

POWERS OF EXCLUSION: A CASE STUDY OF ECONOMIC LAND
CONCESSIONS IN KOH KONG, CAMBODIA

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อำนาจในการกีดกัน กรณีศึกษาการให้สัมปทานที่ดินทางเศรษฐกิจในเกาะกง ประเทศกัมพูชา

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เมื่อไม่นานมานี้ ปัญหาเรื่องการถือครองที่ดินได้กลายเป็นหนึ่งในประเด็นทางการเมืองที่มีความขัดแย้งมากที่สุดใ
กัมพูชา ทั้งนี้เนื่องจากกระแสธารอันเชี่ยวกรากของการให้สัมปทานที่ดินทางเศรษฐกิจ (Economic Land Concessions (ELC)) โดย
รัฐบาลซึ่งเร่งดำเนินการในช่วงไม่กี่ปีที่ผ่านมา รายงานฉบับนี้ศึกษากระบวนการเปลี่ยนแปลงในการถือครองที่ดินในกัมพูชาผ่าน
กรณีศึกษาของการอนุมัติสัมปทานที่ดินทางเศรษฐกิจให้แก่บริษัทน้ำตาลเกาะกง จำกัด ในการปลูกอ้อยในอำเภอแสรอัมปิล (Srae
Ambel district) จังหวัดเกาะกง และตรวจสอบว่ากรณีดังกล่าวยังคงมีผลกระทบอย่างไรต่อครอบครัวจำนวน 220 ครอบครัวที่ร้องขอ
ความเป็นธรรมและค่าชดเชยในที่ดินพื้นที่เกือบ 1,500 เฮกเตอร์ ที่พวกเขาไม่สามารถเข้าใช้ประโยชน์ได้อีกต่อไป จากเดิมที่พวกเขา
ดำรงชีพอยู่โดยอาศัยที่ดินดังกล่าว

การศึกษานี้ใช้กรอบแนวคิดของ อำนาจในการกีดกัน (*powers of exclusion*) ในการวิเคราะห์กระบวนการเปลี่ยนแปลง
ในการถือครองที่ดินที่เกิดขึ้น ได้แก่ อำนาจของ *ตลาด กฎเกณฑ์ แรงผลักดัน และการทำให้ชอบด้วยกฎหมาย* มีการสัมภาษณ์เชิงชาติ
พันธุ์ของผู้ที่ได้รับผลกระทบจากความเปลี่ยนแปลงในการถือครองที่ดิน เพื่อเก็บข้อมูลเพื่อนำมาตรวจสอบอำนาจต่าง ๆ ที่แสดง
บทบาทอยู่

งานวิจัยนี้พิจารณาว่า อำนาจในการกีดกัน มีบทบาทสำคัญในกระบวนการเปลี่ยนแปลงการถือครองที่ดิน และ อำนาจ
ดังกล่าวนี้เกี่ยวข้องกับสอดประสานกันเชิงลึก นอกจากนี้ งานวิจัยนี้ยังพบว่า มันขึ้นอยู่กับระดับของกระบวนการได้รับการตรวจสอบ
ซึ่ง อำนาจ อย่างหนึ่งอาจจะโดดเด่นกว่าอำนาจ อีกอย่างหนึ่ง การศึกษานี้ยังค้นพบว่า การเข้าถึง *ข้อมูล* มีบทบาทสำคัญอย่างยิ่งใน
กระบวนการเปลี่ยนแปลงการถือครองที่ดิน และมันยังมีอิทธิพลต่อการกีดกันจากที่ดินเช่นเดียวกับอำนาจอื่น ๆ

ในกรณีศึกษาของกัมพูชาที่มีประวัติศาสตร์ผ่านความวุ่นวาย มีหลักนิติธรรมที่ยังไม่เข้มแข็ง และ ยังมีสิ่งช่วยยวนให้หา
ประโยชน์จากระบบอุตสาหกรรมเกษตรขนาดใหญ่ที่รวมเข้าด้วยกันในการเป็นแรงขับเคลื่อนสร้างความเปลี่ยนแปลงในการถือ
ครองที่ดิน นอกเหนือจากที่กล่าวมา เอ็นจีโอและชุมชนเป็นฝ่ายใช้อำนาจในการเปิดเผยข้อเท็จจริงเพื่อท้าทายต่อการกีดกันจากการใช้
ประโยชน์ในที่ดินผ่านทางศาลในกัมพูชา คณะกรรมการสิทธิมนุษยชนแห่งชาติของประเทศไทย และกลไกตรวจสอบความชอบ
ธรรมระหว่างประเทศอื่น ๆ

สาขา: การศึกษาดารพัฒนาระหว่างประเทศ

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JOHN CHERRY: POWERS OF EXCLUSION: A CASE STUDY OF
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Land tenure has recently emerged as one of the most controversial political issues in Cambodia. This is due to the rampant wave of Economic Land Concessions (ELC) granted by the government that has accelerated in recent years. This paper examines the process of change in land tenure in Cambodia through a case study of the ELC granted to the Koh Kong Sugar Co., Ltd. to cultivate sugar cane in Srae Ambel district, Koh Kong province, and how it continues to affect 220 families who seek justice and compensation for nearly 1,500 hectares of land they no longer have access to that they had previously depended on for their livelihoods.

The study uses the conceptual framework of the *powers of exclusion* to analyze the process of change in land tenure that took place, namely the powers of *the market, regulation, force, and legitimation*. Ethnographic interviews of people affected by the change in land tenure were conducted to collect data from which to measure the different powers at play.

The research determined that the *powers of exclusion* played an important role in the process of the change in land tenure and that these *powers* are deeply intertwined. Moreover, the research found that depending on the scale at which the process is examined, one *power* may be more predominant than the others. The study also discovered that access to *information* plays a critical role in the process of change in land tenure and that it can also influence exclusion from land just as the other powers.

In the case study Cambodia's tumultuous history, weak rule of law and the lure to profit in a large-scale agro-industrial scheme converge to drive the change in land tenure. Despite this, counter-veiling powers were applied by NGOs and the community to challenge exclusion from land through the court in Cambodia, Thailand's National Human Rights Committee, and other international accountability mechanisms.

Field of Study: International Development Studies Student's Signature

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LIST OF ABBREVIATIONS

ARC	Asia Real-estate Cambodia
BABC	Bridges Across Borders Cambodia
CLEC	Community Legal Education Center
CPP	Cambodia People’s Party
CSC	Clean Sugar Campaign
EBA	Everything But Arms
ELC	Economic Land Concession
FAO	(United Nations) Food and Agriculture Organization
FDI	Foreign Direct Investment
FUNSK	Kampuchean United Front for National Salvation
GDI	Grassroots Development Institute
KKS	Koh Kong Sugar Company, Limited
KPRP	Khmer People’s Revolutionary Party
KSL	Khon Kaen Sugar Industry Company, Limited
LICHADO	Cambodian League for the Promotion and Defense of Human Rights
LHWG	Land and Housing Working Group
MAFF	Ministry of Agriculture, Forestry and Fisheries
MLMUPC	Ministry of Land Management Urban Planning and Construction
MoE	Ministry of the Environment
MUA	Multiple Use Area
NALDR	National Authority on Land Dispute Resolution
NCDD	National Committee for Sub-National Democratic Development
NHRC	National Human Rights Commission
PAVN	People’s Army of Viet Nam
PRK	People’s Republic of Kampuchea
RCAF	Royal Cambodian Armed Forces
RGC	Royal Government of Cambodia
SCPR	Subcommittee on Civil and Political Rights
SLC	Social Land Concession
SLR	Systematic Land Registration

TBA Traditional Birth Assistant
UNGP United Nations Guiding Principles

CHAPTER I

INTRODUCTION

1.1 Problem Statement

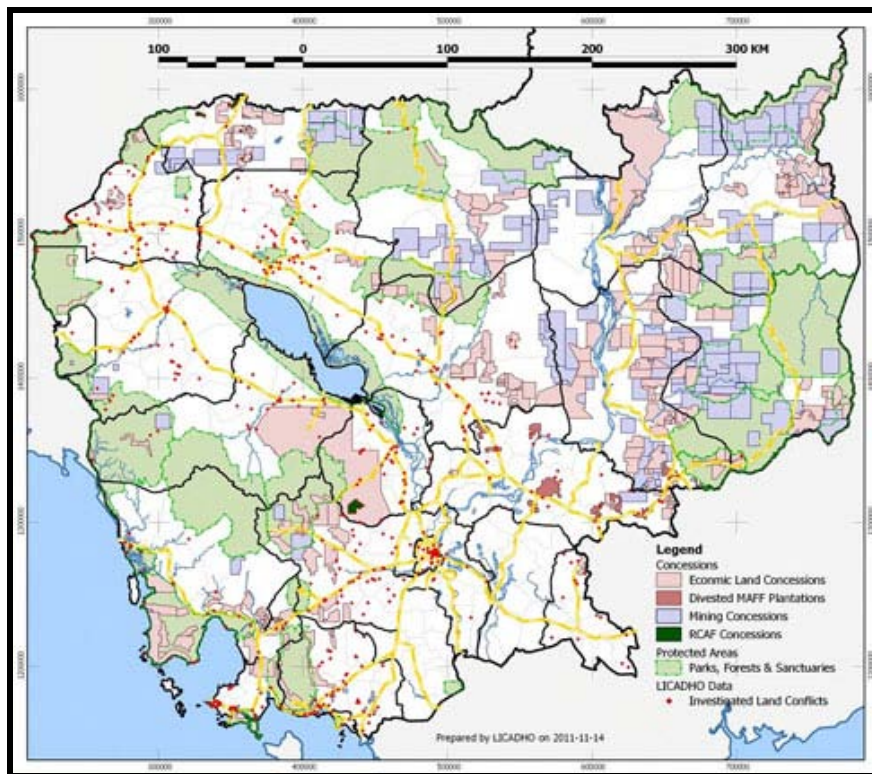
Land tenure has recently emerged as the most controversial political issue in Cambodia. This is due in large part to the rampant wave of Economic Land Concession (ELC) grants that has accelerated in recent years. As ELCs are established they enclose land that has been under informal tenureship by rural Cambodians for years, creating landlessness and increasing rural poverty. It is estimated that in 2011 alone approximately twelve percent of Cambodia's total land area was allocated to ELCs and that in total the portion of Cambodia's total arable land area allocated to ELCs is more than half (Titthara and Boyle, 2012a). According to one human rights NGO, during this year Cambodia will run out of arable land available for consignment (ibid.).

The most central aspect of the controversy surrounding the ELC boom in Cambodia is the disruption it causes to rural people. Cambodia has enjoyed significant economic growth for more than a decade, but it remains overwhelmingly rural and poor. In 2008 Cambodia was still more than eighty percent rural and only a little more than one quarter of the population had access to generator or grid electricity (National Institute of Statistics [NIS], 2008). Rural people depend on access to land for subsistence and their livelihoods. When ELCs are established they enclose land and deny access to rural people. When rural people engaged in agriculture are denied from access to land they live on and cultivate they are essentially cut off from their livelihoods, as they no longer have access to land for cultivation or land for grazing their livestock (International Federation on Human Rights [FIDH], 2011). In many cases compensation is offered, but this is not always the case, and even when there is compensation it is rarely at fair market value (Cambodian Human Rights Action Committee [CHRAC], 2009).

The conditions in which people are denied access to land varies from case to case. There are numerous cases where men hired by the ELC owner or the police and

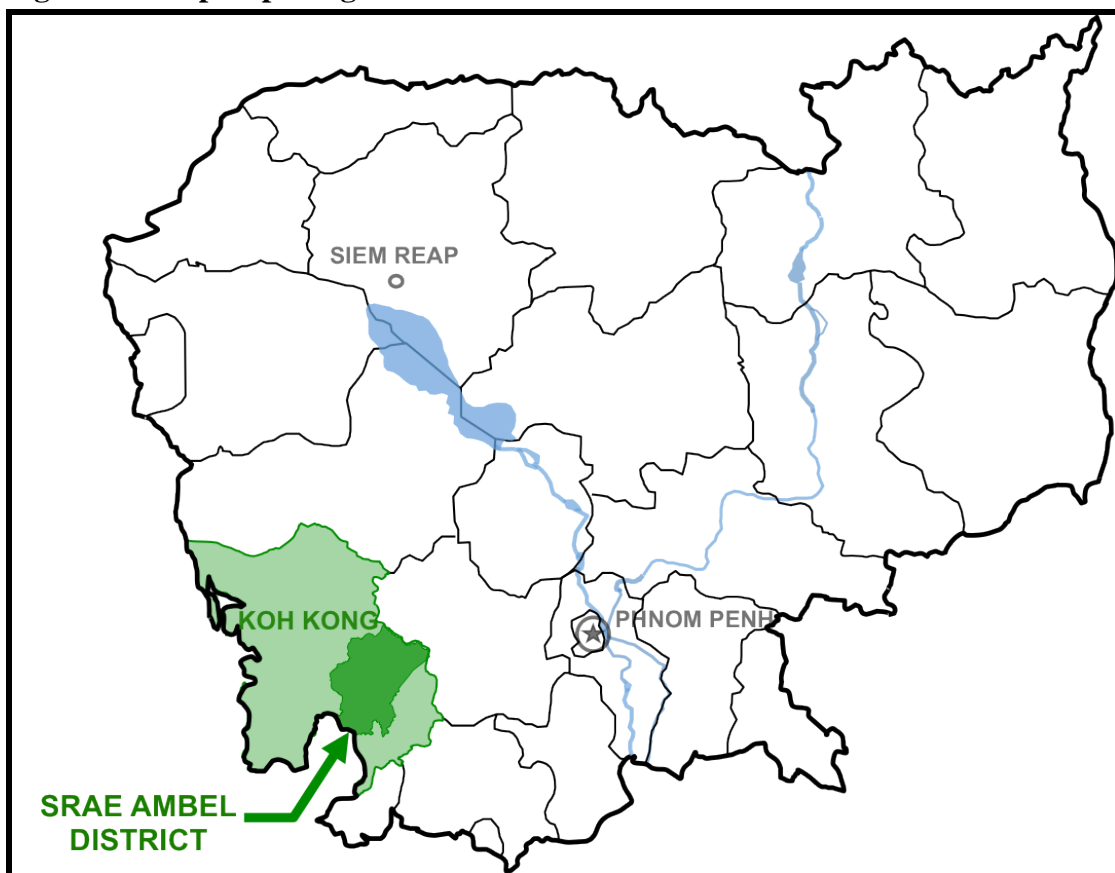
Army have forcibly enclosed land and even violently removed its occupants. One example is for a nearly 800 Ha ELC in Kratie province that is to become a rubber plantation. Another example is the forced eviction of 105 families from land near the village of Spean Ches in Kampong Saom province (Cambodian League for the Promotion and Defense of Human Rights [LICADHO] 2009).

Figure 1.1 Map depicting ELCs in Cambodia



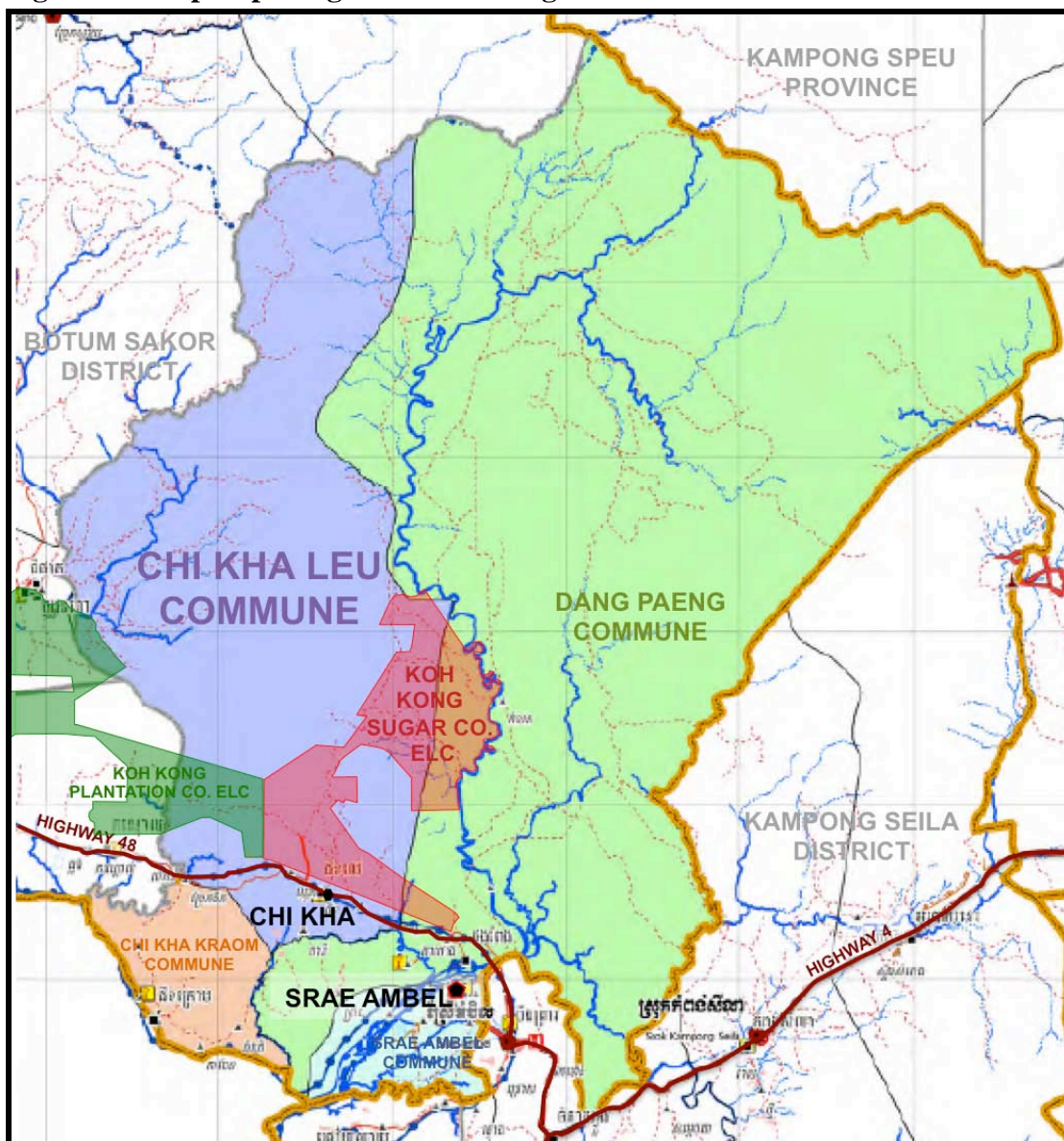
Source: LICADHO (2010)

Figure 1.2 Map Depicting Location of Srae Ambel District.



