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# The Political Economy of **Land Governance** in **Cambodia**

Natalia Scurrah and Philip Hirsch

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November 2015

[Front cover photo: Swiss Agency for Development Cooperation SDC]

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# ABBREVIATIONS

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ADB	Asian Development Bank
CDC	Cambodian Development Council
CLMV	Cambodia, Laos, Myanmar, Viet Nam
CPP	Cambodian People's Party
DFID	Department for International Development
EIA	Environmental Impact Assessment
ELC	Economic Land Concession
FDI	Foreign Direct Investment
LMAP	Land Management and Administration Program
MAFF	Ministry of Agriculture Forestry and Fisheries
MIME	Ministry of Mines and Energy
MLMUPC	Ministry of Land Management, Urban Planning and Construction
MOE	Ministry of Environment
NA	National Assembly
SDC	Swiss Agency For Development Cooperation
SLC	Social Land Concessions
SLR	Systematic Land Registration
UNDP	United Nations Development Program
US	United States
WB	World Bank

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# INTRODUCTION

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Land governance is an inherently political-economic issue. This report on Cambodia is one of a series of country reports on Cambodia, Laos, Myanmar and Viet Nam (CLMV) that seek to present country-level analyses of the political economy of land governance.

The country level analysis addresses land governance in Cambodia in two ways. First, it summarises what the existing body of knowledge tells us about power and configurations that shape access to and exclusion from land, particularly among smallholders, the rural poor, ethnic minorities and women. Second, it draws upon existing literature and expert assessment to provide a preliminary analysis of the openings for and obstacles to land governance reform afforded by the political economic structures and dynamics of each country.

The premise of this analysis is that existing configurations of social, political, administrative and economic power lead to unequal distribution of land and related resources. They also produce outcomes that are socially exclusionary, environmentally unsustainable and economically inefficient. Power imbalances at various levels of society result in growing insecurity of land tenure, loss of access to resources by smallholders, increasing food and livelihood insecurity, and human rights abuses. The first part of this analysis explains why, how and with what results for different groups these exclusionary arrangements and outcomes are occurring.

In recognition of the problems associated with existing land governance arrangements, a number of reform initiatives are underway in the Mekong Region. Most of these initiatives seek to enhance security of access to land by disadvantaged groups. All the initiatives work within existing structures of power, and the second part of the analysis discusses the potential opportunities and constraints afforded by the existing arrangements.

This country report commences with a brief identification of the political-economic context that sets the parameters for existing land governance and for reform in Cambodia. It then explores the political-economic dynamics of land relations and identifies key transitions in land relations that affect access to land and tenure security for smallholders. Finally, the report discusses key openings for, and constraints to, land governance reform.

Cambodia is marked by growing inequalities in wealth, reflected by unequal access to land. This is the case despite the redistribution of land in the 1980s based on household size and number of labourers. Cambodia is also characterised by limited formal recognition of land tenure in areas where potential for conflict and dispossession is greatest. In the absence of large-scale land concessions, a degree of land security is afforded by a customary tenure regime that gives farmers possession rights over cultivated land. However, such rights of possession have been insufficient to protect farmers from state sanctioned land grabbing. The granting of large land concessions to powerful actors for agribusiness and resource extraction, as well as smaller scale dispossession and accumulation by local elites, provide the key context for land grabbing and tenure insecurity.

# THE POLITICAL-ECONOMIC CONTEXT OF LAND GOVERNANCE

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## HISTORY AND KEY TRANSITIONS IN LAND RELATIONS

Cambodia has historically been a country of land abundance relative to its population. It has also been a country in which the overwhelming majority of the population has been rural, producing primarily for subsistence on family landholdings. Today, the majority of Cambodia's 15.2 million people are engaged in some form of agriculture. While agriculture remains the backbone of Cambodia's economy, contributing some 36 per cent to Gross Domestic Product (GDP) and employing 55 per cent of the workforce (RATE 2012), demographic pressures, growing land scarcity and lack of investment in the sector has placed limits on agriculture's capacity to absorb a growing labour force (Diepart et al. 2014).

Contemporary peasant conceptions of land tenure security are traceable to traditional Khmer rural codes from pre-colonial times. Under the concept of "Land to the Tiller" the King was owner of all land, but farmers could claim rights to land by clearing, settling and cultivating land for a period of time (Diepart 2015a). Farmers acquired "possession rights" to a piece of land for subsistence provided they continued to till the land. Institutions for collective use and management of common property resources such as forests, grazing land and fisheries were also created in this early period. These historical customary norms for acquiring, using and managing private and communal land continue to shape peasant conceptions of land tenure, and form the basis of present day claims to land (ibid; Adler & So 2012).

Under the French Protectorate (1863-1953), the notion of private land ownership was introduced, which formed a subtle but important distinction between "possession rights" (paukeas) and "ownership rights" (kamaset) (Diepart 2015a: 8). Whereas "possession" rights

maintained a close association between land use and land tenure, "ownership" was an inalienable right to land irrespective its use. Land "ownership" established through formal registration was limited to areas enclosed by French-owned forest and rubber concessions. As discussed in following sections, the distinction between "ownership" and "possession" rights has formed a governance tension in land titling programs which have sought to upgrade possession rights to ownership rights. In particular, the State has been reluctant to recognise de facto possession rights of smallholders, effectively excluding many people from the right to own land.

The legal basis for private property rights introduced by the French was maintained after Cambodia gained independence in 1954. However, there was little progress in formal registration of land (Hall et al. 2011) and no new concessions were granted to foreign investors (Byerlee 2014). Landlessness increased from four per cent in 1950 to 20 per cent in 1970 (Hall et al. 2011: 209). It was exacerbated by the massive dislocation of people from rural areas in the 1970s as a result of civil conflict and bombing by the United States. Throughout the post-independence Sihanouk and Lon Nol period (1954-75), land continued to be cleared, cultivated and claimed by farmers through customary arrangements that predated the introduction of the private property system.

From 1975 to 1979, Cambodia experienced one of the twentieth century's most fundamental upheavals in socialisation of landholding under direction of the Khmer Rouge. The Democratic Kampuchea regime imposed a radical program to reconstruct Cambodia, which involved geographically uprooting the population from where they previously farmed and forcing them to work on large collective farms. The urban population was also relocated to the countryside and forced to work on collective farms. All pre-existing land tenure systems were erased and land records were destroyed.



“TODAY, THE MAJORITY OF CAMBODIA’S 15.2 MILLION PEOPLE ARE ENGAGED IN SOME FORM OF AGRICULTURE”

[PHOTO CREDIT: SDC]

Immediately following Viet Nam occupation and the ousting of the Khmer Rouge, people displaced during the Democratic Kampuchea period drifted in search of land to resettle. Many people went back to their previous home villages to try to reclaim land and other belongings. Contrary to common perceptions of a complete break in people’s pre-1975 patterns of land holding, Diepart argues that a degree of continuity from the pre-war land relations is more likely as “the majority of people were reintegrated within the village they had occupied prior to 1975” (Diepart 2015a:10).

The Viet Nam-backed People’s Republic of Kampuchea government introduced “solidarity groups” (krom samakhi), a new collective unit of agricultural production comprising 10-15 families who farmed land collectively. A considerable degree of flexibility was afforded in determining the extent to which communal arrangements applied, and it was not long before the krom samakhi system was abandoned in favour of private household farming. According to the rules passed down from the Central Party, land was to be distributed to households within the krom samakhi according to household size and the number of active labour units. However, there was considerable discretion in the implementation of these rules by local authorities, leading to new patterns of differentiation (ibid).

