they did not exist before. However, credit is very expensive and titles appear to have a moderate but definitely positive effect on access to credit at reasonable prices.

With a few important exceptions, respondents do not yet perceive an effect of titles on agricultural production and welfare. However, given the impact on tenure security and conflict and the more minor but nonetheless positive influence on credit and land markets, it is reasonable to expect these benefits to feed through into positive effects on production and welfare outcomes in the longer term.

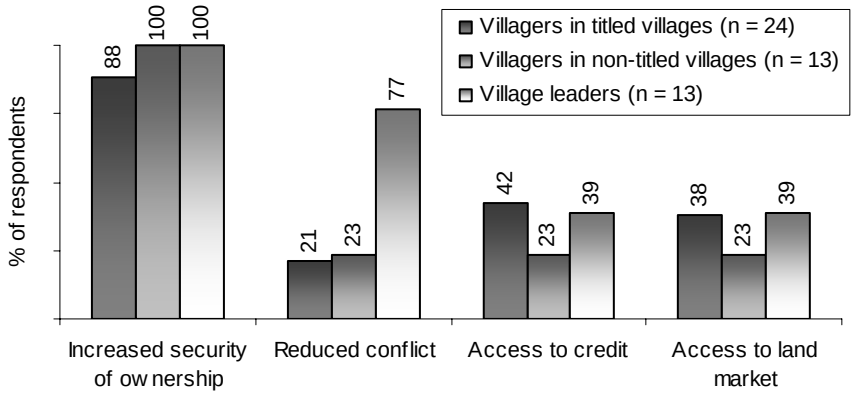
The decision to develop procedures for systematic titling in areas in which the process is least likely to be contentious makes good sense. As a result, however, at present the program seems to reach poor and conflict affected areas last, and leaves significant areas of household-operated, agricultural land untitled because it is claimed by the state. Fees for titling make it difficult for poor households with large plots to participate in the program.

Public opinion is favorable

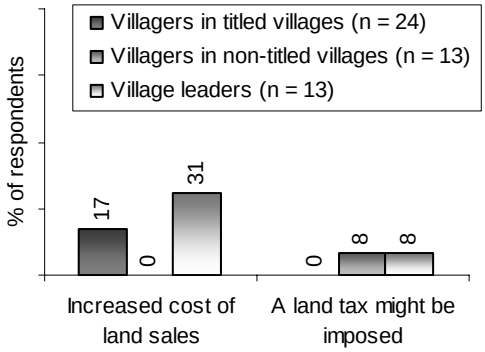
As might be expected, there is general enthusiasm for land titles. Villagers and local authorities perceive a number of benefits and limited disadvantages to land title (Figure 4.5). Although the numbers of respondents are very small, these findings are at least suggestive of how titles are perceived, both by those who have them and those who do not yet have them.

Figure 4.5 The benefits of title are clearly seen to outweigh any problems

a. % of respondents who mention the impact in response to the open question "Do you see any benefits of land titles?" (no prompts provided)



b. % of respondents who mention the impact in response to the open question "Do you see any disadvantages of land titles?" (no prompts provided)



Source: Markussen 2007 pp. 14-15

Beyond a general enthusiasm for titles in principle, households that had received titles over through systematic titling were also very positive of the LMAP process. While there were minor grumbles about the accuracy of the boundary mapping in a few cases, there was no evidence of elite capture or corruption.

Amongst the general public, too, perceptions of the benefits of a land title are overwhelmingly positive, with almost everyone expressing a belief that title conferred

benefits (see Table 4.6). This reflects opinion amongst both those who have already acquired title and those who have not. The primary concern is that the process of obtaining title was difficult and expensive. Given the numbers who perceived this problem, this perception probably reflects experience of previous titling schemes and the *expectation* of difficulties, rather than actual experience (direct or relayed by others) with the contemporary process of systematic titling.

Table 4.6 Public perceptions of land titling are unambiguously positive

Statement (read out to respondent)	% respondents who agree
It's better to have land titles than not	98.7
Land titles signifies ownership and nobody can take it away against his/her will	97.6
Land titles help secure loans or credit	98.5
Land titles can be passed on to your children	99.4
Land titles facilitate leasing out land	94.4
Land titles increase sale prices of land	97.6
Land titles are difficult and expensive to obtain	69.3
Land titles complicate sales or transactions	5.6

Source: IRL 2007 p.