Source: Map from Cambodia National Committee for Sub-National Democratic Development (NCDD) (2009) overlay on CIA World Fact Book Cambodia Political Map (2012).

Figure 1.3 Map Depicting Location of Sugar Cane ELCs in Srae Ambel District



Source: LICHADO map (2010) of Koh Kong Plantation Company and Koh Kong Sugar Company ELCs overlay on a NCDD administrative map (2009)

The Koh Kong Sugar Company, Limited (KKS) ELC in Srae Ambel district of Koh Kong province is representative of the trend.. KKS is one of two ELCs granted on August 2, 2006 by the Ministry of Agriculture Forestry, and Fisheries (MAFF) to cultivate sugar cane in Koh Kong¹ (MAFF, 2010). It is a subsidiary of Thailand-

¹ The other ELC is Koh Kong Plantation Company, Limited, which sits on a 9,400 Hectare (Ha) plot immediately adjacent to the KKS plot and is owned by Cambodian Senator and business tycoon Ly Yong Phat (MAFF, 2010). Based on the timing of the granting of the two

based Khon Kaen Sugar Industry Company, Limited and Thai sugar mogul Chamroom Chinthammit is named as its owner (ibid.). The KKS ELC agreement has duration of seventy years, encompasses approximately 9,700 Ha of land and includes a sugar mill for producing crystallized sugar (ibid.).

The concessions became contentious almost immediately when the livelihoods of approximately 400 families were disrupted to clear smallholder plots to make way for the plantation (BABC 2010). Since *before*² the time the concessions were granted in August 2006 an ongoing dispute has raged between the concession owners and the persons who previously occupied the land. Smallholder farmers in communities neighboring the concession like Chi Kha village in Chi Kha Leu commune suddenly had their land confiscated, enclosed and were denied further access to the land.

The purpose of this thesis is to examine the process of the change of land tenure from smallholder farmers to a large-scale agro industrial plantation. In doing so it applied the *powers of exclusion* conceptual framework created by Dereck Hall, Philip Hirsch and Tania Murray Li upon the change in land tenure and used the Koh Kong Sugar Company sugar cane plantation as a case study of how these powers shape the process of change in land tenure. This thesis contends that viewing the process through the powers of exclusion provides a more thorough understanding of land tenure in Cambodia and how a combination of forces can converge to have unintended consequences.

ELCs and the fact that Ly Yong Phat and Chamroom Chinthammit are business partners, many observers have been led to assert that the arrangement was designed to circumvent the legal limit for the size of ELCs (Clean Sugar Campaign [CSC, 2012], which is 10,000 Ha. (RCG, 2001)

² See Chapter 3. According to respondent statements bulldozers began clearing the land on May 19, 2006. The contract between MAFF and Koh Kong Sugar Company was not finalized until August 2, 2006 (MAFF, 2010).

1.2 Conceptual Framework

The work of Hall, Hirsch and Li regarding powers of exclusion and land tenure in Southeast Asia will provide the basis for the conceptual framework of this thesis. The framework is based upon the four powers of exclusion they identify in *Powers of Exclusion: Land Dilemmas in Southeast Asia*. While they admit that there are other powers at play, they identify the powers of regulation, the market, force and legitimation as being the most frequently used to explain disputes over land tenure in Southeast Asia (Hall, Hirsch, Li, 2011). Power is the central element of the concept. As their work suggests, power can take many forms. For the purpose of this study however, power is the implicit or explicit ability to control. Hall, Hirsch and Li identify four different powers in their framework. The results of the study revealed that the power of information also helps to explain the process of the change in land tenure.

1.2.1 The Market

The market is another power that Hall, Hirsch and Li identify as a power of exclusion. They identify the market as possessing exclusive power because, "...it limits access through price and through the creation of incentives to lay more individualized claims to land (2011: p.5)." There are other characteristics of the market that are also important to note. The market in itself is not a power of exclusion but is a channel through which power is projected. It is the decisions that stakeholders make about the market that projects power. Scale is another characteristic of the market to consider. Conditions in the international market for sugar ultimately led to the decision to develop sugar cane plantations in Koh Kong province.

A tangible embodiment of the market in the case of this study are the ELCs themselves. As the Land and Housing Rights Working Group observes, poor individuals with legitimate claims to the land they occupy are often at the mercy of rich and powerful investors (2009). The market also acts as a power of exclusion in

that it can limit access to land through the price of the land itself, even though it is the actors in the market that are the actual agency of change. Without sufficient capital to purchase land and acquire ownership a person can be excluded from it. The market acts in concert with other powers in a manner that Hall, Hirsch and Li assert, "...operate together...[and]...are inextricably fused." (2011: p. 197). The linkage between the power of the market and the power of regulation is a case in point. The most notable example of this relationship is RGC's policy supporting ELCs that ultimately promotes growth in the commodity market. The Cambodian government's policy of exporting one million tons of rice per year by 2015 has encouraged the steady growth of the rice market.

1.2.2 Regulation

There are numerous sources available regarding regulations that are worth mentioning. Once again it is worth referring to Hall, Hirsch and Li for their definition of regulation, which is defined as "...the rules regarding access to land and the conditions of use (2011: p. 5)." For Peluso and Vandegeest, the manner in which states allocate land for specific purposes is a form of regulation (1995; 2001).

More closely related to this study are the laws that regulate land use in Cambodia. The 2001 Land Law is one such law that is significant in that it defines categories for land ownership as well as conditions and procedures for obtaining ownership of private property. Another significant law is the 2005 Sub-decree on ELCs. Together these two laws are at the heart of the regulatory aspect of land disputes in Cambodia. There are other aspects of regulation in the case study that are worth mentioning, however. Cambodia is known to have a weak legal framework and weak rule of law (LHWG, 2009). A manifestation of this is that national legal and regulatory mechanisms have not been introduced at the local level throughout all corners of the Kingdom (Ministry of Land Management, Urban Planning and Construction [MLMUPC], 2011). In the absence of these mechanisms there is in effect a regulatory void that is open to manipulation and exploitation.

1.2.3 Force

Force, according to Hall, Hirsch and Li can be leveraged by both state and non-state actors and includes the threat as well as the actual use of force (2011: p.5). Force can take many forms. It can be the threat of force like intimidation or its actual employment. There are both legal and illegal forms of force. Legal forms can come in the form of punishment for illegal activity (Hall, Hirsch, Li, 2011). Illegal forms range across the entire spectrum of extrajudicial violence. In the case study several forms of force were observed including clearing land with bulldozers, capturing livestock, beating people with rifle butts, shooting livestock and even shooting a person in the foot. An important perspective on the role of force and the relationship between the military and the people is contained in Cambodia's 2006 Defense White Paper. According to the document, the military has a role in "ensuring internal stability, security and social order in the Kingdom of Cambodia (RGC, 2006: p.22)." This is important to consider in the context of the security forces being employed to forcibly deny access to land because it can be interpreted as maintaining social order.

1.2.4 Legitimation

The final power of exclusion is legitimation. According to Hall, Hirsch and Li, legitimation is the right to exclusive claims based on moral grounds (2011: p.5). Along the same lines Peluso and Vandergeest describe "customary rights" as the basis for access to land, although they don't go as far as to define it as a source of power (2001: p.762). Legitimation provides the normative basis for claiming access to land (Hall, Hirsch, Li 2011: p. 18). In the case study legitimation was a key source of power that was projected by the villagers that took many forms. Their claim to the land that is now at the center of the dispute has a customary basis. They also contest the legitimacy of the ELC based on their claims to a right to livelihood and social justice.

1.2.5 Information

This thesis contends that information also acts as a power of exclusion. Broadly speaking, information is defined as the communication of knowledge or intelligence (Merriam Webster, 2012). Lack of information can expose stakeholders to extreme vulnerability while access to information by other stakeholders can give them pivotal advantage and compel them to make decisions and pursue schemes that bring benefit. An important characteristic of information is that it can be manipulated. Stakeholders can control the flow of information as well as how information is presented (Few, 2001).

Information cuts across the other powers of exclusion. Information, or the lack of it, can manifest itself in market terms, or in terms of laws and regulations or the application of force. It also manifests itself as a power of exclusion when it is used to access or deny access to land based on what a broad audience may perceive as right or wrong. It is a fundamental aspect of power that people, organizations and governments devote tremendous resources toward.

1.2.6 Exclusion

Another important aspect of their work that is incorporated into this thesis is the definition of exclusion. The authors make an important distinction about the use of the word when analyzing land tenure. Although the word is often presumed to have a negative connotation, "...all land use and access requires exclusion of some kind. Even the poorest people, farming collectively and sustainably, can not make use of land without some assurance that other people will not seize their farms or steal their crops (Hall, Hirsch et. Al. 2011: p.4). They assert that exclusion has no normative attachment but is an outcome of access. They also provide key insight that connects the four powers to their definition when they observe that exclusion "is structured by power relations (ibid.)."

1.2.7 Exclusion's Double Edge

One last concept borrowed from Hall, Hirsch and Li is what they describe as *Exclusion's Double Edge*. According to Hall, Hirsch and Li, "Exclusion's double edge means that the various kinds of exclusivity that different actors want generally bring with them not just the desired positive effects but also a series of other effects that are much less welcome (ibid: p. 8)." In other words the term captures the sort of dilemma facing decision makers when they promote land enclosure for various purposes widely seen as a common good, but which come along with negative implications. In the case of this study a major theme is that the investor benefits from the enclosure of the ELC while the surrounding villagers are made landless and thrown into poverty.

Figure 1.4 Conceptual Framework

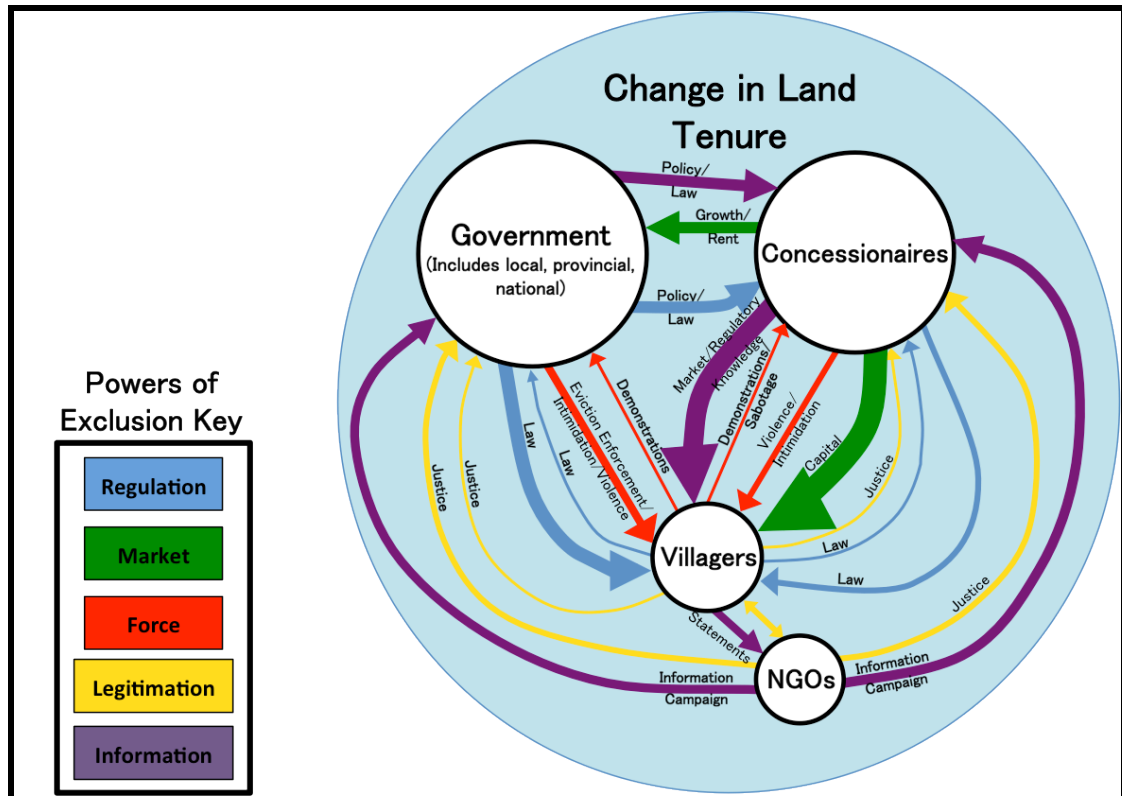


Figure 1.4 depicts the conceptual framework for this study. Key elements of the framework are the major stakeholders and the different forms of power they project upon each other to shape the process of change in land tenure. The power of the market may take the form of capital or cash crops. The power of regulation takes the form of laws and policies. The power of force can take the form of demonstrations or shooting livestock. The power of legitimation may take the form of claims based on customary rights or social justice and the power of information takes the form of knowledge of the market and regulations by some stakeholders while taking the form of information campaigns with others. The projection of the powers of exclusion occurs at the local, national and international scales. The relative strength of each form of power is depicted both by the size of the stakeholder's oval and by the thickness of the arrow that stakeholder wields against its counterpart. These depictions reveal the imbalance of power in the process of change in land tenure. Stakeholders aligned to support one another (Government and

concessionaires) can create a cumulative advantage that exaggerates power imbalances.

The distance between stakeholders is intended to reflect the extent to which each stakeholder is aligned with another. The local, provincial and national governments have been presented as one stakeholder because they appear to be in lock step and no significant tension between them was observed. The concessionaire oval is depicted near the government oval because of the close relationship relative to the other stakeholders during the case study. Likewise, the same is true of the relationship between the villagers and the NGOs (Nee, 2009).

Implied in the diagram is *exclusion's double edge*, which should be understood from the various powers at play between various stakeholders for access to land. The interpretation of the conceptual framework would be that acquisition of the land by Koh Kong Sugar Company has had unintended consequences. Another interpretation is that the creation of landlessness for a relative minority was the accepted cost of development.

1.2.8 Stakeholders

There are four major groups of stakeholders in the case study, all pursuing their own interests but more or less aligning in two factions. The first stakeholder group is the villagers who were displaced by the sugar cane plantation. They are aligned somewhat closely with the next group; the NGOs. Although there appears to be mutual interest, previous studies have revealed some doubts among villagers regarding the commitment and utility of the NGOs (Nee, 2009).

Within the other faction are investors and the government. The term investor is used interchangeably with 'concessionaire' or by the name of the investor's local subsidiary; Koh Kong Sugar Company. This stakeholder is the Thai-based sugar conglomerate and its subsidiary activities operating in Koh Kong province. Although there is evidence that the ELC was brought about through cooperation with a Cambodian senator and business tycoon who owns the adjacent Koh Kong Plantation Company, (BABC, 2010) Koh Kong Sugar Company and its parent conglomerate was the only business entity involved in the case study.

The government appeared to be aligned with the concessionaire in the case study. The deputy governor of Koh Kong province said as much to an NGO in 2009 (CHRAC, 2009). There is other evidence of close links between the investor and the government. As mentioned earlier, the primary investor on the neighboring sugar cane concession is a senator in the Cambodian government. Government policies encourage the granting of ELCs. ELCs can bring revenue in one form or another that benefit the government.