Following the 1991 Paris Peace Agreements, the United Nations Transitional Authority in Cambodia (UNTAC) brought stability to the country and installed a new political economic regime. The 1993 Constitution formalised Cambodia as a multi-party democratic system under constitutional monarchy and a market economy. The first land law for this period was promulgated in 1992, affirming that all land belonged to the State and allowing only “possession” rights. A programme of sporadic (applicant initiated) land titling commenced which encouraged people to apply for occupancy certificates. However, due to complexities in the registration process and various irregularities, only ten per cent of 4.2 million applications received resulted in certificates (Biddulph 2014).

The 1990s was marked by growing inequality and landlessness. This was partly due to the rapid development of a land market, which gave rise to new market-based patterns of dispossession and accumulation, and the reintroduction (since the colonial era) of the forest concession system. The main goal of the forest concession system, which was promoted by the World Bank other international donors, was to do away with “anarchic” logging in Cambodia’s frontier borderlands and establish a centralised, “transparent” concession system that would generate revenue to fund post-war reconstruction efforts (Le Billon 2002; Barney 2010). The concession system was to put an end to the lucrative forest exploitation agreements with Thai military logging companies which were financing Khmer Rouge insurgencies in the northwest of the country.

Efforts to bring the forest access and timber trading channels into central government control through the forest concession system had unintended outcomes. The Cambodia People's Party (CPP), then locked in an uneasy coalition with the royalist party FUNCINPEC<sup>1</sup>, was able to concentrate power by granting forest concessions to political and business elites in return for their loyalty (Le Billon 2002; Global Witness 2007; Jacobsen & Stuart-Fox 2013). Based largely on patronage networks, the forest concession granting process went largely unregulated, resulting in many illicit land acquisitions (ibid). Between 1994 and 2001, 39 per cent of Cambodian territory was allocated to forest concessions (Diepart 2015a: 13). Timber was extracted at unsustainable levels (Barney 2010). A large share of the profits generated from logging in the 1990s – estimated to be around US \$2.4 billion – was captured by elites at various levels of the administration (Le Billon 2002: 565).

The forest concession system was eventually dismantled following a logging ban introduced in 2002 and a donor-supported Forest Concession Management and Control Pilot Project. However, the forest concession system was soon replaced with the Economic Land Concession (ELC) system, which aimed at attracting foreign investment in large-scale industrial agriculture. The underlying neo-patrimonial governance arrangements remained largely unchanged.

In 2001, a Land Law was passed which established a relatively comprehensive legal framework for land tenure and administration in Cambodia and introduced a number of significant reforms (RGC 2001). Firstly, it extended "ownership" rights to residential and agricultural land, provided certain conditions were met (Article 38). Secondly, it introduced a new categorisation system for land ownership in Cambodia, consisting of: state-public land, state-private land, private-individual land and indigenous/communal land (for a description of these land categories, see CCHR 2013: 11-14). Thirdly, it

formalised the system of granting land concessions on state-private land. Land concessions can be granted for economic purposes such as an agribusiness enterprise (Economic Land Concessions, or ELCs), or for livelihood subsistence purposes as a redistributive measure for landless and land-poor farmers (Social Land Concessions or SLCs).

In 2002, a multi-donor Land Management and Administration Project (LMAP) was established to assist with the first phase of the government's land reform program and give effect to key provisions in the 2001 Land Law. The program strengthened legal and institutional frameworks to facilitate the creation of a land market. However, it ran into problems during implementation. In particular, the land titling program supported by LMAP was unable to secure land tenure for poor households most at risk of dispossession by powerful interests (Grimsditch & Henderson 2009; Bugalski & Pred 2010; Bugalski 2012; See also 'land formalisation' section below). The condition of tenure insecurity was in fact paved by the 2001 Land Law. In contrast to preceding Cambodian laws and practices, the 2001 Land Law only recognises occupation of land prior to the effective date of the Land Law (August 2001) for the purpose of converting "possession rights" to full legal "ownership" rights (Articles 30 and 31). In other words, people who have settled on land after 2001 do not automatically have the right to request title of ownership.

The rapid increase in ELCs, often approved without following proper procedures, led to a surge of land disputes between concessionaire companies and local residents. In response, the Government issued a new policy on ELCs in May 2012, called Order 01 on Measures Strengthening and Increasing Effectiveness of the Economic Land Concessions (ELC) Management (henceforth "Order 01"). Order 01 placed a moratorium on the issuing of new ELCs and instructed a review of existing concessions. This was followed by a national

1. Front Uni National pour un Cambodge Indépendant, Neutre, Pacifique Et Coopérative

campaign to fast-track the granting of land titles to households, specifically targeting areas where there were overlapping claims in or near ELCs, forest concessions, forest land, and other state land (Müller & Zülendorf 2013). While a large number of individual land titles were issued under Order 01, the titling process was discontinued after the July 2013 national elections. The implication of Order 01 for future land policy in Cambodia remains uncertain.

## GEOGRAPHICAL CONTEXT OF LAND USE AND LAND RELATIONS

The agro-ecology and topographical diversity in Cambodia presents several main contexts for land use and associated land relations. In the politically marginal upland areas on both sides of the Tonle Sap Great Lake, shifting cultivation has up until recently been the main agricultural practice of mainly indigenous populations that historically settled those areas. Over the past 15 years, however, upland areas have experienced rapid land use and environmental change, market integration, and social differentiation. Various factors have converged to create “commodity frontiers” (Milne 2013), giving rise to new contexts for land grabs and enclosures of common property resources.

Firstly, there has been mass influx of ethnically dominant Khmer migrants from rice plain provinces who have moved to upland areas seeking to acquire land by clearing forests (Diepart et al. 2014). Migrants have placed significant pressure on upland swidden lands and forests, and contributed to land alienation and accumulation through the endogenous process of “intimate exclusion” (Hall et al. 2011). On the other hand, migrants that settled after 2001 also face insecure land tenure due to their ineligibility to claim possession rights under the Land Law.

Secondly, the global demand for products such as rubber, cassava, cashews and timber, has resulted in the conversion of swidden land and forests into agro-industrial boom crops. Land conversion for cash crop production has been driven both by smallholder

farmers seeking market integration, and by agribusiness companies acquiring large-scale land concessions from the State. Both have resulted in the alienation and commodification of land previously used for shifting cultivation, cattle grazing and collecting non-timber forest products, resulting in the long-term loss of traditional livelihood pursuits.

Thirdly, the rural uplands has been the focus of resource investments as most of the country’s land, mineral, hydropower and forest resources are located in these areas. It is no coincidence that all ELCs in Cambodia are located in the peripheral uplands, with a higher concentration in the northeast. Rubber is the most important crop, planted on one million hectares or 37 per cent of the total ELC area granted (Diepart & Schoenberger 2016). In addition to resource development, the establishment of Protected Areas for the conservation has been another factor driving swidden enclosures in the uplands and has sometimes led to the forced relocation of indigenous people (Diepart et al. 2015a).

These state, market and demographic pressures have combined to produce a number of pathways for alienating indigenous people and farming households in upland Cambodia. Many players at different levels are complicit in the process (Baird 2014). Although provisions in the 2001 Land Law establish the rights of indigenous communities to assert communal title over their lands, implementation of this entitlement has been challenging (Ironsides 2003; Prachvuthy 2011; Biddulph 2014; Milne 2013). Consequently, large tracts of ancestral lands have been acquired by local elites and/or allocated to private concessionaires by the State.