Titles are seen to improve tenure security and reduce the likelihood of conflict

For most recipients, land title appears to further strengthen an already robust feeling of ownership security. For a minority of households, however, it may have a more significant effect in conferring security when before there were reasons to fear that the land could be claimed by someone else (see Box 4.7). Many recipients emphasize that the titles would ensure that in the future they can pass their land on as inheritence to their children.

Box 4.7 Among recipients, titles are perceived as improving tenure security

Case 1: A rich household in Tuol Lveang village, Battambang, owns 9 ha of agricultural land. The land was acquired already in the early 1990s, and the household has constantly worried that some of the plots would be confiscated by the state, because the holding is unusually large. After receiving titles, the household no longer worries.

Case 2: A woman from Kandal recently bought land in Tek Thear village, Kompong Speu. She only lives there for a few months each year. She is on good terms with the villagers, but is still very keen to receive titles as soon as possible. Land prices in the area are going up, and she is worried that powerful outsiders may try to take her land. She expects that titles will protect her "even against powerful people, against whom local authorities are of no use".

Case 3: A household in Sla village, Kompong Speu had a longstanding conflict over a plot of land with a cousin of the wife in the household. The conflict could not be resolved during the LMAP titling process, and has been sent to the national Conflict Resolution Committee. The household is happy about the titles they received for other plots, and are keen to get a title for the plot in dispute. They expect titles to prevent such disputes in the future.

Source: Markussen 2007 p. 16.

Conflicts may actually rise during the process of systematic titling, as the mapping that precedes distribution of titles may bring latent conflicts to the surface. However, the impression is that (i) most of these appear to be resolved at the local level with assistance from local officials and LMAP staff; and (ii) once titling is completed, the level of land conflicts has fallen to significantly below the level seen before titling. It is too early to tell whether titles will prevent conflict in the long term as competition for land increases further, especially given ongoing weaknesses in the judicial system. At this point, however, titles are clearly seen as much stronger proof of ownership, with the critical advantage that the titles specify plot boundaries in a way that other documents do not.

Recipients perceive land titles to improve access to credit

As mentioned above, credit markets do function in rural Cambodia and land can be used as collateral even without documents proving ownership. However, rural households interviewed perceived titles as improving the terms of access to credit: and collateralized loans (on terms that are better than those for loans obtained without collateral) appear to have increased in the wake of titling in the villages he visited. Title may enable a household to obtain a loan from a formal lender, when in the absence of a title the household might have been able to borrow only from an informal lender, at higher interest rates. Alternatively, title may enable households to borrow from an informal lender who might not have loaned money without a land title as collateral.

Titles do appear to have advantages over existing documents

Given that the benefits of "title" derived from the CSES 2004 should probably be read as effects of application receipts rather than full titles[3], this raises the question: if Cambodia already had a reasonably effective system of "quasi-formal" property rights to land before the LMAP titling program, does it actually need these new titles? It would be cheaper to issue documents similar to application receipts to those 52 percent of plots which, according to CSES 2004, are not held with any paper.

It seems likely that the new titles do in fact mark a significant improvement over earlier forms of "ownership" document (and application receipts in particular) in several respects. Firstly, several households may have application receipts for the same plot. Secondly, application receipts do not specify plot boundaries and so will not help prevent or resolve boundary conflicts. Thirdly, in transactions with people from outside the local community, application receipts will sometimes not provide sufficiently strong documentation of ownership for the buyer (although under some circumstances they will). Fourthly, in legal terms application receipts represent evidence but not proof of ownership. This is of minor concern to most rural households, as using the courts to resolve disputes is generally not considered a realistic option: nonetheless, case studies suggest that people perceive that application receipts have a weaker deterrent effect than titles against would-be land grabbers from outside the local community. Finally, it is easier to obtain loans from formal lenders with titles than with receipts.

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[3] By the end of 2004—the year in which the CSES was conducted—only one percent of all plots in Cambodia would have been covered by titles allocated through the systematic process. As such, the odds of LMAP-titled plots being recorded in CSES was extremely slim.