Even if the stakeholders can be categorized into four basic groups, there is significant differentiation within each group. Among the affected villagers, there are those who accepted compensation to relocate and there are those who did not. For the government there is differentiation between district, provincial and national levels, but also differentiation between branches of government (judiciary, legislative and executive) and between ministries involved in the case study. Among NGOs, there are different NGOs pushing different agendas that at times come into conflict with one another. Finally, even among the concessionaires there is differentiation. Two different concessions sit side by side, one is part of a Thai conglomerate and the other is part of a Cambodian conglomerate owned by Cambodian senator Yong Ly Phat. There is also a Taiwan-based investor Ve Wong with a stake in Koh Kong Sugar Company (Will, 2012).

1.3 Research Questions

1. How do the *powers of exclusion* shape changes in land tenure in the study area?
2. What have been the impacts on the stakeholders to date?
3. How significant is exclusion's double edge in influencing relations between the stakeholders?

1.4 Objectives of Research

1. To understand how the powers of exclusion work to shape changes of land tenure in the area of study.
2. To examine how the stakeholders in the case study have been impacted by the change in land tenure.
3. To understand the significance of exclusion's double edge as it relates to primary stakeholders in the case study.

1.5 Hypothesis

The hypothesis of this study is that the change in land tenure was brought about by the convergence of the power of the market and the power of regulation in a manner that gave the concessionaire a disproportionate advantage over the villagers. In this case the concessionaire acquired the land to profit from producing sugar and exporting it overseas. In addition to the powers of the market and regulation the power of information was also critical to the process of the change in land tenure. The acquisition of the concession was also aided by RGC policy promoting ELCs and by a contradictory and ambiguous legal framework governing land tenure that can be manipulated by parties that have special access to the government.

1.6 Research Methodology

The methodology for the study was centered upon in-depth, semi-structured interviews with people living near the KKS plantation. The interviews can be categorized as ethnographic research that was qualitative in nature. A total of 21 interviews were conducted, with the focus being residents in Chi Kha village affected by the change in land tenure.

- Seven in-depth semi-structured interviews individually with residents.
- Two focus groups comprising of seven and five villagers respectively were also conducted.
- Expert interviews with two local government officials.
- One Government official from Ministry of Land Management, Urban Planning and Construction (MLMUPC) via e-mail.
- One NGO staff member with knowledge of land tenure and the dispute between KKS and neighboring residents.

Other interviews that ended up being of secondary significance to the study include three people living in or near the Srae Ambel district center, a taxi driver in the Koh Kong provincial capital, three Cambodian residents living in Phnom Penh and an expatriate businessman with knowledge of land tenure issues in Cambodia. Interviews were requested with the Srae Ambel district governor and a representative of KSL Group but both of these interviews were declined.

The interviews were augmented by participant observation and analysis of secondary sources such as newspaper articles, NGO reports and government documents. These secondary sources served to triangulate and contextualize information, serving to confirm the information's accuracy.

Before departing for the field research contacts were obtained from the legal NGO, CLEC. The plan was to use these to facilitate research, but this did not occur as the contacts could not be reached. Instead field research was facilitated by an individual who provided transportation, interpretation and life support.

1.6.1 Data Collection

Detailed notes were taken for each interview and the two focus groups. Following each event the notes were transcribed and later used to formulate narratives that captured the significant information related by respondents. The narratives later served as the basis for analysis used to measure the *powers of exclusion*.

Outside of the village itself interviews were also conducted in and near the Srae Ambel district center, in the Koh Kong provincial capital and in Phnom Penh. Expert interviews were conducted in person in Srae Ambel, Koh Kong and in Phnom Penh. One interview was conducted by e-mail.. They included a government official with MLMUPC (via e-mail) and a member of the NGO Equitable Cambodia in Phnom Penh who has worked extensively on the land dispute between villagers in Chi Kha and the sugar cane plantation.

Interviews were conducted with the assistance of an interpreter. Although the researcher is fluent in Khmer and has extensive experience working in Cambodia, the interpreter's native fluency and ability to interpret on a professional level improved the quality of data collection.

1.6.2 Stakeholder Mapping

There were four basic groups of stakeholders in the study. These include the villagers, the government, the concessionaire and NGOs. Even among each group of stakeholders however, there was differentiation. Upon arrival in the study area the researcher conducted stakeholder mapping to better understand these differentiations. With the differentiations better understood, the research design and sampling was adjusted according to the different sub-groups.

1.6.3 Data Collection and Research Instruments

Tools for data collection included stakeholder mapping and the use of typologies to determine the changes in land tenure over time and the forces that have shaped them. Stakeholder mapping was used to determine differentiation within the

stakeholder groups. Typologies of land use were used to determine the legal categories of land ownership. The interview questions were developed to gather the varying perspectives from respondents in regard to the powers shaping the process of change in land tenure in the area of study. Interviews questions were also designed so that indicators of the powers of exclusion could be identified and analyzed.

1.6.4 Data Treatment and Translation

During the course of each interview detailed notes were taken using pen and paper. Once the interviews for each day were complete they were transcribed into the Microsoft Word word-processing program and were eventually used to develop narratives. The narratives were used as the primary basis of analysis for the study.

Photographs and maps in portable document format (PDF) were collected to capture a graphic depiction of the study area. These media were then superimposed upon one another and traced into Microsoft PowerPoint for better manipulation and clearer comprehension of the study area's physical characteristics. These visual pieces of information are intended to facilitate a more complete understanding of the study area and its key physical characteristics.

1.6.5 Research Scope

The overall scope of the study was cut back for reasons to be discussed in greater detail below. The geographic scope of the study was at three separate locations in Cambodia. The primary location was the village of Chi Kha in Srae Ambel district, Koh Kong province. The secondary location was the Kingdom's capital of Phnom Penh where an expert interview was conducted with NGO staff and where additional information relevant to the case study was collected. The final location was Koh Kong's provincial capital, known by the same name.

1.6.6 Limitations

Numerous limitations were encountered during the course of field research. The first limitation encountered was the availability of NGO contacts. Despite repeated attempts through telephone and e-mail, it was not possible to reach most contacts gathered before setting. This was overcome through the assistance of the individual who provided transportation and interpretation. Another limitation encountered was the remoteness of the study area. Even though a major highway passes directly through the study area it is still almost a three hour drive in a sedan to Phnom Penh in one direction and more than two hours by the same type of vehicle to Koh Kong in the other direction. By bus the time to get to Phnom Penh or Koh Kong would have been almost twice as long. Within the study area distance would have also been an obstacle but this was overcome through the availability of a car.

Availability of transportation and the interpreter also proved to be a limitation. This was limited to approximately one week so the number of days in the primary study area had to be scaled back to five days and the number of in-depth interviews in the primary area of study was scaled back from fifteen to eleven (including focus groups and interviews with the village and commune chiefs). The last limitation encountered in the primary area of study was availability of life support. There is no electricity in the village and there is no guesthouse or other formal accommodations for visitors to stay in overnight. There were also no medical facilities.

Finally, the sensitivity of the issue was a key limitation. This influenced the methodology of expert interviews and is also most likely the reason that key stakeholders declined to be interviewed. The sensitivity of the issue necessitated that interviews with local officials were constructed in a non-controversial manner led to other key informants declining to participate in the study. Although the dispute has been ongoing for more than six years now the concessionaire has never released a statement explaining its position and declined to participate in the study.

1.6.7 Significance of Research

This research is significant for two reasons. The first reason is that the sugar cane plantation is representative of a wave of ELCs that has accelerated rapidly in Cambodia over the last several years. The ELCs have become symbolic of growing inequality in Cambodia and embody the *double edge of exclusion*, as policy makers make land use decisions in the name of economic growth that have unwelcome consequences for ordinary people. The second reason that this research is significant is that the conceptual framework developed by Hall, Hirsch and Li has so far not been fully applied to a case study in Cambodia. Applying it to a well-documented land dispute case in Cambodia may reveal new knowledge in land tenure and development in Cambodia that could assist policymakers in analysis before making important policy decisions related to land use. With the recent suspension on the granting of further ELCs is proof that there is significant attention from the most senior political leaders in the Kingdom.

1.6.8 Ethical Issues

There are currently no tangible risks to the respondents in the case study, however to guarantee the protection of their interests and personal safety certain preventative measures were applied during field research. First, verbal consent was obtained from all respondents before they were interviewed. Second, to the extent possible the identity of all respondents was withheld to protect them from reprisal in the event that their comments were controversial. In no way would it be acceptable for the study to result in some form of harm to any of the participants.

CHAPTER II

LITERATURE REVIEW

The case study of the process of change in land tenure in Koh Kong province involves a complex interaction of many factors. It involves the powers of exclusion: regulation, the market, force, legitimation and information. It also involves different scales as forces at the local, national and international levels influence the process of change in land tenure. Key features of the dispute can also be traced to Cambodia's history.

This review examined existing literature available covering all relevant factors involved in the case study. It examined literature regarding key concepts related to the case study as well as relevant policies, laws and procedures. Through the review gaps in knowledge emerged which allowed the focus of the study to be more completely refined.

2.1 Development

Development is a central concept to the case study. It is the primary objective of RGC's policy to promote ELCs. Development is a very broad term with many interpretations and perspectives. One interpretation of development from Nineteenth Century Europe is that it is the improvement of human kind (McMichael, 2004: p. 25). The current discourse on development is often traced back to U.S. President Harry Truman's 1949 inaugural speech, in which he pledged the technical knowledge and resources of the United States toward growth in underdeveloped areas (Rist, 2002: p. 70). In this context economic growth and technology are closely linked to development.

There are other notions of development however. In 1990 the United Nations popularized the notion of human development when it introduced the Human Development Report. The report formalized the idea that development is more than just GDP growth and accumulating capital, but also encompasses enlarging people's choices and providing access needed for an reasonable standard of living (United

Nations [UN], 1990: p. 1). From this perspective development became more widely viewed in social terms such as conditions of health and education. From a similar perspective Mahbub ul Haq claims that the purpose of development "...is to create an enabling environment for people to enjoy long, health and creative lives (1995: p. 14)." Amartya Sen elaborates on this concept, describing it as involving, "...both the processes that allow freedom of actions and decisions, and the actual opportunities that people have, given their personal and social circumstances (Sen, 1999)."

Development is an especially significant notion for Cambodia. Cambodia has a particularly large international community present on the pretext of development and enjoys an unusually large amount of development assistance from foreign donors. Since the transition from conflict and upheaval to peace and stability development assistance has made a substantial impact on the condition of Cambodian society. As noted earlier, it is also a major policy objective for the Cambodian Government.

2.2 Land Tenure

Land tenure is another key concept of the case study. According to the United Nations Food and Agricultural Organization (FAO) land tenure is, "...the relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land...(FAO, 2002)." From this definition it is understood that the term is not synonymous with outright legal ownership. In many cases persons may occupy the land without legal ownership. This is certainly the case in Cambodia, where past upheaval and an underdeveloped legal framework for land ownership have combined to create a situation where a large segment of society occupies land to which it has no legal claim. With the rapid growth of ELCs recently this has become a significant source of friction.

Rural land tenure in mainland Southeast Asia³ has historically consisted of two basic forms. The original form is smallholder family plots producing staple crops (Hayami, 2001). With European colonization the second form of rural land tenure

³ This term describes the Indochina landmass that comprises the modern states of Cambodia, Laos, Myanmar, Thailand and Vietnam. Other terms that are commonly used to describe the region are *peninsular Southeast Asia* and the continental zone (Hayami, 2001).

was introduced, as large tracts of forest and delta were converted into plantations for the production of cash crops that were needed to fuel economies in Europe (ibid.). Cambodia's experience is consistent with this trend as evidenced by the customary form of agriculture that still exists today, as well as the introduction of plantations for the production of rubber and other essential commodities during the period of French colonialism (Hall, Hirsch and Li, 2011). In a very real sense the land dispute at the heart of the case study represents a clash of these two forms of tenureship.

Each of the two most common forms of tenureship in Southeast Asia have their respective advantages and disadvantages. The key advantages of smallholder tenureship are that they are more productive per hectare of land cultivated and historically they have been responsible for the cultivation of previously unused land (ibid.: p. 190). The advantages of the plantation form of tenureship are primarily linked to the access to capital and access to market that is common among large-scale agricultural enterprises (ibid.: p. 185). Meanwhile, the disadvantages of the plantation form of tenureship include the inefficient replacement of labor with capital, agricultural production that is not as intensive as the smallholder system and the effects to the soil and environment caused by mono-cropping and the use of chemical fertilizers and pesticides (Hayami, 2001: p. 189). Lastly, is the social tension created by the intersection of the two forms of land tenure.

2.2.1 Informal Tenureship

Informal land tenureship rights lack legal recognition or protection. Most often it is based on custom. Customary tenureship of land is essential to understanding the conceptual nuances of the case study. Until recently customary tenureship has represented the most widely recognized basis for land tenure in rural Cambodia (Hall, Hirsch and Li, 2011). A legal framework for rural land ownership evolved over time, but it was never implemented in a manner that significantly altered the nature of how rural Cambodians (the overwhelming majority of the population) (ibid.) cultivate or otherwise develop land on an exclusive basis. However, this tradition is coming under pressure from a newly erected legal framework that is weakly enforced and strongly favors large-scale economic land concessions.

Customary tenureship provides a normative basis for informal property rights. It is a widely accepted custom among poor people in rural areas worldwide and its legitimacy is strengthened by the duration and level of intensity of the tenancy (UNEP, 2007: p. 7). Conflict is possible when the government claims State ownership of customarily occupied land and grants it to an investor without including customary tenants in the granting process (ibid.).

2.2.2 Land Grabbing and Forced Evictions

Land acquisition, or “land grabbing” as its critics refer to it, is a growing global trend that has rapidly expanded in recent years, especially in Asia, Africa and Latin America (Cotula, 2012). Despite its recent emergence as a topic of controversy the practice is not new. The term “land grabbing⁴” was first coined by Karl Marx in the Nineteenth Century to describe the first step in a process that creates large-scale agro-industrial production (White, et al., 2012). One definition of land grabbing is that it is “...the large scale acquisition of land or land-related rights or resources by corporate (business, non-profit or public) entities (ibid.: p. 619). This definition only considers one aspect, however. Other important aspects of land grabbing include its incentives and its effects.

The incentives for land grabbing are varied but most directly relate to market forces. One incentive is to profit from producing commodities. In 2008 global food prices quickly increased. Although prices declined afterward, by 2011 they had returned to 2011 prices (Cotula, 2011). Moreover, the forecast for future food prices is that they will escalate as estimates predict the rate of food production will have to be nearly double the rate of global population growth (ibid.). Another incentive for land grabbing is the value of the land itself. Many investors purchase land in whole or in part speculating that its value will rise. As land is acquired due to speculation over its future value it is enclosed and may or may not be used (ibid.). Government policy also acts as an incentive, as governments that are recipients of investment in

⁴ The origin of the term reveals a great deal about the political orientation of those individuals and organizations that make it a central piece of their vernacular.

land encourage the activity to promote development. Large-scale agro-industrial developments are seen to create jobs in rural areas and generate revenue for the government (MAFF, 2010).

The effects of land grabbing depend on the stakeholder. Acquisition of large pieces of rural land offers the prospect of substantial returns for investors through production of key commodities in a period of rising food prices and through the appreciation in the value of the land itself (Cotula, 2011). Host nation governments benefit from the economic growth and revenue that large agricultural products generate. Rural people on the other hand face losing a great deal in land grabbing cases. The land that is acquired for large agricultural products is normally state-owned land either accessed or occupied through customary rights (Cotula, 2012: p. 669). When this land is enclosed the people are deprived of access to it and often even face forcible eviction. This process leads to landlessness and severe poverty in areas where land grabbing has occurred (White, et al., 2012).

There is a great deal of literature available regarding forced evictions in Cambodia. Nationwide it is estimated that since 2003 more than 400,000 people have been affected by land disputes due to the granting of ELCs (Vrieze and Naren, 2012). There is even some literature available about forced evictions related to the case study. The acquisition of land for development into a sugar cane plantation has been mentioned in several NGO reports (Meas, 2009; BABC, 2010; CHRAC, 2009). A key element of this acquisition is the forcible exclusion of the lands previous tenants. During the case study it became clear that most of the claimants were denied access to land rather than being outright forcibly moved from it. Nonetheless, denial of access can be as devastating as eviction itself.

2.3 Typology of Land Tenure

The most important document for understanding the different types of land tenure in Cambodia is the 2001 Land Law. The law entitles, "...Cambodian citizens, public territorial collectives, public institutions, Cambodian communities or associations, public enterprises, Cambodian civil or commercial enterprises and any

Cambodian organization which is recognized as a legal entity.” (RGC, 2001: Article 8)

There are different types of ownership outlined in the law. Ownership of property can be categorized into various groups. There is State ownership, there is collective ownership and there is private ownership. In order to claim legal ownership an entity must be owned at least 51 percent by a Cambodian stakeholder. Within State ownership there is State *public* land and State *private* land (Nabangchang-Srisawalak, 2006). State *public* land constitutes all territory that is for public good. This includes such types of land as public forests, ports, roads and railways, and royal property. According to the law, State private land is basically unused land. Unless the land has been formally titled to another party, it remains property of the State (ibid.). This makes unused land available for sale or consignment. A key controversy surrounding State *private* property is that even though it is classified as unused by the State, in many cases the land is informally being used. The manner in which the State categorizes the land may not be its actual condition (Vandergeest and Peluso 1995). This is a key issue behind the process of change in land tenure in Srae Ambel.