The situation in the uplands contrasts starkly with that of the main rice-growing lowland areas connecting the Tonle Sap Great Lake plain with the Mekong alluvial plain. Lowland rice farming areas have been much less susceptible to dispossession from concessions in part because of the policy of maintaining rice security and because lowland areas are more densely populated.

Nevertheless, population growth and increased fracturing of landholdings has outstripped the capacity of farmers to secure livelihoods based solely on rice production (Diepart 2015a). Consequently, there has been an out-migration of landless and land-poor farmers from the lowland plains to the uplands in search of land. Rural-to-rural migration is nearly twice the rate of rural-to-urban migration and constitutes a key coping mechanism for the rural poor in Cambodia (Diepart et al. 2014).

Tenure insecurity is also an issue in urban areas such as Phnom Penh. Urban renewal projects, real estate developments, infrastructure upgrades, tourism resorts and casinos, have led to large-scale evictions of urban residents (Mgbako et al. 2010; COHRE 2011). It is estimated that between 1998 and 2003, 11,000 families were forcibly evicted in Phnom Penh, and a further 30,000 people were forcibly evicted between 2003 and 2008 (Amnesty International 2008). A 2014 study on land disputes found that Phnom Penh has the highest incidence of land disputes of all the regions in Cambodia (Research and Information Center 2014).

The geographical position of Cambodia relative to other countries in the Mekong Region has also been a key factor shaping agrarian transformations and patterns of investment, particularly in the upland border areas. In the 1980s and 1990s, Thai and Viet Nam logging companies with links to the military negotiated forest concession agreements in parts of Cambodia closest to their borders. Today, Thai and Viet Nam companies continue to invest in agribusiness ventures in those parts of the country closest to their shared borders. Some companies, such as the privately owned Hoang Anh Gia Lai and the state-owned Viet Nam Rubber Group, have obtained long-term leases on land to plant rubber (Global Witness 2013; Sherchan 2015). Other companies have preferred to enter into market relations with smallholders, providing seeds, helping to clear land and guaranteeing to purchase the harvest (Milne 2013). Research by Diepart and Dupuis (2014) reveals that contemporary agribusiness networks in northwest

Cambodia, which link former Khmer Rouge village elites to a Thai agribusiness corporation and global markets, reflects a political economy of land relations that is historically and geographically specific to that border region.

## STRUCTURES OF POWER AND PATRONAGE IN LAND RELATIONS

In theory, Cambodia has been transitioning from one-party rule to a multi-party democracy. The 2013 Cambodian elections marked two decades since UNTAC supervised the first democratic elections under the current constitution. Progress toward achieving some of the ideals contained in Cambodia's 1993 Constitution has been slow, hampered by corruption, weak rule of law and accountability, and lack of a credible opposition. Despite millions of dollars in international aid spent on promoting 'good governance' and building institutions that promote transparency, accountability, and democratic process, "political power is still exercised in 'traditional' ways" (Jacobsen & Stuart-Fox 2013: 3).

Cambodia's contemporary political-economic regime and development of a concession economy is intimately tied to the country's post-socialist, post-war trajectory and state-managed transition to capitalism. From the mid-1980s, the dismantling of the Viet Nam-backed government involved privatising assets to political and business elites who realigned themselves under the CPP umbrella and contested the 1993 elections. In the context of post-war struggles between different political factions, the CPP used Cambodia's natural resources, particularly its forests, to create a patronage network traversing the party and state apparatus (Global Witness 2007). In time, the CPP has consolidated its position by drawing the wealthy business community, including Cambodia's "tycoons", into its patrimonial networks, and strengthening relations with powerful provincial families and the military commanders (Jacobsen & Stuart-Fox 2013: 6). Granting concessions for agribusiness, resource extraction and urban development projects has been an important part of building and maintaining

relationships with powerful actors, who in turn have an interest in maintaining existing power arrangements (ibid; Global Witness 2007, 2013; Un & So 2009; Milne 2015). This has produced a powerful oligarchy which not only enjoys control over political and economic resources, but also has influence over the judiciary (c.f. IBA 2015). These patronage networks have also served to counteract efforts (particularly post-2008) to decentralise political and administrative power to local levels.

A massive UN intervention and two plus decades of reforms supported by international donors have not loosened CPP control nor embedded western ideals of democratic power (Jacobsen & Stuart-Fox 2013). Indeed, reforms have often served to consolidate what has sometimes been termed “neoliberal authoritarianism” (Boer et al. forthcoming). This denomination has been used to refer to states that combine repressive, often violent, patrimonial politics with rational rule-based institutions that are attentive to the demands of donors, civil society organisations and communities (thus conferring a level of legitimacy).

The CPP continues to dominate politics and has secured senior positions in the Senate and the National Assembly. In 2012, as predicted, CPP won landslide victories in the third Senate election and Commune Council elections. However, in the 2013 national elections, the main opposition Cambodia National Rescue Party (CNRP) made significant gains in the polls, thanks in large part to the merger between two former rivals, the Sam Rainsy Party and the Human Rights Party. The elections left CPP in the majority, but notably weakened. The recent cancellation of more than 330,000 hectares of ELCs (ADHOC 2014), and the moratorium on new ELCs officially still in place, suggests the government recognises the need to review the ELC mechanism and address inequalities at the heart of popular discontent.

Finally, it is worth noting that structures of power and patronage operate at different scales. At the local level, village and district authorities have at times been instrumental in the annexation and seizure of land. Cases point to well-connected individuals acquiring land in the uplands that was slated for community title using various tactics to deceive and/or coerce villagers (Ironsides 2003; Milne 2013; Rabe 2013). At the international level, patronage networks comprise such players as Korean and Taiwanese money launderers with links to top Cambodian officials who invest in Cambodian real estate to ‘clean... black money’ (Baird 2014: 446).

## PUBLIC AND PRIVATE INTERESTS IN LAND

Processes of state formation and resource extraction in post-socialist Cambodia have produced significant shifts and ambiguities in public and private interests in land and other resources. In what is often referred to as “shadow governance”, state power in Cambodia has been achieved and is continuously reinforced through the brokering of informal deals over land and other resources with powerful political and business players, often at the expense of weaker groups. This type of predatory rule involves repressive use of state power that is widely seen as “illegitimate”. Yet, the State is also composed of formal institutions and practices that give it a legitimising function capable of capturing and instrumentalising donor support (Neef et al. 2013; Milne 2015). Likewise, many NGOs have stepped in to assist with the delivery of basic services where the State has failed to fulfil its function (Kimchoeun et al. 2007). State sponsored privatisation of public land and resources has been achieved through the manipulation of a complex field of plural laws (for example, through the partial or selective interpretation and implementation of some laws while ignoring others). Dual categories of “legal/illegal” and “public/private” have been created and become problematic (Milne 2015).

While there are provisions for private ownership through fully transferable land title in Cambodia's Constitution and 2001 Land Law, the majority of land in rural Cambodia remains unsurveyed and untitled. By default "state land" has become "available" for private concessions (Dwyer 2015). According to the 2001 Land Law only 'state-private land', which is deemed not to have a public interest, can be allocated to concessions. 'state-public land' can be reclassified as 'state-private land' if it no longer serves "public interest". What is highly problematic is the discretion that state representatives have in deciding what land serves public purpose, particularly since these decisions take place behind closed doors. This has allowed an increasing share of 'state-public land' to be reclassified as 'state-private land' so as to allocate ELCs to private actors. For example, over 70 per cent of concessions awarded in 2012 overlap with areas slated for conservation (Milne 2015: 202).