These observations suggest that the older application receipts do not adequately prepare Cambodia for a future in which land market interactions between strangers (people not from the same community) will become steadily more important. Land titles of the kind now being distributed through the systematic titling program do have the potential to fulfil this role (Markussen 2007 pp. 7-8).

Trade-offs in process: pursuing equitable development through interim institutions

To begin with, it needs to be recognized that land titling alone cannot be an adequate solution to the challenge of promoting equitable, efficient land management that promotes pro-poor growth. On its own, titling could be argued to be inherently regressive, in that households benefit in proportion to the amount of land they own, and the program has no direct effect on the welfare of the landless.

A number of pieces of evidence point to LMAP and the systematic titling process it supports having a positive impact in the areas it has covered to date. Such an approach, which sets out to title all land in a Commune at one time (hence "systematic"), seems to be clearly superior to earlier attempts to title land through "sporadic", on-demand titling, which suffered from capacity constraints and high fees, such that only a little land (predominantly that held by the rich) was titled. In that the landed poor tend to be the losers in conflicts over land ownership, providing them with strong titles is likely to improve their ability to retain their key productive asset in the face of increasing competition over land resources. A minor concern is that the area-based formula for the calculation of titling fees, while not excessive, may deter applications from poor households with large plots.

However, the more important consideration is whether the success of the program so far in part reflects some deliberate choices regarding the process of implementation. These choices have arguably limited the impact of systematic titling on the most vulnerable landholders—and thus on equity—*to date*. In most Provinces, LMAP has started out in the more long-settled, more productive and probably better-off rice-growing communities close to the provincial town; and seems likely to reach remote, recently-cleared areas, which are poorest and most prone to land conflicts, last. This sequencing reflects incentives in the administration of the titling process: fees are paid to the titling teams based on the area of the plot, leading to a preference to work first in areas with a large number of small, easy-to-measure plots and a low incidence of land conflicts (as titling can only proceed once conflicts are resolved). Adler *et al* argue that systematic titling has so far succeeded largely as a formalization of reasonably well-established local understandings of land ownership. In other words, it has succeeded in bringing local "legal" understanding and practice into alignment with formal, Government law through a process of transparent and structured negotiation, in which inclusion of the poor (i.e. equitable process) is supported by the provision of information and processes to facilitate their participation.

This approach makes sense from a long-term perspective that, informed by considerations of the political economy of land and the policy process, emphasizes the importance of creating improved (transparent, rules-based) institutions for formalizing land rights. These institutions need to be given time to develop technical capacity,

independence and legitimacy. This is best achieved by focusing first on the relatively more tractable, densely-populated core regions of the country, before taking on the contentious areas on the forest frontier where widespread encroachment of local populations, based on traditional concepts of usufruct, are in direct contradiction to (i) state law that classifies these lands as "state public" or "state private" land and (ii) national and sub-national authorities' assumption of the right to distribute these lands to commercial interests, generally on an informal, neo-patrimonial basis only tenuously rooted in the law. A somewhat sobering conclusion is that reform initiatives that either consciously or unconsciously seek to create sustainable institutional improvements as a precondition for equitable development in the long term—the approach described by Adler *et al* in terms of a focus on "interim institutional arrangements"—probably do *not* target the poor in their initial stages.

Some recommendations for building upon the gains achieved by LMAP to date include

- changing the fee policy so that it lowers the rate charged for poor quality land, reducing the cost barrier for poor households seeking to register large plots with low productivity.
- changing the compensation schedule for LMAP titling teams to create incentives for them to visit remoter, less densely populated areas with lower productivity (for example, by basing pay on the area titled as well as the number of plots). And,
- engaging with the reclassification of state lands in order for titling to benefit the poor living in remoter areas on the land frontier. A comprehensive policy framework for land management, and one that would serve growth and equity objectives simultaneously, is therefore likely to require a complex process of integrating titling and redistribution processes.

Other policy recommendations would include to conduct more rigorous review of the status of the economic land concessions, so that those which are not in compliance with the law (because they are too large, or have not conducted environmental or social impact assessments, or overlap with a cancelled forest concession, or are not active) are cancelled and reallocated to alternative, productive uses; and, related to this, that Government and partners work together to identify ways of putting the social land concessions principles into operation.