There is collective ownership. One form of collective ownership is by monasteries. The conditions for this form of ownership are very restrictive and land in this form cannot easily be commoditized (RGC, 2001). There is also a provision for collective ownership by indigenous groups. These are defined as “...a group of people that resides in the territory of the Kingdom of Cambodia whose members manifest ethnic, social and economic unity and who practice a traditional lifestyle, and who cultivate the land in their possession according to customary rules of collective use (ibid.).”

Finally there is private ownership. The conditions for private ownership seem straightforward. Only Cambodian citizens can own private property. All Cambodian citizens are entitled to privately own property unless State interests supersede them. There are provisions for individual ownership, co-ownership and collective private ownership. It is unclear to what extent the original tenants exercised ownership before the sugar cane plantation. This will be an important issue in field research.

2.4 Policy

The RGC has a deliberate policy to promote the granting of ELCs. This policy supports the objectives of 1) promotion of the agricultural industry and capital mobilization; 2) job creation in rural areas; 3) infrastructure development; 4) export promotion (especially of rice and rubber); 5) environmental protection and 6) technology transfer (Sakun, 2011).

The policy is controversial because it creates a zero-sum situation in many cases where broader economic growth is pursued at the expense of some rural people who are excluded from land that they have lived on or cultivated, in some cases for almost thirty years. Although this policy may lead to broader economic growth through the promotion of agro-industry it is difficult to measure its benefit to the Cambodian public overall.

For some causing landlessness among Cambodia's rural people is an acceptable cost of policy implementation if it will lead to the benefit of broader segments of the population. One government official interviewed regarding the land dispute between villagers in Chi Kha Leu commune and the Koh Kong Sugar Company emphasized the priority that development holds and how it trumps 100 families keeping their land (CHRAC, 2009).

Another policy with clear implications on the case study is the Prime Minister's land titling plan that began implementation in July 2012. Although some important details of the policy have not been publicized, the overall objective of the policy is to measure and title up to 1.2 million Ha of land for 350,000 families across the Kingdom that are involved in a land dispute with an ELC (Titthara and Boyle, 2012b).

2.5 Law

The supreme law of the Kingdom of Cambodia is its Constitution. The Constitution was enacted in September 1993 and officially proclaimed in March 2008 (RGC, 2008). The constitution is significant not only because all other laws must conform to it, but also because it contains articles that specifically address land ownership and ultimately touch upon land tenure.

Article 35 is significant because it guarantees that the government will properly handle the requests of the Cambodian people (ibid.). As following subsections will show, there are numerous reports from villagers related to the case study that requests using government processes most often go unanswered.

Article 39 is significant because it provides the right to compensation for Cambodian citizens who have suffered damages at the expense of the State (ibid.). This is significant to the study because NGOs allege that security forces were involved in forcing the eviction of villagers who are at the center of the study (CHRAC, 2009).

Article 44 is extremely important because it provides the right for individual property ownership and also because that it stipulates that only in the case of public interest will property be expropriated. Moreover, the article states that in case of expropriation of property the owner is entitled to “fair and just compensation (RGC, 2008).” In the case study and in NGO reports there are many claims in which people were denied access to their land by the company and were only compensated after the fact if at all. Moreover, many of those who lost their land and were compensated were given compensation that is well below what would be considered fair market value.

2.5.1 Land Law

The 2001 Land Law has already been mentioned and cited in previous sections of this chapter. The purpose of the law is to protect the rights of ownership to property and to define the various types of ownership possible under the law. It also codifies processes for obtaining ownership and processes for resolving disputes over ownership of immovable property.

Article 30 of the law is significant to the case study because it provides the right for people *to request* a title of ownership for land that they possessed for five or more years before enactment of the law (RGC, 2001). This has become a key point of contention, as parties who have lost their land to ELCs assert legal claim to their land based on this article while their opponents counter that there is no legal guarantee to secure tenure (LHWG, 2009).

Article 35 is significant because it stipulates that only “competent authorities” are authorized to forcibly evict people from their land when they lack the legal documentation to justify their tenure (RGC, 2001). This is another contentious issue related to land tenure in Cambodia because it is often the police and the Army that provide the coercive means to enforce evictions (LHWG 2009; BABC 2010; CHRAC 2009). From a western perspective the notion of the security forces employing coercion and violence upon their own people appears nothing less than reprehensible, yet it is sanctioned by the land law in cases where occupants lack full legal claim. Moreover, whereas the military in the West is seen as principally involved with defending against external threats, a primary function of the Royal Cambodian Armed Forces (RCAF) is to maintain internal security and social order (RGC, 2006). In the case of forced evictions it can be argued that the military, along with the police represent a competent authority for enforcement of evictions.

Article 40 is important because it makes a legal distinction between possession and ownership. An individual may have a title of possession but this does not equal outright ownership and reveals a legal paradox that has strong implications for the case study. During field research it was discovered that villagers had neither legal

title of possession or legal title of ownership. Their claims were based on custom, right to livelihood and social justice. The lack of a legal title to ownership created a channel through which the concession could appropriate their land.

In all, the 2001 Land Law provides the legal framework for ownership of land in Cambodia and ultimately the legal power for land tenure, but it has been criticized as imperfect and its implementation weak (LHWG, 2009). Nonetheless, it is an essential element of land tenure in Cambodia and it overshadowed many aspects of the case study.

2.5.2 Sub-Decree on Economic Land Concessions

Another essential element of the legal framework related to the case study is the 2005 Sub-Decree on Economic Land Concessions. The purpose of the document is to provide guidelines and procedures for the granting of ELCs. The document defines ELCs as, "...a mechanism to grant private state land through a specific economic land concession contract to a concessionaire to use for agricultural and industrial-agricultural exploitation (RGC, 2005)." Not only does the sub-decree define the nature of an ELC, but it also specifies the conditions in which ELCs are granted and the processes through which an ELC can be established.

Another significant question at the heart of the case study is whether or not the process detailed in the sub-decree on ELCs was followed properly. NGOs working on behalf of villagers who were excluded from their land assert that the process was not properly followed and that the ELC is therefore illegal.

2.6 Processes

There are several processes that are important to the case study. These processes involve land tenure in general, but more specifically involve legal tenure of land and resolution of disputes involving land. One main grouping of processes important to the study is the acquisition of legal tenure to land. For the purposes of the study this can occur either through ownership or through consignment. The Land Law codifies the processes for both ownership and concessions (2001). ELCs do not

constitute legal ownership but they do constitute legal tenure of land for extremely long periods. The 2005 sub-decree on land concessions provides further guidance regarding the awarding of ELCs (2005). Ownership takes many forms, but in this case the most relevant form is private ownership. In terms of ownership there are some important nuances that are worth mentioning. Any Khmer citizen has the right to own land. The law provides for citizens who have been in possession (what the study categorizes as exclusive access) for five or more years previous to the enactment of the law the right to request title to ownership. However, the law clearly distinguishes between possession and outright ownership (RGC, 2001). This is a significant aspect of the recent wave of land disputes and is an important element of the study. A central aspect of the study that is not clear is the legal standing of the dispossessed.

There are two official processes for resolving land disputes. These include submitting complaints through the Cadastral Commission or through the National Authority of Land Dispute Resolution (NALDR). The Cadastral Commission falls under the Ministry of Land Management, Urban Planning and Construction (MLMUPC) and has the mandate to resolve disputes over untitled land (RGC, 2002). It maintains a presence down to the district level and has resolved more than 2,100 disputes since April 2003 (MLMUPC, 2011). In 2010 it received 48 complaints. The NALDR was created in 2006 is intended to disputes that are beyond the realm of the Cadastral Commission or the courts (Asia NGO Coalition [ANGOC], 2010). The two processes have had varying degrees of success. Still, there are other processes. These include the court system, appeals to the National Assembly and to the King (NGO Forum, 2010).

Another key process relevant to the case study is the process of Systematic Land Registration (SLR). This process is also under the stewardship of MLMUPC and has the objective of formalizing legal ownership for millions of Cambodia's mostly rural informal landholders (MLMUPC, 2011). By 2010 SLR had already registered 2.2 million parcels of land with the cadastral commission. Unfortunately Koh Kong is one of eight provinces in Cambodia that has not yet seen the implementation of SLR (ibid.). There is also a means for minor land dispute resolution within the SLR process. In some cases there may be multiple claimants to

a piece of untitled land that is to be registered. If the dispute between claimants can be resolved on the local level then the registration moves forward. If not, the case is referred to the district cadastral commission.

2.7 Literature Gaps

A significant body of work exists on both land use in Southeast Asia as well as on the controversy surrounding the two sugar plantations in Koh Kong province, but there is a gap when it comes to looking at the plantations through the framework of the processes of change in land tenure. Hall, Hirsch and Li touch on the topic of land use in Cambodia but devote virtually all of their work to case studies elsewhere throughout Southeast Asia (Hall, Hirsch et al. 2011). Peluso has carried out extensive work on land issues in Southeast Asia, but mostly as it pertains to forests in Thailand and Indonesia (Vandergeest and Peluso 2001). Nee touches on the Koh Kong sugar cane plantations in his work but provides little analysis on them and none through the framework of land tenure. Neef (2012) comes closest to the topic in his paper about ELCs and Social Land Concessions (SLCs) in Kratie province, but the location is not the same, there is an element of rights for indigenous people in his paper that is not a factor in the case study, and a major theme of his paper is discursive strategies that justify land grabbing rather than powers of exclusion that shape the process of change in land tenure.

The existing work dealing specifically with the sugar cane plantations also has little to do with the analysis of changes in land tenure. BABC (2010) released a report on the two sugar cane plantations in 2010, but it is basically a human rights report that fails to address land use in any analytical framework. In similar fashion LHWG released a report (LHWG 2009) that addresses ELCs within the framework of human rights, but it does not address the sugar cane plantations specifically. This case study offers the issue of ELCs from a different perspective. While human rights and rule of law are essential in understanding the issue overall, it is also worth examining the processes through which changes in land tenure occur. The processes seem to be taken for granted, but by viewing them through the powers of exclusion the complexities in power relations are revealed. This is not only useful for the case

study, but is also useful for understanding the broader issue of ELCs and land grabbing.

CHAPTER III

STUDY AREA PROFILE

This chapter provides an overview of the study area and key characteristics of land tenure there. It is divided into two sections. The chapter begins with a chronology of events directly related to the land dispute. It considers the study area's physical characteristics as well as statistics about its people, differentiation among stakeholders and the economy. It also considers historic events that have influenced the case study specifically and land tenureship in Cambodia more generally. The second section goes on to overview specific issues regarding land tenure in the study area relevant to the case, including the existence of a land market, the disputed area private title ownership and the process of compensation for expropriated land.

3.1 Background

The following section is provided to establish a baseline of information needed to fully comprehend the case study. This section considers several aspects of the case study including a chronology of events significant to the case study, a description of the physical characteristics of the primary study area, the study area's demographic data, an overview of its infrastructure, its economy, the influence of Cambodia's recent history and differentiation among stakeholders in the study.

3.1.1 Chronology

There are a series of key events that have helped to shape the case study and are useful to examine. Some are historical such as the collapse of the Khmer Rouge Regime in 1979, others are enactment of laws and the implementation of policies. Still others are events and incidents in Chi Kha Leu Commune that are directly related to the dispute.

January 7, 1979: Phnom Penh was liberated by the Kampuchea United Front National Salvation (FUNSK) and the People's Army of Viet Nam (PAVN), which symbolized the fall of the Khmer Rouge regime. The fall of the Khmer Rouge regime was a key event because in the aftermath of the abolition of private ownership of land it freed millions of people to restart their lives wherever possible (Slocomb, 2003). Many tried to return home to reunite with their families, but many others settled wherever possible (see Section 3.1.5 of this chapter).

Late 1980⁵: In 1980 the People's Republic of Kampuchea (PRK) government implements the *family economy* policy, which allocates land for private use to achieve the goal of raising agricultural production. The privately used land remained the property of the state and could be returned to state possession if needed (Slocomb, 2003).

September 21, 1993: The National Assembly of the Kingdom of Cambodia enacted a new constitution. The new constitution guarantees the right of private ownership of land (RGC, 2008).

September 30, 2001: On this date the Kingdom enacted the Land Law, codifying the right to private ownership of land, guaranteeing the right to *apply* for private ownership if a citizen can prove they occupied the land continuously for at least five years before the enactment of the law and stipulating that in case of deprivation of ownership, the deprived will be compensated at fair market value before the deprivation is allowed to proceed (RGC, 2001).

December 27, 2005: In 2005 the RGC issued the sub-decree on ELCs. The document outlined the criteria for awarding an ELC and detailed the process for applying for one (RGC, 2005).

⁵ According to the reference the source document promoting the family economy was undated. The author estimates it was drafted in late 1980 (Slocomb, 2003).

March 16, 2006: MAFF issued a letter requesting a 15,000 Ha ELC for the Koh Kong Sugar Co. to the Council of Ministers for the cultivation of sugar cane and other crops and the construction of a processing factory (MAFF, 2010c).

March 20, 2006: The Council of Ministers issued a letter approving in principle to transfer 10,000 Ha of land for 90 years in Srae Ambel district to the Koh Kong Sugar Company for investment in a sugar cane plantation and the construction of a processing plant (ibid.).

May 19, 2006: Bulldozers hired by Koh Kong Sugar Company appeared near Chi Kha village and began clearing land that had been under the tenure of local smallholder farmers. This action occurred approximately ten weeks before the contract between MAFF and Koh Kong Sugar Company was officially signed (Respondent 18, 06 Jul 2012; Chhay, 2012a).

August 2, 2006: MAFF officially signed the contract with Koh Kong Sugar Company granting the ELC to cultivate a sugar cane plantation and to build a sugar refinery (MAFF, 2010c).

March 2007: 150 villagers from Chi Kha Leu commune travel to Phnom Penh to deliver a complaint to the Prime Minister (CHRAC, 2009).

2007 (date unknown): A complaint was filed with the Koh Kong provincial court on behalf of villagers against the Koh Kong Sugar Company. The complaint asserted that the concession was illegal because the total land area of Koh Kong Plantation Company and Koh Kong Sugar Company exceeded the 10,000 Ha limit stipulated in the 2001 Land Law, the companies did not follow the process for acquisition of an ELC described in the 2005 Sub-decree on ELCs, no social or environmental impact assessment was ever conducted and the villagers were not compensated at fair market value for the seizure of their land in advance.

January 6, 2010: Lawyers from the NGO Community Legal Education Center (CLEC) filed a complaint with Thailand's NHRC against Khon Kaen Sugar Industry Public Company Limited (KSL) alleging that its subsidiaries in Cambodia had violated Cambodian law and international standards in human rights in their acquisition of the ELC in Srae Ambel district (NHRC, 2012).

May 7, 2012: Prime Minister Hun Sen ordered a moratorium on the granting of additional ELCs and called for a review of all ELCs to ensure they are in compliance with their contracts (Di Certo and Meas, 2012).

May 13, 2012: Demonstrators in Chi Kha Leu commune blocked National Highway 48 for 24 hours to protest government inaction in resolving the dispute with Koh Kong Sugar Company (Chhay, 2012b).

July 1, 2012: The Prime Minister introduced a new land titling plan where up to 350,000 rural families will be issued titles to land totaling 1.2 million Ha. The plan is intended specifically to assist families who are involved in land disputes with ELCs (Vong, 2012).

July 25, 2012: Thailand's NHRC ruled that it has the mandate to investigate KSL Group and its Cambodia subsidiaries for violating international human rights standards and the Thai state's obligation to protecting human rights both domestically and abroad. NHCR designated its Sub-committee on Civil and Political Rights (SCPR) to conduct the investigation (NHRC, 2012).

3.1.2 Chi Kha Village

The primary area of study for the field research was the village of Chi Kha and its immediate surroundings in Chi Kha Leu commune, Srae Ambel district. Chi Kha village is one of four villages in Chi Kha Leu commune⁶. As depicted in Figure 3.1 the village sits along National Highway 48 near the southern boundary of the Koh Kong Sugar Company ELC.