The granting of concessions has often been premised on the notion that land is "empty" or "degraded". However, land has almost always been cultivated and utilised by people who claim equal ownership rights. While those with political power and money can access appropriate bureaucratic channels to get their land claims formally recognised, the poor majority are left with little recourse to justice.

The judicial system is widely perceived to favour the interests of investors and powerful elites. The government has made use of legislative, judicial and extra-legal means to restrict democratic space, both for civil society and citizens. Communities who challenge land expropriations often experience intimidation or direct violence from state agencies and company security guards (CHRAC 2009). The recently approved Law on Associations and NGOs is widely criticised as a further attempt to limit space for independent civil society and freedom of association (Naren & Meyn 2015). In this context, finding redress for injustices through existing dispute resolution mechanisms has proven a major challenge.

The distribution of more than two million hectares to a few hundred private investors for ELCs contrasts starkly with the much smaller allocation of state land to landless and land-poor households under the pilot Social Land Concession (SLC) project, supported by donor agencies. SLCs are a legal mechanism established under the 2001 Land Law to redistribute state-private land to landless and land-poor households for residential and agricultural use (RGC 2003). In 2008, the Land Allocation for Social and Economic Development (LASED) project was established with support from the World Bank and German Development Assistance, and a major pilot project for distributing SLC land was initiated. For years the LASED encountered blockages and very little SLC land was distributed. This prompted some people working in the LASED project to declare the pilot a "fail[ure]" (Müller 2012: 3). From late 2012 to early 2013 there was a significant surge in the allocation of SLCs after Prime Minister issued Order 01 (ADHOC 2014). Observers have noted this was politically motivated as it coincided with the run up to the July 2013 national elections. A report by LICADHO (2015a), finds that most of the public land allocated to for SLCs is unsuitable for agriculture and located in marginal areas far from basic social services.

Neef et al. argue that the Government, with the help of international donors, have presented SLCs as a complementary policy to ELCs that reduce landlessness, alleviate rural poverty and ensure more equitable land distribution. In so doing, international agencies have been complicit in "formalizing displacement and distributional injustice," by "smoothing the adverse social impacts of their very own land policies" (Neef et al. 2013: 1085-1086). Likewise, the LICADHO report strongly criticises the US \$13 million LASED project for giving a positive spin to what it claims is a flawed SLC system that has failed to provide benefits to Cambodia's rural poor (LICADHO 2015a).

# POLITICAL-ECONOMIC DYNAMICS OF LAND RELATIONS

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## ACTOR DYNAMICS IN DECISION MAKING AND CONTESTATION AROUND LAND

In Cambodia, multiple agencies and ministries are responsible for land governance and land administration. The Ministry of Land Management, Urban Planning and Construction (MLMUPC), through the Cadastral Commission, is responsible for mapping, identifying, and registering lands so that ownership title can be issued. The Ministry of Agriculture, Forestry and Fisheries (MAFF) is responsible for approving ELCs, although monitoring falls under the Ministry of Interior. Although ELCs for agro-industrial crops can only be granted on converted forestlands that have been reassigned as state-private land, since 2008 various ELCs have been granted inside Protected Areas under the authority of the Ministry of Environment (MoE). MoE is also responsible for reviewing and approving environmental impact assessments (EIA), which are legally required ahead of approving ELCs and other investment projects. The Office of the Council of Ministers (OCOM), the government's top executive agency which is chaired by the Prime Minister, also approves the granting of ELCs and SLCs.

The Ministry of Industry, Mines and Energy (MIME) is another important player in land issues as mining and hydropower projects involve the acquisition of land and resettlement of communities. The Ministry of Rural Development is involved in registering communal title under the 2009 sub-decree on Indigenous Land. Indigenous communities seeking to register communal title must first register for "indigenous" status with the Ministry of Rural Development, then register their village as a legal entity with the Ministry of Interior, and finally get their title issued by MLMUPC (RGC 2009).

In addition to the Ministries, the Council for Development of Cambodia (CDC) was established under the 1994 Law on Investment (revised in 2003 and currently under review) to oversee private sector investments. The CDC is chaired by the Prime Minister and composed of senior ministers from relevant government agencies.

Under the CDC, the Cambodian Investment Board and the Cambodian Special Economic Zone Board are responsible for promoting investment and reviewing applications. Investments of over US \$50 million for projects requiring mineral and natural resource exploitation or those concerning politically sensitive issues, must also request approval from the OCOM (Subedi 2012).

Prime Minister Hun Sen exercises considerable power over decisions concerning land through his role as Chair of both OCOM and CDC, and in his personal capacity as Prime Minister. Order 01, which suspended the granting of new ELCs and initiated a national land titling campaign, was highly personalised and the Prime Minister and OCOM carefully orchestrated its implementation. As noted in a report by NGO Forum on the impacts of Order 01, "Rather than emphasizing the authority of the land administration and management institutions, the campaign nurtured a political and personal focus on the Prime Minister and the Cambodian People's Party, and to an extent on the youth volunteers over which the Prime Minister assumed an image of a paternal figure" (Grimsditch & Schoenberger 2015: 276). More recently, the cancellation of some ELCs has proceeded along ministerial lines, with MAFF and MoE making separate announcements (Diepart & Schoenberger 2016).

With little transparency in decision making around the granting or revocation of ELCs, it is difficult to build a reliable consolidated data set of concessions, although there are various attempts to do so by NGOs and donors (e.g. LICADHO [www.licadho-cambodia.org/concession\\_timelapse](http://www.licadho-cambodia.org/concession_timelapse) and Open Development Cambodia [www.opendevdevelopmentcambodia.net](http://www.opendevdevelopmentcambodia.net)). There is wide discrepancy between official government figures on land concessions and those produced by NGOs, donors and researchers. Concession agreements with private sector investors in resource projects such as hydropower dams or urban developments are equally shrouded in secrecy.

It is widely recognised that procedures specified under the 2005 ELC sub-decree and the 2001 Land Law are not followed. Reports document numerous cases where concessions exceed the 10,000-hectare limit. Public consultation and EIAs required under the ELC Sub-decree are rarely conducted properly, if at all. Many eviction cases have contravened basic human rights standards, including those within Cambodian law. People have been evicted without prior notice or information, and without housing alternatives. At the same time, companies that have acquired land through the ELC mechanism have not always followed through on their contract. For example, only a small proportion of ELCs have actually been planted with crops, although the sub-decree specifies that an ELC must be developed within 12 months. A number of so-called agro-business companies have used the ELC system to access land for logging, and left lands fallow after clearing. This could explain the surge in ELCs granted in Protected Areas over the past five years (ADHOC 2013; Global Witness 2015).

The police or military typically evicts communities who occupy lands granted to concessionaires. Those who challenge the loss of their lands are often violently repressed, threatened or taken to court. While there are various formal mechanisms for settling land disputes – such as Commune Councils, the Cadastral Commission, the Administrative Commission, the National Authority for Land Dispute Resolution, and the courts – in practice, these mechanisms are ineffective (CCHR 2013). Conflicts often come to an end because the weaker party is threatened or forced to accept inadequate compensation. Stronger parties are able to mobilise support from public authorities or powerful individuals to put pressure on weaker parties or manipulate the judicial system to their end (Adler & So 2012).