Figure 3.1 Overlay of the Study Area



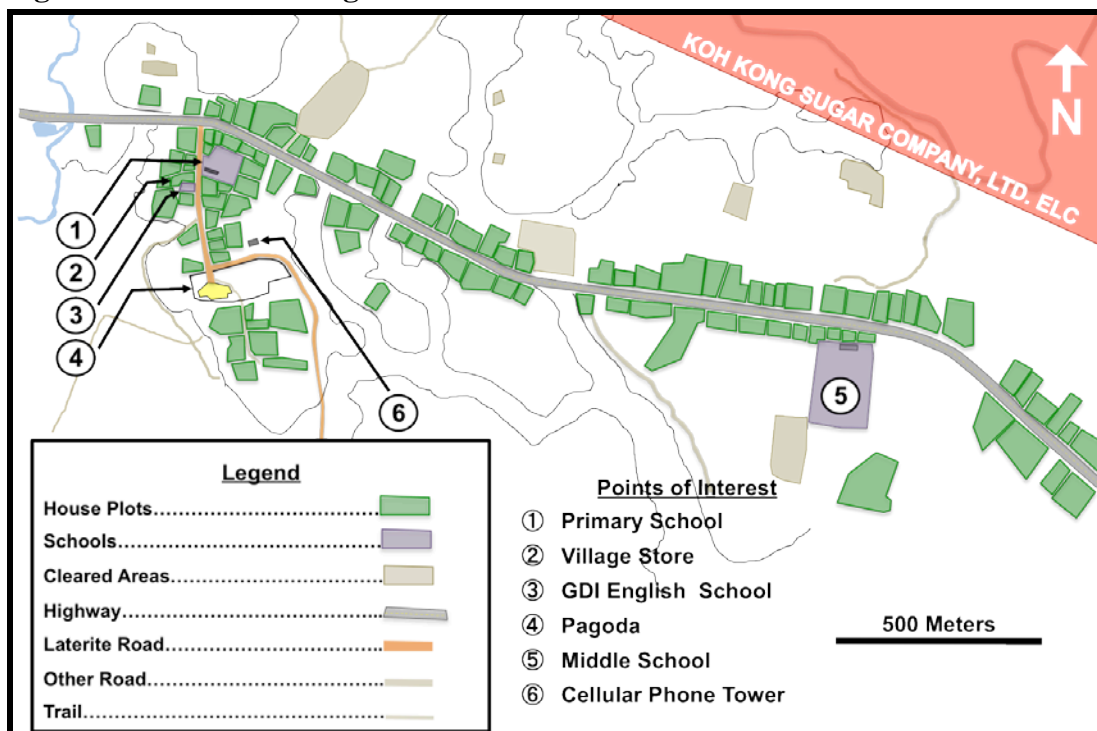
Source: Prepared by overlaying a map made by LICHADO (2010) onto Google Earth satellite imagery (2007).

As shown in Figure, 3.2 Chi Kha village more or less forms an elongated T-shape, with the longer axis running from east to west and straddling National Highway 48, while a shorter axis runs perpendicular from the highway to the south for about 500 meters until ending at the entrance to the village pagoda. This shorter

⁶ The commune (or Sangkhat in cities) is the lowest level of formal government in Cambodia's administrative hierarchy. Commune councils are elected once every five years to five-year terms. Villages have village chiefs but this tier is not considered a formal level of government. Above the commune is the district and above the district is the province, which is the second highest tier of government in Cambodia after the national government (NCDD, 2009).

axis constitutes the village center and is located on the opposite side of the highway from where the sugar cane plantation and disputed land is located.

Figure 3.2 Chi Kha Village.



Source: Developed from Google Earth Imagery (2007).

Figure 3.2 captures a more detailed view of the village. In addition to the pagoda at the end of the main road there are houses lining both sides. The only true store in town sits along the side of the main road in the village center. One lot down is another house with a small food stand with tables and chairs sitting in front. This is near where the village primary school and the English language school run by the NGO Grassroots Development Institute (GDI) are located.

A narrow and at the time of the study saturated mud track hooks around the east side of the pagoda and runs to the south for some distance, where there are a few more modest houses. Approximately 50 meters before reaching the pagoda an improved laterite road sweeps left before then veering to the south. There are no houses along this road but there is a cell phone tower approximately 35 meters tall on the left side of the road just outside the village before the road begins to sweep to the south. Along the outer edge of the road are several wet rice paddy fields. There is

another track on the other side of the village that angles off to the southwest that descends a slope leading to more wet rice paddies below.

Back along Highway 48 the rest of the village stretches along both sides of the highway for several kilometers. There are many houses but they are not as densely concentrated like in the village center. Notable structures include the secondary school located on the south side of the highway about 2 km east of the heart of the village, the commune police post located 2 km further down the highway to the east and a few more kilometers further to the east is a laterite road in good condition leading north from the highway to the entrance of the plantation. Conspicuously, a freshly built Gendarmerie post stands at the intersection of the highway and the road leading to the plantation. Traveling in the opposite direction from the village center stands the commune hall approximately 1.5 km west of the main village, along the north side of the road. It stands out for being constructed mostly of concrete in a traditional Khmer style. Other than its stylized design however, it is fairly modest, consisting of a large pavilion-like space in the middle of the structure flanked on either side by two small offices.

3.1.3 Demographic Data

According to the village chief Chi Kha has 236 families and a total population of 774 people (Respondent 8, 19 June 2012). Most of the families have lived there for 30 years or more and there is little in terms of migration in or out of the village. Although there is no other demographic data about the village itself, there is a 2009 report by the National Committee for Sub-National Democratic Development (NCDD) that contains demographic data on Chi Kha Leu commune. In the absence of any detailed data on the village itself commune demographic data is the most representative demographic information available on Chi Kha village, especially considering that it represents twenty percent of the commune's total population.

The population of Chi Kha Leu commune is approximately 3,900 (Respondent 3, 18 Jun 2012), up moderately from the population of 3,723 people recorded in 2008 (NCDD, 2009). The population is overwhelmingly Khmer, but there has been a steady growth of Cham families moving into the region since 2003. There are also a

small number of Vietnamese. In 2006 there were only 288 Cham in the entire district of Srae Ambel. By 2008 the number had almost doubled to more than 500 (ibid.). As of 2012, in his district alone the Chi Kha Leu commune chief claims that approximately ten percent of the population is Cham (Respondent 3, 18 Jun 2009).

There are several indicators that point to pervasive poverty and lack of human development in the commune. One such indicator is the material used to roof the houses of villagers. The most inexpensive roofing material and the material suggesting the greatest level of poverty is thatched roof. This material accounted for more than 21 percent of roofing on houses in the commune in 2008. The majority of houses however, were roofed with zinc/fabro panels, indicating a modestly higher economic status. Tile roofs indicate an even higher economic status. Only about a half of one percent of all houses in Chi Kha Leu commune were observed to have tiled roofs. There were no villas in the commune in 2008 according to the report meaning that at the time there were no moderately well off families living in the commune (NCDD, 2009).

Another indicator that is closely linked to poverty and is directly linked to human development is the commune's literacy rate. In 2008 more than 41 percent of the commune's population was reported as totally illiterate. Between genders the rate of illiteracy was higher among females than males with women accounting for approximately 60 percent of illiterates. The report also revealed differentiation among age groups. Among the 15-24 year old age bracket the illiteracy rate was reported to be 37.6 percent. The next highest age bracket was people between the ages of 25 and 45 and was reported to be 41.2 percent. The highest rate of illiteracy however was among the highest age bracket, with more than half of all people between the ages of 46 and 60 considered as illiterate (ibid.).

A final category of demographic data that reflects the current condition of the people of Chi Kha Leu commune is their health. There is no health clinic in Chi Kha Leu commune. The nearest clinic is 20 kilometers away in Bung Prieu commune (NCDD 2009; Google Earth 2007). Medical care is so scarce in Chi Kha Leu that in 2008 more than 95 percent of all child births were performed with only the assistance of a traditional birth assistant (TBA), somebody who is normally a woman with rudimentary training in assisting child births. Moreover, more than 85 percent of the

commune's population lacked access to safe drinking water and in 2008 there was only one latrine for every 169 people in the commune (ibid.).

The indicators in the report reflect a low level of human development among the people of Chi Kha Leu. They reflect that as of 2008 the people were poor, lacked education and were exposed to numerous health threats. From what was observed during field research the situation in Chi Kha village remains the same.

3.1.4 Infrastructure

Other than National Highway 48, infrastructure of all types is severely underdeveloped in Chi Kha village. There are three schools in the village. One is a public primary school, one is a public secondary school and one is an English language school operated by the NGO GDI. There is no medical clinic. If a resident of the village requires medical treatment the nearest treatment available is at the clinic in Bung Prieu located 18 km to the East. There is no running water and no electricity from the national power grid. According to the NCDD report only one tenth of one percent of households in Chi Kha Leu commune have access to generator electricity. In 2008 nearly 85 percent of Chi Kha Leu residents relied on batteries for electricity (ibid.), normally car batteries daisy-chained together to provide enough electricity for fluorescent lights and a television.

Access to running water is almost equally as scarce. In 2008 only 1.3 percent of Chi Kha Leu residents had access to piped water. Access to water primarily came through wells, rivers lakes and streams. In 2008 there was only one well capable of pumping water year round for every 60 people in the commune and only two ponds in the commune that contained water throughout the year (ibid.).

During field research two other notable pieces of infrastructure were observed; the commune hall and a cell phone tower (see Section 3.1.1). Other than that there was nothing. According to the report infrastructure was severely underdeveloped in 2008. Based on first-hand observation it is safe to say that this remains the case.

3.1.5 Economy

Cambodia provides a unique example of land tenure because of the upheaval caused by more than thirty years of conflict and civil war. Modern Cambodia has made an impressive transition from a post-conflict society engrossed in recovery and reconstruction to a stable country with a steadily expanding economy. This is all the more impressive considering that Cambodia's limited infrastructure that translates into higher costs for energy and transportation.

Cambodia's economic growth has been led chiefly by the garment and tourism sectors. Over the last fifteen or so years the two industries have propelled economic growth in Cambodia. In 2010, even following the global financial crisis the garment industry accounted for approximately ninety percent of all exports and employed approximately 320,000 people (International Labor Organization [ILO], 2011). The tourism industry has also been a major pillar of the economy. In 2011 there were nearly three million tourist visits to Cambodia and receipts from tourism accounted for nearly two billion dollars, or roughly seventeen percent of GDP (Ministry of Tourism [MoT], 2012).

Recently however, there have been efforts to diversify the economy and a major emphasis has been placed upon the agricultural sector. One major policy undertaken by RGC has been to promote private investment in agro-industrial ELCs. The RGC believes that the promotion of the agro-industry in the Kingdom will ultimately lead to the creation of jobs and generation of income for people living in rural areas (MAFF, 2010a). Cambodia's agricultural sector has long been underdeveloped due to war and a lack of investment, but with policies promoting development of the agricultural sector and agro-industry this is changing. Emphasis on the development of the Kingdom's agro-industry has been placed on rice and rubber in particular. It is the government's goal to export one million tons of rice by 2015 (Reuy, 2011a). Although no similar benchmark has been set for rubber, it is another key commodity that is planned to drive the growth of the agro-industry sector (Kunmakara, 2011). Although not viewed as strategic a commodity as rice or rubber, the production of sugar in Cambodia is also expanding (Reuy, 2011b).

The economy of Chi Kha depends on agriculture (Focus Group 1, 19 Jun 2012). A 2008 report by the NCDD reveals that at the time that over 95 percent of Chi Kha Leu residents were involved in agriculture. With the loss of land that most of its residents depended on for their livelihoods, the economy of the village has been hit hard. Those who lost their land, even when compensated, have watched their incomes shrink as they no longer are able to grow crops or raise livestock to earn income. The sugar cane plantation is a source of employment for many villagers, but for most there is only work during the harvest once a year in January and February.

Chi Kha Leu commune's wet rice production is the least productive of all communes in the district, producing just one metric ton of rice per hectare. In 2008 on average the typical family in Chi Kha Leu commune owned 2.4 head of livestock, which ranked third out of seven communes. At the same time more than 85 percent of families raised pigs, including nearly thirty percent of whom owned three or more. More than 90 percent of families also raised chickens. Only 2.3 percent of families reported to have a family member engaged in the service sector and only eight people were reported to be working for a company outside of the commune (NCDD, 2009). Agriculture is extremely important to the entire commune's economy.

3.1.6 History's Influence

Like many other aspects of Cambodia in the current day, it is difficult to overstate the influence the legacy of the Pol Pot regime has had on the case study. Even before coming to power in April 1975 the Khmer Rouge movement had collectivized some of the areas occupied by Khmer Rouge forces, but after seizing power from the Lon Nol government the Pol Pot regime embarked upon a radical program of collectivization (Slocumb, 2003).

For the purpose of the case study however, two key elements that that have particular influence were the abolition of private land ownership and the forced migration of people all over the country. While it is true that the evacuation of the cities was forced migration, there were many other instances of masses of people moved around the country by the regime so that it could maintain its grip on power (Hayes, 2002).

After the Pol Pot Regime was deposed by the People's Army of Vietnam (PAVN) and the United Front for the National Salvation of Kampuchea (FUNSK), another wave of migration ensued in which people from all parts of the country attempted to return to their homes, or to at least flee from their collectives.

In many cases people settled where they could. This is certainly the case with several of the respondents interviewed for the case study. When asked how long he had lived in Chi Kha village one respondent replied:

“I came here in 1982 after Pol Pot. They told us to take the land so I [took it and] cleared it myself.” (Respondent 4, 18 June 2012)

His statement is representative of many of the villagers in Chi Kha. It is important because it reveals a pattern in the aftermath of the Pol Pot regime where a considerable number of people settled on land and cultivated it for a number of years, there by gaining informal ownership through possession, even when they had no legal claim. In the years after the Khmer Rouge fall from power they couldn't have had legal claim. The successor to the Khmer Rouge regime was itself a revolutionary regime and during that era all land continued to belong to the state, even if arrangements were made for private use of land to encourage improved agricultural production and to reduce hunger.

In Chi Kha the situation remained the same for more than a quarter of a century, where the land technically belonged to the state but village residents exercised exclusive use of their respective plots, both for food security and also as a means to generate small amounts of income. Forced evictions to make way for large-scale concessions have been going on since the 1990s in Cambodia (LICHADO, 2009), but it is only relatively recently that the pace has picked up and it wasn't until 2006 that the process reached Chi Kha (BABC, 2010). The legacy of the Pol Pot Regime has a significant role in this process. Even if Cambodia has a long tradition of informal land ownership that predates the Khmer Rouge era, the legacy of the Khmer Rouge has exacerbated the current situation because it created massive waves of migration and eventual resettlement that was never adequately recorded and registered by the government. Land that may appear to be unused property of the

state on a map hanging on a wall in an office in MLMUPC is actually inhabited and has been under cultivation for a generation. This seems to be the case with the Chi Kha village, and it is due at least in part to the legacy of the Khmer Rouge.

3.1.7 Stakeholder Differentiation

Within the affected villagers there are those who accepted compensation, those who were never offered compensation and those who have thus far refused to accept it. According to respondents affected by the concession, nine of 20 respondents who participated in the interviews were not offered compensation for land seized by the concession. Among the nine respondents who did receive compensation, the amount paid ranged anywhere from \$25.00 to \$1,000.00 US per Ha. There was significant variation in the amount of land lost among respondents, ranging anywhere from 1.5 to 11 Ha. There was also some variation in how long respondents had tenured their land before it was seized. Most respondents had either lived in Chi Kha their entire lives or at least since the end of the Pol Pot regime, but one respondent claimed that she and her husband had cultivated their land for six or seven years while another respondent stated that her family had only lived in Chi Kha for the last two years⁷. Finally among the villagers there is some ethnic variation as well. According to the commune chief, ten percent of the commune's population is made up of the Cham ethnic group (see section 3.1.4 of this chapter), with the majority of the remainder being Khmer.

Among NGOs there is differentiation as well. The NGOs that were either present or are known to be involved in the land dispute can generally be categorized into three sub-groups. The first sub-group consists of those NGOs known to be involved in the land dispute. Among the more active NGOs on the issue are Equitable Cambodia (until recently Bridges Across Borders Cambodia), LICHADO, ADHOC and CLEC. The second sub-group consists of NGOs more generally focused on fighting poverty. In Chi Kha this cause was represented by Care International. A team from Care was observed visiting the village on June 16, 2012 to

⁷ It is also worth noting that their land was seized from a different concessionaire who arrived recently but is also growing sugar cane.

observe the status of a program it had established to assist village women in learning to raise farm animals such as chickens, ducks and pigs. The last sub-group was represented by GDI. GDI is the local partner of SOLS 24/7, an NGO aiming to provide education to poor young people. In Chi Kha GDI was operating an English language school for village children.

Differentiation within the government is not as clear. The village chief was among villagers who lost land (it is unclear whether or not this is also the case with the commune chief). No significant gap in policy or position was observed between different elements of government during field research.

Finally, differentiation within the concessionaire stakeholder group was equally difficult to clearly understand. There are two concessions (see Chapter I Section 1.1) that sit adjacent to one another and were formally granted by MAFF on the same day in 2006 (MAFF, 2010c). They are alleged to be closely linked and under the ownership of three investors. However, a recent article appearing in the Phnom Penh Post indicates that one of the investors, Senator Ly Yong Phat, sold his stake in the concessions in 2010 (Pellechi, 2012). Another investor, Wong Ve from Taiwan, offered to return the land seized from the villagers if it could be proven that it was acquired illegally (Will, 2012).

3.2 Land Tenure

This section is intended to depict the current state of land tenure in the study area. It examines the existence of a land market in Chi Kha village, the status of the land in the village's surrounding areas, the sugar cane plantation and the disputed land that has been enclosed within the plantation and the presence of legal title to ownership in the area. The understanding of each one of these topics contributes to a comprehensive understanding of the many different subtleties of land tenure at play in the study area.

3.2.1 Land Market

There is little literature available on the existence of a land market in rural Cambodia for smallholder farmers and none on the existence of one in the study area before the development of the sugar cane plantation. What is written about land tenure that gives some idea of condition of a rural land market comes by way of Hall, Hirsch and Li (2011), who depict a long tradition of rural tenure based on customary ownership. A policy paper by ANGOC portrays a similar situation in pre-revolution Cambodia but claims that by the Lon Nol coup in March 1970 that, “By the next decade [1960s], however, private property rights had started to be adequately documented, particularly through cadastral maps and land titles...” and “...many of the low-lying areas planted with rice had been claimed by private owners (2009: p.61). Even with the existence of maps and land titles however, there is no evidence that a functioning land market existed in rural Cambodia prior to the Khmer Rouge regime.

There is no formal land market in Chi Kha and little evidence of any legal title to private ownership in the village. Most land holders claim possession based on clearing and cultivating the land since at least the end of the Pol Pot regime. Transactions involving the change of land tenure in the area are rare. In just one case out of approximately 22 interviews did a respondent claim that they had bought land (informally). In this case a Cham family bought the land in 2002 from another family and began to occupy it in 2010.

When there is a change in the possession of land it must be approved by the village or commune chief (Respondent 8, 19 June 2012). Within the village there was no known process among any of the respondents, including the village and commune chiefs for obtaining a legal title to private ownership for small land holders. During field research evidence of a nationwide real estate market that has extended itself to Chi Kha was observed (See Section 4.1). It was clear though that local residents do not participate in it because they do not have the financial means to do so.

3.2.2 Sugar Cane Plantation and Disputed Land

The sugar cane plantation is the only large-scale employer in the commune. Technically it consists of three major components. The first two components are the economic land concessions of roughly 9,400 Ha and 9,700 Ha respectively that sit side by side north of the highway. The 9,400 Ha ELC is titled to Koh Kong Plantation Company and stretches across parts of Srae Ambel and Botum Sakor districts (MAFF, 2010c). The 9,700 Ha ELC is titled to Koh Kong Sugar Company and sits mostly within Chi Kha Leu commune but also extends into neighboring Dang Paeng commune that is also part of Srae Ambel district (ibid.).

The other component is the sugar mill. The sugar mill sits on the ELC originally granted to KSL Group but on the KSL group website it is listed as a separate company, Koh Kong Sugar Industry Company, Ltd (KSL Group, 2009). It is one of only two industrial-scale sugar mills in all of Cambodia (Reuy, 2011b).

The disputed land is enclosed within Koh Kong Sugar Company's sugar cane plantation's to the north of National Highway 48. The footprint of the disputed land has changed over time. One report from late 2009 estimates the total area of land to be approximately 2,500 Ha (CHRAC, 2009). However, more recent estimates put the area of disputed land at 1,490 Ha (CSC, 2012c).

No map is available that accurately depicts the area of each family's plot. From the data collected during field research it is possible only to say that the size of each disputed plot ranges anywhere from approximately two to eleven Ha. It is also known that of the 400 families originally affected by the ELC, there are now only 220 families remaining as parties to the dispute (Respondent 18, 06 Jul 2012).

3.2.3 Development Projects in Koh Kong

The Koh Kong Sugar Company's sugar cane plantation has become a visible symbol of the province's road to economic development but there are many others. There are many development projects planned and ongoing that can be viewed from many perspectives. Major development milestones in Koh Kong include the

establishment of its casino enclave along the border with Thailand, the construction of a bridge linking the Koh Kong provincial seat to the border with Thailand, the rehabilitation of Highway 48 linking Koh Kong with the rest of Cambodia's highway network and a recently established special economic zone (SEZ) where the Korean automaker Hyundai and American automaker Ford now assemble automobiles. Ecotourism is another aspect of development in Koh Kong, where it is endeavored to blend a major sector of the Kingdom's economy with sustainable development (Lindt, 2011).

There are many other development projects that are like Koh Kong Sugar Company's sugar cane plantation because they are based on large-scale ELCs. Key among these are the development of a massive tourist resort located in Botum Sakor National Park and the construction of a hydroelectric dam on the Tatai River (O'Fall 2010). Other concessions include a 60,200 Ha ELC for the cultivation of oil palms, fruit and acacia and a 4,100 Ha ELC for growing tapioca (ODC, 2012b). The tourist resort is being undertaken by the China-based Union Development Group. It will become a tourist complex encompassing an international airport, a seaport, a golf course and commercial area. As in most cases with development projects, significant economic growth is expected but it will come at a cost. In the case of the tourist resort economic development will come at the cost of destroying swaths of one of Cambodia's most pristine forests as well as forcing the relocation of more than 1,000 families (Titthara, 2011).

3.2.4 Status of Land

There is inconsistency in the various accounts of how much land and how many families are actually involved in the dispute. A report written in early 2007 by UNHCR estimated that at the time approximately 507 Ha had been cleared affecting the livelihoods of approximately 400 families (UNHCR, 2007). A report by CHRAC from 2009 put the total land area of villager's land cleared at roughly 2,000 Ha but also having affected approximately 400 families. The most recent tally available is from the Clean Sugar Campaign, which is a coalition of NGOs and communities demanding justice and putting an end to human rights abuses (CSC, 2012a). The

Clean Sugar Campaign estimates the total land area to be 1,490 Ha affecting 220 families who have remained as parties to a complaint against Koh Kong Sugar Company in the Koh Kong provincial court . The difference between the 400 families originally reported as affected by the development of the plantation and the 220 families who remain as parties to the complaint against Koh Kong Sugar Company raises the question of what happened to the other 180 families? Most accepted compensation through a process that the company undertook over time and dropped out of the complaint.

3.2.5 Land Title Ownership

Little evidence was found of land title ownership in Chi Kha, other than the concession title owned by Koh Kong Sugar Company (MAFF, 2006c). Of all respondents, there was only one who claimed he had a title of ownership in his possession, but his claim could not be confirmed. None of the other respondents interviewed claimed to possess a legal land title. As one of them explained:

“Most people don’t know the process for applying for a title [of ownership] for their land. They don’t know where to go or who to talk to.”
(Respondent 7, 19 June 2012)

Moreover, the village chief stated that there is no process. This is due to two important factors. The first factor is that a system for registering and titling smallholders exists in Cambodia (see Section 2.6) but not in Koh Kong province (MLMUPC, 2011). Koh Kong province is one of eight provinces in Cambodia where the SLR program has not yet been implemented, meaning that the village chief was correct when he said there was no process for obtaining legal title to tenured land. Second, there was no demand for land registration in the first place since people believed that they legitimately owned the land, having occupied and cultivated so long and being ignorant of the law. Therefore, rather than a legal basis for ownership in the form of a land title, they base their claim to ownership on a more informal basis. This is understandable given the history of land ownership in rural Cambodia. The abolition of private ownership of land by the Pol Pot regime is an important

milestone in analyzing the process of change in land tenure, but in terms of private ownership of land for individuals in rural areas, there was never really a formal legal mechanism that provided an officially recognized legal title to small-scale rural farmers. Before the colonial era land was considered property of the king, but it was so abundant that any unused land was free to be used by anybody who wanted it. During the colonial era several laws were adopted by the colonial administration, including the 1920 civic code, which recognized private property, but these regulations were not geared toward private ownership of land by small-scale rural landholders. They were mainly designed to protect French investors as they developed concessions to grow cash crops such as rubber. The lack of a legal mechanism that was specifically geared toward small-scale private land ownership continued all the way up until the seizure of power by the Khmer Rouge (Hall, Hirsch Li, 2011). Thus, there is a long tradition of informal ownership of land in rural Cambodia predating the Khmer Rouge era and it is understandable that villagers in Chi Kha wouldn't have considered applying for a legal title to land ownership.

3.2.6 Spatial Factors

Considering the area of study's spatial layout is useful in more fully grasping the issues at stake in the case study. Maps and other mediums that graphically depict the study area's physical composition are especially helpful and along these lines reviewing Figures 3.1, 3.2 and 3.3 of this chapter will provide a full appreciation of the study area's physical characteristics.

Chi Kha village was originally described as resembling a T-shape with the village center clustered around one axis jutting south from National Highway 48, while the rest of the village straddles either side of the Highway for several kilometers. This is depicted as the green shaded area at the bottom of Figure 3.2. The families most affected by the ELC are those who have their houses along the Highway. In most cases, the land they cultivated is not immediately adjacent to their houses, but a distance to the north, whether hundreds of meters or several kilometers away from their homes. Again referring to Figure 3.2, examination of the red shaded area between the light-colored blotches reveals what appear to be cultivated areas (the

light-scaled blotches are most likely areas that were recently cleared to make way for the development of the plantation)⁸.

In most if not all cases villagers who lost their land did not lose their homes since the concession nearby Chi Kha is a significant distance from the highway. As one villager said:

“It would have been better if the plantation was built further away from the highway because it would have left more land for the people.”
(Respondent 7, 19 Jun 2012)

The fact that people were able to keep their homes even after losing their land helps to explain why they have been able to stay in Chi Kha village. Even if they have no land they still have a place to stay. Some villagers lost all of their land but many others retained some. The village chief for example, lost three hectares to the concession, but still has one remaining on which he grows rice. This is likely due to the fact that most of his land sat inside what became the perimeter of the concession, but he still has a small piece remaining outside it. There were other respondents with similar experiences who lost most but not all of their land. These pieces of evidence demonstrate that among affected villagers there was no standard degree of loss. The location of their plots relative to the concession played a significant role in the extent to which they were affected by the development of the plantation.

3.2.7 Compensation Negotiation Process

There are many questions regarding the process undertaken by Koh Kong Sugar Co. to compensate villagers for the seizure of their land. In some cases villagers were not compensated at all. Among villagers who were compensated there is wide variation in the amount paid, ranging from as little as \$50.00 U.S. to as much as \$1,000.00 for each hectare. Unfortunately, because the company has been silent about the dispute it is impossible to get a understanding from an insider's perspective.

⁸ According to Google Earth the satellite image was taken on January 12, 2007 (Google Earth, 2012).

Article 5 of the 2001 Land law stipulates that owners must be compensated at fair market value (RGC, 2001). In an area with no formal land market before the ELC was established it is unclear what the definition of fair market value is in this case. Finally, there is the question of compensation being paid in advance. The Land Law stipulates not only that compensation must be paid at fair market value, but that it must be paid in advance of “deprivation of ownership” (RGC, 2001: Article 5). A bigger problem with the entire compensation process is that the exchange of cash for land is bad practice. This is certainly the case in the study. Cultivating the land and being able to sell its produce provides an indefinite income stream upon which a family can base its livelihood. When a villager accepts cash in exchange for their land the income stream ceases and the villager will eventually find it hard to make ends meet. Even in the few cases where the landholder was provided seemingly generous compensation of \$1,000.00 U.S. per hectare, cash depletes over time and eventually these villagers too, ran out of money and fell into poverty (Respondent 12, 20 June 2012).

3.3 Conclusion

The purpose of this chapter was to provide an overview of the current status of the study area, the stakeholders as well as the status of land tenure. Chi Kha village and the surrounding area are very poor. The area lacks basic infrastructure and several indicators such as condition of dwelling, access to safe drinking water, literacy and access to health services point to a low level of human development.

Land tenure in the area is also underdeveloped in the formal context. A customary arrangement has existed there that has functioned adequately for ages but there is no formal framework for legal ownership. There is no local land market and no process for local smallholders to register and obtain title to their land. Koh Kong is one of eight provinces in Cambodia where the government’s land registration program, SLR, has not yet been implemented. The people are literally at the will of powerful actors like the investor who unilaterally seized their land and may or may not provide compensation through an opaque compensation process.

CHAPTER IV

FINDINGS AND DISCUSSION

This chapter reports the major findings of field research conducted in Chi Kha village and then uses them as a starting point from which to discuss the various ways that the primary stakeholders encountered the powers of exclusion in the case study. In doing so it applies the conceptual framework to discuss how the powers of exclusion shaped the change of land tenure from the residents of Chi Kha village to the Koh Kong Sugar Company. This is accomplished through the analysis of respondent narratives where indicators of the five powers at play are pulled out of the narratives and used to build a clearer picture of the role of the powers in the overall process. The findings are based primarily on the in-depth semi-structured interviews, but in some cases it was necessary to triangulate and contextualize these primary sources with secondary sources.

The discussion will also be used to describe how certain powers are more prevalent at one scale than another. In other words, powers that effected the change of land tenure at the local level may be different than those influencing the process of at the national and international levels. Once the discussion is complete, consideration will also be given to the extent to which exclusion's double edge was significant in influencing relations between stakeholders.

4.1 Impact on the Villagers

The most essential issue to be addressed by this study is to determine the impact of the change in land tenure on the people. It is clear from field research as well as secondary sources that they are worse off than before the change. They have less land than before, which makes it more difficult for them to make a living. Rather than moving somewhere else and starting over, the overwhelming majority of those who lost land to the concession remain in Chi Kha village and rely upon family and neighbors for assistance since they have no way of making a living themselves.

Respondents consistently reported this. According to the commune chief almost nobody who lost land left the village (Respondent 3, 18 June 2012). Another respondent corroborates the commune chief:

“Even after people sell the land they stay in the village, but life is very hard because they have no land on which to make a living.”
(Respondent 6, 18 June 2012)

Another respondent said that after people sell their land they stay in the village but they can't make a living on their own anymore so they have to ask for friends and neighbors for help (Respondent 7, 19 June 2012). In the commune chief's interview he also mentioned that sometimes in the case of the very poor the commune can let them use some of the commune's land, but this is very rare. Thus, for the families who sell their land two points become clear.

First, they don't move away but remain in the village. There is a certain amount of logic in this by asking where would they go? In his interview the village chief indicate that there isn't much flow of people in or out of the village. Many of the villagers interviewed indicated that they had lived in the village for the last thirty years. Many others said they had lived in Chi Kha all their lives. The second point that is clear about the villagers who sell their land is that they are definitely worse off than when they had possession of their land. As demonstrated earlier, respondents consistently reported that once villagers sold their land they began to struggle to make a living. Agriculture, whether raising livestock, growing rice, or any other crop is the basis of their livelihoods. However, in a place like Chi Kha in rural Cambodia without adequate land it is very difficult to make a living in agriculture.

For villagers who lost their land to the plantation yet never received any compensation, their situation was even worse. A focus group of villagers who haven't been compensated for their land revealed other difficulties they believe are caused by the loss of land as well as some perspectives cynical toward development. One woman in the group said that without any money she couldn't send her children to school and that now she is afraid they will get into trouble and join gangs (Focus Group 1, 19 June 2012). Another woman said that if somebody gets sick there is no

money to take them to the hospital to get treatment (ibid.). Another member of the of the group said:

“They say development, but development for who? NGOs don’t help either. They come to train and develop us, but they don’t help because people need land for agriculture, not training...” (Focus Group 1, 19 June 2012)

The plantation has been promoted as bringing economic development and jobs (CHRAC, 2009) to the community but comments by several respondents cast doubt on how much this has been the case so far. One of the women in the focus group above mentioned that the company won’t let her work on the plantation because they recognize her as somebody who has participated in demonstrations in the past. According to her, to work on the plantation the village chief or commune chief has to submit your name to the company, but the company recognizes her name.

Even when villagers do work on the plantation the pay is not that good. Several respondents said that they have worked on the plantation for 10,000 riel (\$2.50 U.S.) per day and that they didn’t think it was very good pay. \$2.50 U.S. for a day’s work in rural Cambodia would normally be considered a decent wage, but since work on the plantation is only seasonal, it isn’t enough to provide income year round. There is one harvest each year that occurs in January and February (Respondent 3, 18 June 2012).

Thus, the impact of the change in land tenure has not been good for villagers directly affected by the establishment of the sugar cane plantation. The most damaging effect is that it has separated people from their livelihoods and forced them to struggle to make a living. Even if they were far from well off before the concession seized their land they were still able to make a living off of their land that was modest but adequate. The loss of their land has led to other problems as well, including not being able to send their children to school and not being able to pay for medical treatment. Villagers have also complained that the water in streams has become polluted because of fertilizers and pesticides running into the streams from the plantation. Many of the villagers also feel that the promises of jobs and economic development have not been realized either. The wages paid to work on the plantation

seem high but are considered inadequate because they don't work on the plantation throughout the year and struggle to get by on that and whatever other income they are able to generate through other activities.