In the current climate of impunity, NGOs and researchers have focused on documenting a large number of land cases (e.g. Kato 1999; CHRAC 2009; LICADHO 2009; Grimsditch & Henderson 2009; Mgbako et al. 2010; Amnesty International 2011; Sothath & Sophal 2012;

ADHOC 2013; EC & IDI 2013). Reports are also issued by the UN High Commissioner for Human Rights (2007) and the Special Rapporteur on the situation of human rights in Cambodia (Subedi 2012). Increasingly, many NGOs have provided legal aid to communities to help fight expropriation and land seizures, and filed lawsuits before provincial and national courts. Some cases have gained international attention (EC & IDI 2013). Cases involving foreign investors have opened some doors for accessing transnational justice (Oxfam 2013; Polack et al. 2014; Sherchan 2015; See also section on ‘civil society’ below).

## AGRICULTURAL MODERNISATION

Large-scale land acquisitions in Cambodia date back to the colonial period, when commodity booms drove extensive market-driven investment in land development and facilitated the expansion of the French concession system (Byerlee 2014). However, large-scale investments in land gained particular momentum in Cambodia at the end of the 1990s, when new land laws encouraged the development of land markets and foreign investment. This signalled a remarkable break from previous socialist-inspired models of development based on state ownership of land, and the embrace of a model that encouraged long term leases and favoured large private and corporate owners over smallholders. The governance arrangements that have developed from the superimposition of neoliberal development policies onto socialist-authoritarian political rule suggest, however, continuity of historical power relations rather than any real ‘break’ from the past.

As shown in preceding sections, there are strong political and pecuniary incentives for Cambodia’s elite to maintain existing configurations of power and patronage that allow accumulation and dispossession. There is also a strong modernist ideological for the current concession model, based on assumptions about the superiority of large-scale industrial production that take advantage of economies of scale, to best deliver agricultural output and economic growth. Promoting investment in capital-intensive agriculture by granting

large-scale ELCs to domestic and foreign companies is central to the Cambodian government's vision to modernise agriculture. It is based on a still prevalent belief among government agencies in the Mekong Region (and elsewhere) that foreign direct investment (FDI) is a precondition for agricultural productivity and growth, that large-scale agriculture is more efficient than smallholder farming, and that privatising land will increase productivity by encouraging investment (Castellonet & Diepart 2015). Often implicit in the logic is that small-scale farmers and indigenous people employ "backward" agricultural practices that "under-utilises" land. This is evident in the State's use of the category of "wasteland" to justify its appropriation of upland swidden areas, which are then reallocated to private actors. By extension, smallholder farmers and indigenous peoples are themselves seen as perpetuating poverty and impeding development.

These assumptions continue to influence the land and agriculture policy setting in Cambodia, although they have been increasingly challenged on a number of fronts. Firstly, research points to a lack of evidence linking large-scale land concessions with economic development and poverty alleviation. There is a mounting body of evidence showing the reverse is often the case; ELCs have in many cases led to disappointing results in terms of agricultural productivity and investment. According to MAFF's annual report for 2013-2014, less than 20 per cent of the land that has been granted as ELCs has actually been utilised for agro-industrial development (cited in Grimsditch 2015: 22). As noted in previously, there are numerous examples of companies obtaining land concessions as a pretext to harvest and sell valuable timber obtained during the land clearance process. Other companies have used ELC mechanism to speculate on rising land values, or to make a profit by on-selling the concession to a company that has the capacity and resources to develop it into an agricultural enterprise. After 10 years of granting concessions for large-scale agriculture, Cambodia's agricultural exports remain remarkably low, comprising only 3 per cent of total exports in 2012 (ibid).

Secondly, while ELCs are often promoted as "development" and a means of creating jobs for the rural poor, significant evidence points to the creation of "new poverty" through the dispossession of people from their land and other resources previously held as commons (LICADHO 2009; Touch 2009). The evidence on whether ELCs provide employment for the rural poor is inconclusive (Diepart & Schoenberger 2016). Some research points to cases where plantations have created employment opportunities for local people (Sothath & Sophal 2010, 2012). However, most studies converge on the point that ELCs provide only limited opportunities for wage labour and often involve poor working conditions (Middleton & Sokleap 2007; Socheth 2012; Neef et al. 2013; Oldenburg & Neef 2014). Livelihoods in Cambodia are increasingly situated in multiple locations that span across rural-urban spaces and dependent on diversified activities that include off-farm employment. Yet, the capacity of the modern economy to absorb or partly accommodate the large number of people partly or entirely exiting smallholder agriculture is limited (Diepart et al. 2014). Studies that link land loss with growing poverty and food and nutrition insecurity (c.f. WFP 2008; Scheidel et al. 2014), problematises the government's current approach to rural development that sees little role for smallholder farmers.

The government has acknowledged problems with the large-scale land concession model. The National Strategic Development Plan Update (2009-2013), for example, notes: "land concentration and landless people are on a rising trend, adversely impacting on the equity and efficiency of land use. On the other hand, large areas under economic land concessions have not been utilised efficiently as targeted, needing strict government measures to tackle them" (RGC 2009: 10). The Plan proposes partnerships between smallholders and large-scale agribusiness companies, and between economic and social land concessionaires, especially those involved in rubber, cashew and sugarcane.

The proposal to create partnerships between ELCs and SLCs has been embraced by the LASED project, which has adopted it as a strategy to achieve “livelihood consolidation” for SLC recipients (Neef et al. 2013). The logic behind bringing ELC and SLC recipients together lies in the complementary assets that each of these bring to the arrangement, namely the provision of cheap labour force to work on ELC (ibid).

Various public-private partnership models involving large agribusiness firms and smallholders, such as contract farming, have been discussed globally and regionally in light of their potential for more inclusive pro-poor development (FAO 2012; Byerlee et al. 2014). Cambodia adopted in February 2011 a sub-decree which regulates “contract-based agricultural production” (RGC 2011). A leading player is the Sino-Thai agro-food conglomerate, Charoen Pokphand (CP), which operates in Cambodia through its subsidiary, CP Cambodia. CP operates a number of contract farming schemes in northwest Cambodia that integrate smallholders into agricultural commodity chains (Diepart & Dupuis 2014). Companies such as HLH Agriculture (Cambodia) Co. Ltd. (a subsidiary of the HLH Group Limited in Singapore), purchase maize and other crops from smallholders in the areas surrounding established ELCs (Sothath & Sophal 2012). Nevertheless, contract farming is still nascent in Cambodia compared to neighbouring Laos. Research in the Mekong Region examining smallholder commodity production involving Thai, Viet Nam and other companies show a tendency toward increased agrarian and social differentiation and fragmentation (Milne 2013; Diepart & Dupuis 2014; Woods 2015). More research is needed to understand the opportunities and risks associated with different contract farming type arrangements.

## FOREIGN DIRECT INVESTMENT, LAND GRABBING AND DISPOSSESSION

In the 1990s, Cambodia liberalised its economy and took steps to promote private sector investment, namely through the privatisation of state-owned resources. The 1994 Law on Investment provided tax and other incentives to domestic and foreign investors. Private investment (domestic and foreign) began to rise in 2005 after considerable engagement from China, Thailand and Korea. After dipping in 2009 as a result of the global financial crisis, investment has since recovered and surpassed pre-crisis levels.

The majority of Cambodia’s private investment has concentrated on tourism, manufacturing (mainly garments/textiles and footwear), construction and agriculture. According to data from the Council for the Development of Cambodia (CDC), between 2000 and 2010, the sector with the highest amount of approved investment in dollar value terms was tourism, followed by construction/services and industry. Agriculture’s share of all approved investment over the 10-year period was relatively small in comparison – only 6 per cent of total approved investments (FAO 2012: 164). However, the figures for 2011 show the value of approved investments in agriculture is proportionately much higher that year, accounting for around 30 per cent of all approved investments (Grimsditch 2015: 17). It is important to note these figures represent investments approved by CDC, rather than actual invested money. As noted by Grimsditch (2015), there is a huge discrepancy between the much higher figures for approved investments compared to actual investments. This is mainly because many projects that are approved are never implemented. Conversely, investment projects may also be implemented unofficially without being approved by the CDC, and are not accounted for in the statistics.

Domestic and foreign investment in agriculture in Cambodia has experienced a significant rise in recent years, driven mainly by a global commodity boom in rubber and other crops. This saw an increase in demand for land in Cambodia, principally from neighbouring countries but also other countries in Asia and beyond. To capitalise on these regional and global dynamics and attract foreign investment, Cambodia embarked on a program of comprehensive land related reforms, most notably the 2001 Land Law. Part of the reforms included establishing a mechanism by which state land can be leased to domestic and foreign investors, namely economic land concessions, discussed above, and Use, Development or Exploitation Concessions, which are to develop mines, ports, airports, industrial complexes and fishing concessions.

While foreign investment in agriculture has grown significantly in the past decade, it is still modest compared to other sectors. The modest contribution of FDI in agriculture is stark when measured against the total size of secured land in agriculture. It is difficult to ascertain the exact number of ELCs granted in Cambodia, let alone the land size they cover. MAFF claims to have granted concessions to 122 companies covering an area of more than 1.3 million hectares. However, this does not include concessions granted by MoE within Protected Areas, for which there are no official figures (MAFF 2014, cited in Grimsditch & Schoenberger 2015: 5). ADHOC (2014) estimates the number of total ELCs to cover an area of around 2.6 million hectares.

ELCs have been granted to both domestic and foreign firms. According to 2014 MAFF figures (cited in Grimsditch & Schoenberger 2015), the majority of foreign firms holding ELCs are from Viet Nam and China. Hoang Anh Gia Lai (HAGL) and the Viet Nam Rubber Group (VRG) are two Viet Nam companies that have been particularly influential in Cambodia. According to Global Witness (2013), both companies have high-level connections within the Cambodian government, which

has allowed them to exceed the legal threshold on concessions holdings by as much as 16 times in the case of VRG, and to run logging operations within and outside their concession boundaries.

As discussed in previous sections, ELCs have often had limited impact in terms of boosting agricultural production and exports. On the other hand, the social and environmental impacts of ELCs have been severe (Touch 2009; LICADHO 2009; CHRAC 2009; Prachvuthy 2011; Subedi 2012; CCHR 2013; Global Witness 2013, 2015). The sub-legal and non-transparent character of ELCs and other land deals has led to widespread dispossession of smallholder farmers' private lands and communal lands, resulting in significant and often violent conflicts. Alongside other land grabs, it is estimated that ELCs affected more than 770,000 people (around 6 per cent of the total population) from 2000-2013 (LICADHO 2014). An overlooked and under-researched phenomena is land acquisition in medium sized plots of 10s or 100s of hectares by military, business and other personnel, as well as micro-scale accumulations by more "intimate" means. These land acquisitions are made less visible by the dichotomous discourse of smallholders and land-grabbing tycoon.

## FORMALISATION, TITLING AND TENURE SECURITY

Land titling has been an important element of the land reform in Cambodia. Following the 2001 Land Law, which established a framework for the recognition of property rights throughout Cambodia, a multi-donor supported Land Management and Administration Project (LMAP) was initiated to implement key aspects of the law. LMAP supported the Cambodian government in rolling out a program of systematic land registration (SLR) in target areas, with the aim of eventually registering all of Cambodia's land parcels. Land titling was identified by LMAP as a principal means of increasing land tenure security for marginalised communities and promoting the development of efficient markets.

“ELCs HAVE OFTEN HAD LIMITED IMPACT IN TERMS OF BOOSTING AGRICULTURAL PRODUCTION AND EXPORTS.”

[PHOTO CREDIT: EQUITABLE CAMBODIA, CAMBODIA]



Compared with Laos, the Cambodian government has followed through on the LMAP program with a very large number of titles issued (more than 3 million, and 400,000 per year ongoing). However, these titles have been issued almost entirely in lowland paddy areas where conflict and tenure insecurity are not issues. The rural areas targeted by SLR focused almost exclusively on the central rice farming lowlands and avoided former forests in the uplands. Various researchers have examined how SLR conducted by LMAP led to exclusions and other barriers that prevented people from accessing title (Bugalski & Pred 2010; Grimsditch et al. 2012; Biddulph 2014; Oldenburg & Neef 2014; Dwyer 2015). These studies have demonstrated that in direct contravention to the stated aims of LMAP, the land titling program deliberately avoided registering households that were most at risk of encroachment by concessions.

Contradictions in the land titling program surfaced when an area in downtown Phnom Penh that was selected for land title adjudication was marked as a “development zone” by Phnom Penh municipality, and 4,000 families were threatened with forced eviction (Bugalski & Pred 2010). As the conflict intensified, it became clear that it was not an isolated case. The program had systematically avoided disputed areas where there were overlapping land claims, especially those areas in the vicinity of land concessions. The conflict culminated in the World Bank ending its engagement with Cambodia’s titling program in 2009. Nevertheless, titling activities have continued to be implemented by the Ministry of Land Management, Urban Planning and Construction with assistance of a new donor-funded Land Administration Sub-Sector Program (LASSP).

The national land titling campaign initiated by Prime Minister Hun Sen under Order 01 in 2012 differed from the SLR program in a number of ways. First, it purportedly targeted disputed land in areas that had been excluded by the SLR program, including forest land, protected areas, economic land concessions and forest concessions (see Grimsditch & Schoenberger 2015 for an empirical examination of this claim). Second, Order 01 was largely geared at addressing what the State saw as the problem of “illegal” occupancy of state public land by “donating” land to people (ibid). This stood in contrast to principles underlying the donor-funded SLR program based around recognising and formalising existing smallholder possession rights in order to create transparent market-based property rights in land devoid of state interference.

Between June 2012 and December 2014, around 610,000 land titles were issued. A total of 1.2 million hectares of previously designated “state land” was reclassified, one-third (380,000 hectares) of which was ELCs (Schoenberger 2015). Although the campaign succeeded in issuing a large number of land titles in a short amount of time, a number of concerns were raised about the approach and manner of implementation of Order 01. Observers have remarked on the campaign’s lack of transparency (Dwyer 2015). Questions have also been raised about the capacity of the 2,000 student volunteers with only a few days training and limited time to resolve complex and delicate land disputes (Müller & Zülsdorf 2013).

Research on the impacts of Order 01 found that a lack of clarity in eligibility criteria and inconsistent application resulted in some communities and household plots receiving titles while others were excluded, despite their circumstances being similar (Grimsditch & Schoenberger 2015). In some villages, the titling process was left unfinished, leaving much uncertainty about the future of land titling and the resolution of ongoing land disputes (ibid; Schoenberger 2015). The announcement

by human rights group LICADHO of a “surge” in new land disputes in 2014 – a doubling of cases recorded in 2012 – could be an indication of the magnitude of unresolved problems that require urgent attention (LICADHO 2015b).

Although Order 01 had some beneficial results for non-indigenous people in the Cambodian lowlands, the policy has not been suitable for indigenous people, namely because it does not recognise collective land rights (Bourdier 2014; Milne 2013; Rabe 2013). As an outcome of a decade of advocacy of indigenous rights, Cambodia is unique among countries in the Mekong Region for its legal recognition of collective ownership of indigenous residential and agriculture lands, including cultivated lands and lands reserved for shifting agriculture. Despite legal recognition, getting recognition for communal land title for indigenous people has proved to be a difficult and slow process (including registration of “indigenous”). Only eight indigenous communities have so far received recognition of their collective land use and ownership rights in Mondulakiri and Rattanakiri provinces, northeast Cambodia (Müller 2013).