4.1.1 The Villagers and the Power of the Market

On the local scale there was the absence of a land market, which created a power vacuum that was exploited by the concessionaire (see Section 3.2.1). According to the commune chief, people sold their land to the plantation and are protesting to get it back now, but these alleged transactions are far from qualifying as a functioning market considering that the transaction occurred only after the plantation seized their land in the first place. A villager claims that there are a few transactions based on land but not many (Respondent 5, 18 June 2012). This suggests the absence of any real land market. Another villager's discourse also suggests the absence of any land market. She and her family claim ownership to land seized by Koh Kong Sugar Company, because the family cleared and cultivated it much earlier; not because of any transaction that was legally guaranteed (Respondent 6, 18 June 2012). Another villager relates an experience that is much the same. He arrived in Chi Kha village after the Pol Pot regime and came into possession of his land because he cleared it and cultivated it. He did not purchase his land through an agent or middleman and he never obtained any legally guaranteed title to ownership (Respondent 7, 19 June 2012). His story is very similar to the stories of several women who participated in a focus group on June 20, 2012. There was unanimous consensus among all five participants that their families' claim to ownership derived from the fact that it was unused when they arrived in Chi Kha more than twenty years ago and that they cleared the land and had cultivated it ever since. There was no formal land market and no protection of private ownership, which underpins the functioning of markets.

It is the absence of any real local land market that is exactly why powerful investors at the national and international level were able to leverage other forms of power to force a change of land tenure. An active local land market with fundamental market characteristics of legal protection for ownership of private property and rule of

law would have likely ensured that villagers would have maintained exclusive tenure of their land. Even if they didn't want to sell but the investor was able to apply enough pressure to force local smallholders to give up their land, there would have at least been a market upon which to base compensation at fair market value. Instead there is only informal ownership where smallholders stake their claims based on having cleared their land and cultivated it for a long period of time. This custom may have been exacerbated by the Khmer Rouge regime but it goes back even further. There is a long tradition of informal ownership among smallholders in rural areas, but not much of a tradition in land market (Hall, Hirsch, Li, 2011).

Further reinforcing this point is the statement of another respondent. In a focus group on June 19, 2012 one of the participants stated emphatically to the effect that the rich have ownership rights but the poor do not. Her comments allude to the manner in which powers of exclusion can intertwine and transcend scales to force changes in land tenure that lead to the exclusion of the disadvantaged such as the residents of Chi Kha village. Her statement suggests that the rich operating at the national and transnational scales have resources available far beyond the scale of villagers in Chi Kha and take advantage of a convergence of disproportionate wealth and a weak regulatory framework to dislodge rural smallholders from their plots. Together, the market and regulation are wielded by the rich to exclude the poor from their land. The role of regulation in the process of exclusion will be considered more thoroughly in the next section. What is important here is that it compliments the market and works across scales.

There may not be a functioning *local* land market present in Chi Kha village, but the presence of a national land market was observed during field research. Figure 4.1 below suggests that the power of the market is present at the national level with implications for the absence of a land market at the local level. The ambiguity and contradictions within the legal framework create a paradoxical situation in which villagers have no access to a market through which they can buy or sell land or obtain legal ownership in their own village but real estate speculators from Phnom Penh can. Although there is no local land market there is a local tenure arrangement.

This arrangement is both supported and opposed by the law. On the one hand villagers have the right to apply to register their land and obtain full ownership if they

occupied the land for more than five years before enactment of the Land Law in 2001 (RGC, 2001). On the other hand, because the land is not registered as privately owned it is categorized as state private land according to the 2001 Land Law. Since the villagers don't have legal title to the land they are considered to be illegally occupying state land and are subject to eviction (ibid.). The villagers are unable to register their land and prevent eviction because MLMUPC's SLR program has yet to be implemented in Koh Kong Province (MLMUPC, 2011).

As opposed to the villagers, real estate agencies and ELC investors for that matter have disproportionate financial resources at their disposal and political connections in Phnom Penh. ELCs can claim they acquired land legally even when they extra-judicially and forcibly evict rural farmers from their land. Real estate speculators are able to buy up land in rural areas at bargain prices (by Phnom Penh standards) and extend Cambodia's commercial real estate market into communities where the local populace is unable to participate. Before the arrival of the ELC, according to the law the villagers should have been able to register their land as private, but in practice they could not.

Figure 4.1 Land for Sale in Chi Kha Village



Pictured above: Phnom Penh-based Asia Real Estate Cambodia advertising a 200 Ha plot of land for sale near Chi Kha village

Asia Real Estate Cambodia (ARC) is a real estate company with interests throughout the Kingdom (ARC, 2010). Companies like this one speculate on the value of land and buy up as much as they can while it is relatively cheap and then wait for the market price of the land to rise before reselling it to investors. However, even if the land was cheap by the standards of real estate agencies in Phnom Penh, the price they paid for it would have been prohibitively expensive for local farmers in Chi Kha and would have excluded smallholders from ever obtaining it. On the national scale then, speculative real estate acquisitions in rural areas can have the same exclusionary effect as if the land had been confiscated. The only difference in this case is that according to local residents who were asked, ARC's plot is in an area behind the village where nobody lives.

4.1.2 The Villagers and the Power of Regulation

The power of regulation also influenced the process of change in land tenure in ways with profound implications for the villagers. Like the power of the market, the power of regulation's most glaring characteristic on the local scale was a conspicuous absence of a formal regulatory framework in Chi Kha. There is an important relationship between the two. A formal regulatory structure is required to establish a formal land market. The implication of the absence of both is that the community is more vulnerable to having these powers of exclusion projected upon them by other stakeholders. Essentially it constituted a vacuum that made the land claimed by the villagers appear at the national level to be unused state private land that was open for re-zoning⁹. Unknown to smallholder farmers in and around Chi Kha, their land could (and was) re-categorized from State private land to a sugar cane ELC because the State didn't recognize it was being used.

In Chi Kha nobody had any idea that their land had been consigned to an ELC. The government never arranged a meeting between the plantation and the villagers were never included in the planning before bulldozers arrived to clear the land in May 2006 (Focus Group 1, 19 June 2012). Moreover, villagers consistently responded that they did not know how to obtain a legal title to the land and they thought they owned it because it had been under their tenure for years and it was never contested. Just one example is a woman who had been living in the village since the collapse of the Khmer Rouge government. Her family believed they owned the land because they, like other villagers introduced earlier (see Section 4.1 of this chapter), cleared it when they first arrived and had been putting it to use ever since. She added that the local authorities and the government don't provide any information on how to obtain legal title to ownership (Respondent 6, 18 June 2012). The lack of information on government regulations is typical of rural areas, especially remote rural areas. One government official working at MLMUPC estimated that while 70 percent of people

⁹ State private land is considered to be any land within the territorial boundaries of Cambodia that is not State public land (state property having a natural origin, for general public use, specifically developed for public use, property allocated to provide a public service, natural reserves, archeological or cultural sites, royal property or other land considered to be of public interest) or legally privately or collectively owned land (RGC, 2005).

in the Phnom Penh are familiar with the land titling process, among rural people the ratio is more like 20 to 30 percent (Respondent 23, 26 August 2012).

4.1.3 The Villagers and the Power of Force

Of all the powers of exclusion the power of force was most evident at the local level. It had a profound impact on the villagers as it was repeatedly projected upon them by the concessionaire and to a lesser extent the government (see Sections 4.2.2 and 4.3.3). Moreover, the power of force represented the physical manifestation of the process of change in land tenure. However, the villagers were able to project forms of force that they had at their own disposal.

In the case study the power of force represented the physical manifestation of the process of change in tenure and occurs entirely on the local level. The land was unilaterally enclosed and cleared by the concessionaire and then the enclosure was enforced with violence or the threat of violence. Villagers attempted to counter being denied access to their land with other forms of force, mainly in the form of protests and demonstrations, but also including the temporary closure of a major highway. The government has also employed the power of force to support the process of change in land tenure. Security forces are alleged to have participated in forced evictions early in the dispute and the new Gendarmerie post near the entrance to the plantation represents the implicit threat of force.

Several villagers described how they lost land when the company enclosed their plots and incorporated the plots into the concession. One villager had seven hectares confiscated by the plantation (Respondent 6, 18 Jun 2012). Another, the village chief lost three hectares (Respondent 8, 19 Jun 2012). Several participants from the first focus group recounted how their families had each lost between two and six hectares. Every case in which the company seized a villager's land is an instance of the application of force since it was done against their will.

As the villagers began to respond to the company's forceful seizure of their land the company escalated the intensity of the power of force wielded to protect its claim by employing intimidation, harassment and actual violence (CHRAC, 2009; BABC, 2010). The company began harassing villagers by seizing their livestock

and holding them until the villagers paid a fine to get them back and by forcing villagers to pay a fee and by blocking access to forest on the concession (CHRAC, 2009). A man from Chi Kha who was interviewed said that when his cattle wandered onto the plantation the guards didn't shoot them but they still kept them (Respondent 10, 19 June 2012).

There are numerous reports of violence carried out by the company against the villagers that have been recorded in reports published by NGOs. NGO reports document shootings of livestock owned by villagers that wandered on to the concession on at least three separate occasions dating as far back as 2006 (CHRAC, 2009; BABC, 2010). Several villagers interviewed during field research related their own personal experiences of company guards shooting their livestock. In one example a woman described how plantation guards shot three of her cows (Focus Group 1, 19 Jun 2012).

Shooting livestock isn't the only form of violence perpetrated against the villagers by the company to contribute to the process of the change in land tenure. NGO reports also document incidents in which villagers' homes were burned down (CHRAC, 2009; BABC, 2010), villagers were beaten by company guards with rifle butts (BABC, 2010) and a villager was shot in the foot by company guards (CHRAC, 2009). These incidence of violence do not necessarily demonstrate how the process of the change in land tenure was shaped by force, but how force was used to maintain the integrity of the company enclosure once the process was complete.

The villagers have also employed the power of force in the dispute to resist the process of change in land tenure. There are several reports in government documents, newspaper articles and the statements of some of the villagers who were interviewed that demonstrate their employment of the power of force. In September 2006 work clearing land for the plantation was delayed because of "some problem with the people (MAFF, 2010)." In May 2012 villagers blocked National Highway for 24 hours to protest the unresolved land dispute (Chhay, 2012b) and threatened to block the highway again if the situation wasn't resolved (Kunmakara, 2012).

According to one villager, he participated in the demonstration that blocked the highway (Respondent 10, 19 June 2012). Other villages stated that they had also participated in demonstrations (Focus Group 2, 20 June 2012). The villagers threat to

use force and actual use of force is significant because unlike the powers of the market and regulation the concessionaire and the government don't have nearly complete monopolies on the power of force. The villagers also have limited forms of force at their disposal and as the closure of the highway shows, they have employed force from time to time. Without the powers of the market or regulation at their disposal to reclaim access to their holdings the villagers are left with few other options. Force is certainly one of them, although it may not be the most effective one. If the goal is to reclaim their previous holdings or at least to receive fair compensation for losing their land then employing various forms of force is not the best tactic since the company is unlikely to be intimidated and has greater means of the power of force at its disposal anyway.

4.1.4 The Villagers and the Power of Legitimation

The power of legitimation has been the villager's primary tool for contesting the change in land tenure. The villagers use it as a means to justify their respective claims to ownership of their land and as a means to contest the concession's seizure of their land. Their respective claims to the land are legitimated on the basis of customary ownership. It was already explained that Cambodia has a long tradition of informal ownership in rural areas that stretches back to before the arrival of the French (see Section 3.2.4). This tradition is based on the premise that unused state land is free to be occupied and improved by anybody that wants it. In this sense the power of legitimation takes the form of tradition.

An example of this form of the power of legitimation is found in the discourse of one of the women interviewed. Her family had seven hectares of land confiscated by the company (Respondent 6, 18 June 2012). Although her family has no legal title to their land they still believe they own it because when first came to the village over thirty years ago they cleared it themselves and have been raising crops on it ever since. Her family's claim is based on customary ownership. They legitimate their claim by asserting that it was unused when they first arrived and through their hard work they improved it. For over twenty-five years before the development of the sugar cane plantation their ownership was never challenged.

Her family's experience is not unique. Of all the villagers interviewed only one claimed to possess legal title as his basis for ownership of his land. All other interviewees believed they owned the land because they had used it to grow crops or graze livestock for decades. Most of these claimed that the land was unused when they first arrived in the village and that they cleared the land themselves. Their claims to ownership are clearly based on customary arrangements.

Another form of the power of legitimation employed by the villagers is the claim to tenureship based on the right to livelihood. One of the findings of the previous chapter was that villagers who lost their land to the concession were deprived of their livelihoods and thrown into poverty (see Section 3.4). They contest the legitimacy of the seizure of their land because it has made them poorer and their lives more difficult. According to one NGO report the development of the sugar cane plantation has caused impoverishment and increased food insecurity among villagers who lost their land (BABC, 2010). A UN report found that in the immediate aftermath of the confiscation of their land many villagers were living off of the previous year's harvest and had difficulty repaying loans (UNHCR, 2007).

Villagers who were interviewed during field research shared similar experiences. They described how after they lost their land they could no longer make a living and became poor. If a family member became sick they couldn't help them much because they had no money to pay for treatment or medicine. They no longer had money to send their children to school (Focus Group 1, 19 June 2012). Their point is that they need the land to survive because their livelihoods depend on agriculture so they should get the land back from the company.

The final form of the power of legitimation employed by the villagers is the claim to their land based on social justice. Social justice is closely linked with the right to livelihood but it specifically addresses bringing resolution to the dispute in a fair manner for those who have been harmed by the concession (CSC, 2012a). NGO reports and statements villagers made during interviews detail the many ways in which the concession has harmed villagers. Allegations include that the land was seized illegally, there have been numerous incidence of violence, the plantation has polluted local streams and the livelihoods of villagers have been uprooted (BABC, 2009; Focus Group 1, 19 June 2012; Respondent 10, 19 June 2012). Based on these

infringements of their rights and their well-being villagers use social justice as a form of legitimation upon which to claim they should either get their land back or be fairly compensated.

4.1.5 The Villagers and the Power of Information

Like the powers of the market (see Section 4.1.1) and Regulation (see Section 4.1.2) there was a notable absence of information in Chi Kha village that had profound implication for villagers throughout the process of the change in land tenure. There was a persistent trend throughout the interviews where respondents had no idea of the legal status of their tenure or the process for obtaining legal tenure. Moreover, when bulldozers arrived and began clearing land in 2006, villagers were completely unaware that an ELC had been approved to be developed in their commune and that it would seriously affect their livelihoods. Lack of information was a key vulnerability that prevented them from taking any action before the change in land tenure and it continues to be a source of vulnerability even as NGOs active in the dispute have worked to inform villagers of such information as their legal rights and the status of their case in court. This is because the government has been persistently opaque about the legal case and the hearing to decide the case has been postponed indefinitely.

4.2 Impact on Koh Kong Sugar Company

Another key stakeholder to consider is the company itself. It is not completely clear what the impact on Koh Kong Sugar Company has been because the company didn't participate in the study, but there is enough material available on KSL Group that it is possible to discern that the impacts have been both good and bad.

Koh Kong Sugar Company is comprised of two subsidiaries. They are the Koh Kong Plantation Company and the Koh Kong Sugar Industry Company. The former represents the sugar cane cultivation side of the plantation and the latter operates the sugar refinery that sits on the plantation. Together the two subsidiaries produce crystallized sugar, all of which is exported to Thailand for further export

abroad through KSL (NHRC, 2012). The destination of these exports is the European Union, where KSL Group avoids any tariffs or quotas under the EU's Everything But Arms (EBA) trade initiative. The EBA arrangement provides an added advantage in competitiveness and profit margins for the Group's exports of Cambodian sugar to Europe.

The downside for KSL Group and ultimately its subsidiaries operating in Cambodia is that the manner in which it seized the land of local farmers is starting to gain a lot of negative publicity. Perhaps little known to most of the world (and even most of Cambodia) at the time, it caught the attention of local and international NGOs, who quickly became active in seeking justice and due process for those who had their land confiscated by the Koh Kong Sugar Company. They have since organized the Clean Sugar Campaign, which originally aimed at bringing the case into public view and into pressuring western entities that deal with KSL Group into holding the conglomerate accountable for the human rights abuses committed by its subsidiaries. The latest step in the campaign is the July 2012 launching of the boycottbloodsugar.net website, which calls for boycotting Tate & Lyle, the company that imports KSL Group sugar into Europe.

Another action has also been undertaken on behalf of the affected communities. In January 2010 the Community Legal Education Center (CLEC) filed a complaint with Thailand's NHRC charging that KSL Group's Cambodia subsidiaries had illegally confiscated land from the community, used force against its residents during illegal evictions, engaged in intimidation tactics, killed livestock belonging to nearby residents and had caused food insecurity among the local villagers and driven them into deeper poverty. After completing an initial inquiry into the complaint NHRC ruled that it has jurisdiction to investigate the matter further and assigned the Subcommittee on Civil and Political Rights (SCPR) to conduct a full investigation into the business activities of KSL Group's Cambodia subsidiaries and the obligation of Thailand to protect human rights.