Order 01 presented yet another challenge for community titling. Survey teams were instructed to register individual plots within indigenous communal land titles if community members wished to do so. Reports have emerged detailing how community members were persuaded to register individual plots within their communal titles, resulting in the privatisation and fracturing of communal land (Subedi 2012; Milne 2013; Rabe 2013; Grimsditch & Schoenberger 2015). Some communities who had not yet begun the process of applying for collective land title lost the possibility of doing so. The process has highlighted significant tensions between seeking security of land tenure through communal land title, on the one hand, and individual title on the other; and triggered “painful deliberations” in indigenous communities about the merits and constraints of both (Milne 2013: 323).

## LAND CONCENTRATION, LANDLESSNESS AND DISTRIBUTION

Cambodia's proportion of arable land relative to total territory is among the highest in the world. In per capita terms, there is 0.25 hectares of arable land per person in Cambodia compared to 0.07 hectares in Viet Nam or 0.11 hectares in the People's Republic of China (Beckel 2011). However, the distribution of these resources has become increasingly unequal in recent years. In 2010, the United Nations Capital Development Fund estimated that as much as 30 per cent of Cambodia's land was owned by only one per cent of the population (cited in Neef et al. 2013). It is estimated that around 60 per cent of the country's arable land is held under concessions (ADHOC 2014). Meanwhile, 29 per cent of rural households were recorded as landless in 2011, while 27 per cent owned less than one hectare (Phann et al. 2015). Female-headed households are more likely to be landless and land-poor than male-headed households (STAR Kampuchea 2013).

Various factors shape current trends in land concentration and landlessness. A key factor influencing patterns of land distribution is migration. In the central plains there has been a growing trend towards land concentration and landlessness due to population growth, land fractioning through inheritance, and land sales and acquisitions. Without sufficient land to feed

their families, many have migrated to the uplands in search of land. In the rural uplands, farming households and indigenous communities have lost access to land through a range of processes. The allocation of land to private companies has been a key driver of rural landlessness, but endogenous processes linked to the commodification of livelihoods have also resulted in accumulation and exclusion.

Private and communal land titling programs have largely failed to protect the most vulnerable people from losing their lands in the face of more powerful interests, and at times have served to reinforce tenure insecurity. The main mechanism under the 2001 Land Law for redistributing land to land-poor and landless Cambodians – the Social Land Concessions (SLC) system – has been ineffective in readdressing land inequalities (Müller 2012; Neef et al. 2013; LICADHO 2015a).

With so much of Cambodia's arable land concentrated in the hands of private companies, the land available for redistribution is limited. Order 01 sought to address this problem, but it did so inconsistently and over a limited period of time around elections. Moreover, a large portion of forested land, including inside Protected Areas, was re-classified as "state-private land" for both ELCs and private ownership (ADHOC 2013).

# CONSTRAINTS AND OPENINGS IN LAND GOVERNANCE

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## LAND AND RELATED POLICY AND LAW REFORM

Land and related policy and law reform in Cambodia has been subject to a number of influences reflecting diverse interests within the bureaucracy and government apparatus, state-linked business elites, donor agencies and civil society. The diversity of interests weighing in on the process has revealed significant points of tension between policies seeking to attract foreign investment through large scale concessions on the one hand, and the protection of land rights for smallholder farmers and indigenous people on the other. There has also been tension between formal legal commitments to land formalisation through individual and communal land titling, and a lack of government commitment to a transparent process of state land (re)classification and mapping.

Since the passing of Cambodia's Land Law in 2001, there has been an increase in the number of Cambodian citizens facing land tenure insecurity, forced evictions, land-grabbing and other violations of the land law. The systematic land titling has made significant progress in issuing land titles in the agricultural lowlands areas where land is not disputed. The majority of people in the rural uplands have not been able to register for land title, or have been excluded from these rights. The process of state land classification has worked by default, with the granting economic concessions being the trigger for reclassifying state- public land to state-private land (Dwyer 2015). Meanwhile, the government has deprioritised allocating state land to SLCs, rendering the key redistributive mechanism for the landless and land-poor ineffective.

Order 01 introduced a new (through still uncertain) element to Cambodia's land reform process. It included a moratorium on ELCs and a land titling campaign to fast track private land registration on forest land and other state land targeting areas with land disputes. Farming households previously branded as "illegal settlers", including those inside ELCs and in Protected

Areas, suddenly were eligible – and many received – full property title by way of "donation". This dramatic change in policy direction, and the speed at which it was implemented in 2012-2013, took many by surprise. Human rights organisation ADHOC remarked that "Recent government initiatives amounted to recognition that something had gone wrong and that the land crisis had begun to threaten the country's stability" (ADHOC 2013: 37).

However, few signs suggest the government is abandoning the economic concession model. Neither are there signs the government is committed to reforming state land management in favour of a multi-level integrated land use planning system. The rapid titling program initiated under Order 01 has been left unfinished, despite promises it would resume after the 2013 national elections. Current modifications in the system are more likely to be politically driven than reflect a long-term strategy for reversing current land and developmental inequalities (ADHOC 2013; Grimsditch & Schoenberger 2015; Diepart and Schoenberger 2016). Schoenberger (2015) argues that by selectively disciplining concessionaries and arbitrarily granting and revoking land rights, Order 01 has reinforced state sovereignty and its power of to act unilaterally on land issues.

Yet, Order 01 may also provide new possibilities for some communities under certain contexts to advocate for the formal recognition of their land through titles. Schoenberger provides examples of two communities in Kratie Province that were excluded from the land titling campaign, but were able to successfully lobby the government to obtain land titles by "grabb[ing] onto the loose ends" of Order 01 (Schoenberger 2015: 1). These cases represent a shift in what constitutes a legitimate land claim for the government, the implications of which could be profound. On the other hand, the emphasis on private individual land titles vis-à-vis other possibilities for recognition of people's land rights may present constraints for indigenous and other customary communities in the future.

## POSITIONS, AGENDAS AND INTERESTS BEHIND LAND GOVERNANCE REFORM

### GOVERNMENT

As noted in previous sections, Order 01 and the land titling campaign have the undercurrent of a “political stunt”. However, recent actions by the government also expose a degree of vulnerability on the side of the government to increased political pressure and the potential for social instability if land disputes are not adequately addressed. Certainly, there is recognition by the government of the need for more regulation of ELCs and to give greater allowances to the poor (“donations”) to ensure stability in the system. What is significant about the land titling campaign under Order 01 is that previously designated “illegal settlement” on state land by poor farmers for subsistence purposes were reconstituted as legitimate claimants to land. On the other hand, SLC recipients are increasingly seen as a potential cheap labour source for ELCs, rather than as productive farmers in need of agricultural extension and other livelihood support.

### PRIVATE SECTOR

Domestic companies have had little impetus for more accountable and transparent land governance, but they may now be paying more attention to the government’s disciplining actions targeting some ELCs. More reform-minded domestic and foreign companies may want to see improvements in the resolution of Cambodia’s land conflicts and a more streamlined process for approving and obtaining land concessions. Conflicts with local communities and allegations of illegal land grabs can pose significant risks to investors and increase their exposure to judicial claims, particularly if companies have links to transnational investors who abide by international standards of best practice. For example, in response to a campaign by Oxfam, the Coca Cola Company initiated an investigation into allegations of land grabbing and forced evictions by its Cambodian

sugar suppliers, which included field visits to the three sugar concessions in Oddar Meanchey Province in February 2014 (Sherchan 2015). Similarly, ANZ Bank has been forced to respond to charges that its financing of Cambodian sugar plantation could be in breach of the bank’s due diligence process and its compliance with a global ethical banking code to which it is a signatory (Baker & McKenzie 2014). In the context of Cambodia’s weakly enforced regulatory regime, there is much less incentive for domestic companies to adopt safeguard policies, and corporate social responsibility initiatives are limited.

### DONORS

Donors have a long history of engagement on land issues in Cambodia. According to the ADB, “the passage of the [2001] Land Law can be almost wholly attributed to ADB” (ADB 2009: 32). The World Bank, together with donors from Germany, Finland and Canada, assisted in the implementation of the Land Law through their support of LMAP, including funding the SLR program.

LMAP became the subject of a World Bank Inspection Panel investigation when NGOs filed a complaint on behalf of communities threatened with eviction. The Panel found that a number of World Bank safeguard policies had been breached in the design, implementation and supervision of LMAP. It also found that “design flaws in the Project led to the arbitrary exclusion of lands from the titling process and that this denied residents, especially the poor and vulnerable, the opportunity to claim and formalize their pre-existing rights through the adjudication process under LMAP” (World Bank Inspection Panel, cited in Bugalski 2012). The controversy eventually forced the World Bank to discontinue its support to the land titling program in 2009. Nevertheless, donors have continued to provide support to land registration and other aspects of land governance through the Land Administration Sub-Sector Program (LASSP).

The German Agency for International Cooperation (GIZ) and Swiss Agency for Development Cooperation (SDC) are now among the main donors who continue to be involved in the land sector, both at the policy support level and through ongoing innovation in participatory land use planning in partnership with (MLMUPC). The World Bank and GIZ are also supporting the SLC system under the LASSED project.

Focused exchange between government and donors is provided for by sector-specific technical working groups within the Council of Development for Cambodia's Strategic Framework for Development Cooperation Management. Government-donor relations have often been strained and delicate. Despite occasional demands from civil society groups for international donors to "show backbone" on land issues (Zsomer 2010), donors are generally unwilling to push the government too hard on sensitive issues around land and human rights. Donors have sought to gain leverage through other means. For example, in the mid-1990s, the ADB made a US \$30 million dollar concessional loan package to the agricultural sector conditional on the inclusion of a new, clearer legislative regime over land (Bugalski 2012). Subsequent support to Cambodia's land sector, such as the ADB's Agriculture Sector Support Program (2004-2010), also contained a number of land-related conditions that needed to be met before the release of fund tranches (ADB 2009).

#### CIVIL SOCIETY

Civil society in Cambodia has adopted a range of roles and strategies with regard to land tenure security. These include researching and monitoring the implementation of land-related laws and supporting communities affected by land dispossession through legal advocacy and building of social movements. Communities have often partnered with NGOs to defend their land or to explore legal avenues for restitution and justice (Lamb et al. 2015). At the same time, some NGOs in Cambodia

have been criticised for not representing the interests of farmers, for creating community dependencies by replicating patron-client relationships, and for stifling rather than aiding grassroots community mobilising (IHRCRC 2015; Frewer 2013). Another common response to landlessness and land poverty for many communities has been migration to new areas where land appears to be available or to search for non-farm employment in cities within Cambodia or across borders.

Civil society groups in Cambodia have also engaged with regional and international processes and mechanisms. In January 2010, the Community Legal Education Centre (CLEC), a Cambodian legal NGO in Cambodia, filed a case with the Thai National Human Rights Commission against the Khon Kaen Sugary Industry, the majority shareholder of the Koh Kong Sugar concession in southwest Cambodia. In March 2013, pro-bono lawyers representing two hundred families affected by the concession filed a law suit in the UK Commercial court against UK-based Company Tate & Lyle which purchases its sugar from the Koh Kong Sugar Concession (Middleton 2015). Cambodian civil society groups have also engaged with networks and institutions at regional level to campaign on hydropower dams in Cambodia that involve lost land and resettlement. A campaign on the Lower Sesan 2 dam targeted the Chinese dam developer, Hydro-Lancang, as well as filing a complaint to the United Nation's Special Rapporteur on the Situation of Human Rights in Cambodia (Harris et al. 2015). These multi-scale, multi-jurisdictional approaches could have far-reaching implications for the potential of transnational litigation in the region (Polack et al. 2014). However, to date these mechanisms have had limited success in terms of returning land to farmers (Middleton 2015). Moreover, this does not address the problem that current land laws continue to criminalise smallholders who engage in agricultural practices without official land titles.

## RESEARCH INSTITUTES

Cambodia has a weak institutional research infrastructure and a relatively limited research culture. The foremost policy research institute in Cambodia is the Cambodian Development Resource Institute (CDRI), which is an independent research institute that nevertheless remains quite close to government. CDRI has conducted research on land in the context of rural development, poverty and agricultural policy, but it has not specifically addressed the sharper issues of economic land concessions or land titling. There is potential for at least two of CDRI's research divisions to engage in research on land – the Natural Resource and Environment division and the Governance division.

The Learning Institute (formerly known as the Community Based Natural Resource Management Learning Institute) is mainly a training centre, but it also conducts studies based on experience of its member organisations, most of which are NGOs working at a local level on issues associated with decentralised resource governance.

Some of the Learning Institute's publications present useful analyses of land governance (e.g. Diepart 2015b).

The university research culture in Cambodia is embryonic. A number of university teachers engage in research, but this is most often through consultancies and other opportunities for income supplementation rather than in pro-active critical research on key issues such as land grabbing. Where they do take on this research, for example, in the work carried out by staff of the Department of Natural Resource Management at the Royal University of Phnom Penh, this is usually either in alliance with NGOs or in partnership with foreign academics.

NGOs have done much of the investigative work on land issues in Cambodia. Global Witness has long been active on issues associated with illegal logging which has relevance to the granting of ELCs, particularly when the main objective has been to profit from timber extracted from the concession.

# CONCLUSION

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Efforts to regularise land ownership through land titling has led to some land security, particularly in the lowlands and urban areas. However, the majority of rural communities in the Cambodia continue to experience insecurity in land tenure. Even in the central rice-growing plains, where land markets and property rights are most entrenched, new patterns of differentiation, fragmentation and poverty have resulted in people losing access to their land. The response has been migration to new areas where land appears to be available, even if in practice new conflicts emerge.

Land reforms in Cambodia have taken place in a post-war political economy where resource extraction and state-building are mutually reinforced by patrimonial networks that benefit political and economic elites. The allocation of economic land concessions by the State has severely undermined the tenure security of smallholder farmers and indigenous communities. Although Cambodia's legal framework formally recognises private and communal land ownership, accessing land titles has

been challenging for the vast majority of rural people, particularly in upland areas. As a result, land has readily been appropriation by more powerful actors. Long running disputes over land abound, but access to justice through the Cambodian court system or other dispute resolution mechanisms is limited.

At the same time, the mechanism for redistributing land to landless and land-poor households (the social land concession system) has not been effective in redressing growing inequalities. Order 01 was a dramatic intervention by the State to extend private land titles into upland areas, both around ELCs and within state forests. However, with the land titling campaign currently on hold, it remains unclear what opportunities are still available to communities to formalise their land rights. The moratorium on ELCs is still effective. With the 2018 elections on the horizon, there may be opportunities to advocate for a more inclusive review of the concession system.

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