The decision to investigate KSL Group must come as a serious blow to the conglomerate's reputation and undermines its legitimacy as a business committed to Community Social Responsibility (CSR) (KSL Group, 2009b). In this sense then, KSL Group's venture of expanding into Cambodia in the form of the Koh Kong

Sugar Company must be seen as bad for business. The process of the change of land tenure that brought it land at the expense of local villagers has tarnished its corporate reputation. Nonetheless, there has been no move to block imports of KSL sugar into the EU and it continues to profit from the arrangement (CSC, 2012b).

4.2.1 Koh Kong Sugar Company and the Power of the Market

The power of the market also works to exclude at the transnational level. The market in itself does not represent power but is a channel through which power is projected. It is decisions that stakeholders make about the market that project this power. KSL Group's decision to invest in the development of an ELC in Cambodia was driven by the desire to profit from the international sugar market and represents a clear example of the mechanism.

The most important element that reinforces the case's transnational character and more importantly represents the power of the market on an international scale is the relationship between the concession and international commodity markets. The purpose of the concession after all is agro-industrial sugar cane cultivation (MAFF, 2010c). Not only does the concession cultivate sugar cane, but it has its own sugar mill with which it processes sugar cane and produces sugar. The sugar produced on Koh Kong Sugar Company's plantation is then shipped to KSL Group facilities in Thailand and then exported onward to markets abroad (NHRC, 2012). The system just described is profitable on its own, but what makes it even more appealing is that products originating from Cambodia are not subject to tariffs and quotas under the EU's EBA arrangement and are therefore cheaper and more competitive in Europe (CSC, 2012b). To summarize, a transnational conglomerate,¹⁰ KSL Group, developed a sugar cane plantation in Srae Ambel district to capitalize on the international commodity market for sugar and the advantageous trade regulations with the EU. In doing so it seized approximately 1,490 Ha of land from smallholder farmers in Chi Kha Leu commune, Srae Ambel district, initially affecting approximately 400 families. In this sense the international market became an

¹⁰ KSL Group also operates a similar sugar plantation and sugar mill in Lao PDR (KSL, Group 2009).

incentive for KSL Group to inadvertently exclude 400 families from their land, many of whom had cultivated the land for a generation or more. It can be said that the power of the market in the form of the international sugar market was an important factor in the process of change in land tenure. It is important to note however, that it did so with other powers working at different scales, whether it was force at the local scale or regulation at the national scale. What is clear is that the power of the market, existing on multiple scales is closely intertwined with other powers.

4.2.2 Koh Kong Sugar Company and the Power of Force

Of all the stakeholders it was the concessionaire that most often wielded the power of force, either to physically influence the process in change of land tenure or to enforce it (see Section 4.1.3). The first example of the use of force by the concessionaire occurred in May 2006 when bulldozers hired by the company appeared near the village and began clearing land being cultivated by villagers. The bulldozers physically carried out the change in land tenure. The small plots of the villagers were flattened and they were prevented from accessing the plots by the company's armed security guards.

The company employed other forms of force to consolidate its hold on the land as well. In some cases villagers agreed to accept compensation from the company because they had no other choice. In one case a family agreed to accept compensation for their land because it had been encircled by holdings acquired by the company and they were afraid they wouldn't have access to the land if they decided not to accept compensation. Essentially they had no choice and were forced to accept the company's terms (Focus Group 2, 20 June 2012). In yet another example of a forceful seizure of a village family's land a villager described how the company offered compensation after it had already enclosed the family's plot. When the company did offer compensation, it was only \$50.00 U.S. for two hectares. According to the woman:

“We didn't think it was unfair but we took the money because we didn't think we had a choice. The agent told us the company would still take our land

even if we didn't take their money.” (Respondent 13, 20 Jun 2012)

In effect, the woman and her husband were forced to accept compensation against their will. Villagers have their land forcefully seized and once the land is securely in company possession the company is free to offer whatever price it chooses because the previous tenant is in no position to decline even the smallest of offers.

4.2.3 Koh Kong Sugar Company and the Power of Legitimation

There is also a reasonable argument to be made that the company has its own claim in the dispute that is based on the power of legitimation. In a manner similar to the government it can claim that developing the sugar cane plantation creates jobs and contributes to the local economy. In this sense it offers the community a common good (see Section 4.3.2). Moreover, according to the commune chief the company built a new six-room school (Respondent 3, 18 June 2012), further strengthening its claim that its presence benefits the community.

4.2.4 Koh Kong Sugar Company and the Power of Information

The power of information is another power of exclusion being projected by the company. It appeared in in two significant forms that cut across the powers of the market and regulation (see Section 4.2.3). First was information about the international sugar market that incentivized investment in the ELC in Koh Kong.

The other form was the withholding of information by the company along with the government (see Section 4.3.5) that could have benefited the villagers. Since the outset of the project information about the process for acquiring the ELC has been incomplete and difficult to come by (CSC, 2012b). Before bulldozers appeared to clear land in May 2006 no information was ever provided to the villagers by either the company or the government regarding the coming project or how it would affect them (see Section 4.1.2). Since the acquisition of the disputed land the company has continued to withhold information as a means of protecting it. The company has never released a statement regarding the dispute (Respondent 18, 06 July 2012).

4.3 Impact on the Government

There has been a measurable impact upon the Cambodian government as well, at least among the residents of Chi Kha village. The inaction of the government on behalf of the villagers has created a sense of doubt among members of the community regarding the real motives of the government. When asked if there is any process for obtaining a title to land ownership, a woman responded:

“I don’t have a legal title and I don’t know how to get it. The local authorities and the government don’t tell us anything and the commune chief doesn’t help.” (Respondent 6, 17 July 2012)

This comment clearly expresses doubt in the ability of the local authorities to resolve the respondents’ grievances and suggests doubt in the willingness or ability of the local officials to look out after their constituent’s interests. There are other examples of frustration with the government as well. Speaking on the topic of how the plantation came into the possession of her land, a woman that was the member of a focus group commented that the local authorities should have at least arranged a meeting between the company and the local people before clearing began but this was never done (Focus Group 1, 19 June 2012).

Ironically, this sort of inaction by local government officials is supported by a comment made by the village chief during a semi-structured interview when he said that it is impossible to take action against the concession because they are too powerful (Respondent 8, 19 June 2012). In this sense the change in land tenure process has undermined the self-confidence of local officials.

Among the respondents there was also a sense of frustration or even hostility toward higher tiers of government. Respondent 10 was one of about 150 villagers who went to Phnom Penh to deliver a petition to the Prime Minister for help in getting their land back from the Koh Kong Sugar Company. He was also among those who delivered a petition to the Koh Kong provincial court in 2007. To this date there has

been no ruling on the petition¹¹. Most recently he was involved in a demonstration that blocked National Highway 48, the main artery between Phnom Penh and Koh Kong. On May 13 he was among 200 demonstrators who fell trees to block the highway for 24 hours. Recalling the event, the man says:

“I was in the demonstration. It wasn’t good. We blocked the road for a day. I’m sorry we did it. I’m sorry we made it difficult for the [other] people, but the government keeps on ignoring us.” (Respondent 10, 19 June 2012)

Ironically, it wasn’t government officials or the security forces that convinced demonstrators to clear the highway, but angry motorists (Chhay, 2012b). His experience reflects a strong sense of frustration that goes well beyond Chi Kha village. The demonstration was covered in the press and brought national attention to the issue.

On the other hand, the government has also benefited from the change in land tenure. One objective of promoting ELCs and agro-industry for the government is to generate revenue from the export of key commodities (MAFF, 2010a). Although it is not possible to quantify the revenues generated for the government by the concession it is certain that the government is benefiting from the arrangement. Moreover, agro-industrial ELCs are viewed within the government as an important engine of development, especially in rural areas (CHRAC, 2009).

In summary, it is clear in Chi Kha village that there is widespread frustration with the government on all tiers regarding the issue of land confiscated by Koh Kong Sugar Company, mainly because of the government’s failure to act on their behalf. This is especially so because people believe the confiscation was illegal and unjust. Within the village the impact on the government has not been good. At the national level more research needs to be done to determine public sentiment. On the international level the impact has not been good either. A series of reports about this issue in particular, but also “land grabbing” and ELCs more generally has been flowing

¹¹ A ruling on the complaint was scheduled for July, 12 2012 but was postponed at the last minute to July 26. The ruling was postponed again only days before the rescheduled hearing. There is no new date for the hearing.

from NGOs and human rights advocates even before Koh Kong Sugar Company's bulldozers first arrived in Chi Kha Leu commune. This includes a 2007 report critical of the government by UNHCR. The effect has been to tarnish the international reputation of RGC and pressure it to improve protecting the rights of its citizens.

4.3.1 The Government and the Power of the Market

The power of the market is essential in driving government policy promoting ELCs and once again reveals how closely the market and regulation are closely linked (see Section 4.1.2). ELCs are the government's primary instrument for developing the agro-industrial sector in Cambodia (see Section 4.3.2), which is viewed as underdeveloped in terms of infrastructure, technology and production, but is considered to possess the potential to create a number of economic goods. ELCs attract FDI, which leads to the introduction of technology and infrastructure that is needed to increase production of key commodities that can be exported and sold on international markets.

4.3.2 The Government and the Power of Regulation

Considering that it holds a monopoly on regulatory power it is no surprise that the Government projected the power of regulation more than any other stakeholder. Developing Cambodia's agro-industrial sector is a key objective of the central government and the promotion of creating agro-industrial ELCs is a major supporting element of that objective. Centralized authority for decision making combined with government policy preferential toward ELCs make for a force that is difficult to resist. Cambodia's political system is highly centralized. Even with a nationwide strategy to decentralize the national government and empower governments at the provincial, district and commune levels, there is still little in Cambodia that serves to balance against the concentration of power at the top.

The RGC has been subjected to intense criticism for the uneven application of the law, a contradictory and weak legal framework and generally weak rule of law (LHWG, 2009). The policy promoting ELCs (see Section 2.1) has become a favorite

target of such criticism (LHWG, 2009; CHRAC, 2009; BABC, 2010). All of these different aspects represent various forms of the power of regulation that have contributed to the process of change of land tenure in Chi Kha village. What follows is an analysis of the various forms of the power of regulation at play in the case study and how they influenced the change of land tenure.

RGC's policy to promote ELCs as a means of rural development is a central issue in the dispute between the villagers in Chi Kha Leu commune and the Koh Kong Sugar Company. It is a national level policy that has the overall goal of developing Cambodia's rural areas. There are several supporting objectives to this goal that include to develop intensive agriculture and the agro-industry, to achieve the goal of the ELC as agreed to with the investor, to create rural jobs in an ecologically sustainable manner, to attract FDI and to generate revenues for the government (MAFF, 2010b). The importance of the policy to the central government can be measured by the recent massive expansion in the number of ELCs in Cambodia and the total land area allocated to them (see Section 1.1). If measured in terms of increased agricultural production the policy has to be considered a success, but it has come at a price. The price as it relates to villagers in Chi Kha is discussed below.

The subject of ELCs emerged during a focus group with villagers who were made landless by the Koh Kong Sugar Company ELC. Recalling the statement of one of the focus group participants, she asked rhetorically, "...They say development but development for who?" (Focus Group 1, 19 Jun 2012). Her question leads to the realization that the government's policy to promote ELCs ostensibly to improve the lives of rural people has in reality led to the exclusion and deprivation of tens of thousands of rural people throughout Cambodia. Ironically, it is rural Cambodians like the villagers of Chi Kha who are the very people that the policy is intended to support. The policy is intended to provide jobs in rural areas and raise the level of development. And yet the policy does the opposite in Chi Kha where the number of people who have had their livelihoods uprooted when their land was seized to make the plantation is a high price for any jobs created on the sugar cane plantation. Most jobs on the plantation are only seasonal anyway, meaning that it does not provide income for workers year round.

Bureaucrats working within various organs of the government with authority over the allocation of land may not care much about the plight of smallholder farmers with claims that overlap an ELC. Field research discovered that smallholders do not normally hold official title to their land and therefore the land they occupy is officially considered as state land if it has not already been allocated for some other purpose. Since they are on state land the government may rationalize that smallholders like the people in Chi Kha are occupying it illegally and that the government is under no obligation to provide any sort of assistance in the case of a dispute or eviction brought about by the development of an ELC (Neef, 2012). The manner in which the government controls its territory in itself can act as a form of exclusion and the government can be less than sympathetic toward the people who bear the consequences and are marginalized.

Regulation can also act as a power of exclusion when laws and the legal framework don't function properly. This became apparent coming from the discourse of a man who described how the courts had failed to reach a decision after CLEC filed a complaint on behalf of villagers with the Koh Kong provincial court against Koh Kong Sugar Company. The complaint asserts that: (1) the ELC is illegal because the size of the ELC is larger than the 10,000 Ha ¹²limit prescribed by the Land Law and the Sub-decree on ELCs, (2) it did not follow the process stipulated by the ELC, (3) no social or environmental impact assessment was ever done and (4) those who lost land to the ELC were never compensated at fair market value, as required by the Land Law (Respondent 18, 06 Jul 2012). What is important here is not the merits of the complaint, though they seem solid, but how the legal process functions as a form of the power of regulation and ultimately influences the case study to exclude the villagers of Chi Kha from access to the land that they possessed before May 2006. To date the court has been unable to reach a decision. Not only has the court's failure to act prevented reaching any decisive outcome, but in the meantime the company continues to hold land which once belonged to the villagers.

¹² This accusation is based on the claim that the Koh Kong Sugar Company ELC and the 9,400 Ha Koh Kong Plantation Company ELC that sits immediately adjacent to it on its western boundary are both owned by the same group of investors and are in effect one ELC. Creating two ELCs sitting side by side was done to circumvent the 2001 Land Law, which prescribes 10,000 Ha as the maximum size for an ELC (CSC, 2012b).

The provincial court finally scheduled a hearing on the case for July 12, 2012, but it was postponed to July 26 and then was postponed once again indefinitely.

Another form of exclusion brought about by the power of regulation in Chi Kha has been ambient exclusion.¹³ Following the seizure of nearly 1,500 Ha of smallholder land by the Koh Kong Sugar Company and subsequent compensation payments, land became scarce and access to new land very difficult in Chi Kha (Respondent 3, 18 June 2012). To the north of the village is the sugar cane plantation and to the south is the Dong Peng Multiple Use Area (MUA), managed by the Ministry of Environment (MoE) (RGC, 2008)¹⁴. Using plantation land is no longer an option and cultivation of the MUA requires a permit from the MoE that is not easily obtained, especially in a part of Cambodia lacking a functioning regulatory framework. The result is that those made landless by the concession have little hope of taking up tenancy elsewhere near the village.

By far the most thorough insight into the exclusionary power of regulation regarding the dispute was provided by a staff member of Equitable Cambodia; an NGO working directly on the case¹⁵. According to the Respondent, the origins of the dispute between the villagers of Chi Kha and the company go all the way back to the Khmer Rouge period when all private ownership was abolished (Respondent 18, 06 July 2012). Although on its face collectivization would not seem to be exclusionary, it nonetheless contributed to the process of change in land tenure and exclusion that took place in 2006 and remains in place today. As already considered in Section 3.1.5, in the aftermath of the Khmer Rouge regime a wave of migration and resettlement occurred in which it was common for people to settle on unused land,

¹³ This represents a form of *ambient* exclusion, where an all encompassing moral argument to enclose and preserve unused land for the common good and future generations becomes the basis for excluding small-scale farmers from accessing arable land (Hall, Hirsch, Li, 2011: p. 60).

¹⁴ The 2008 Protected Areas Law assigned MoE with jurisdiction of all of Cambodia's protected areas. Among the types of protected areas are MUAs, which are land areas rich in natural resources that are intended to be protected in the long term, but can provide natural products to the community in the short term. The Nature Protection and Conservation Administration within MoE is charged with management of Cambodia's protected areas (RGC, 2008).

¹⁵ Equitable Cambodia is the local successor to BABC (Equitable Cambodia, 2012).

clear it and cultivate it although they had no legal title to ownership¹⁶. Since then laws have been enacted guaranteeing the right to private ownership of land by Khmer citizens. Despite the existence of these laws however, the staff member believes that the current legal framework is contradictory and ineffective (Respondent 18, 06 Jul 2012). Powerful investors have no problem obtaining ELC titles but most [ordinary] people can't get land titles. Here it is apparent that the power of the market is closely intertwined with the power of regulation. Investors eager to profit from Cambodia's booming investor-friendly agroindustry sector support a key government policy that creates a relationship of convenience. Stakeholders like Koh Kong Sugar Company have the financial resources to take advantage of a relatively weak legal framework while ordinary Cambodians do not, or they don't know how to access the regulatory process in the first place.

According to the staffer the legal system and rule of law in Cambodia are very weak (Respondent 18, 06 Jul 2012). This raises the question of if a weak legal framework represents the power of regulation in denying the villagers of Chi Kha access to their land. The empirical evidence is that the answer is yes. Starting in May 2006 smallholders living near the concession had their land confiscated by Koh Kong Sugar Company, which was justified as an ELC despite villagers also having a legitimate claim. To this day they remain without access to the land. Koh Kong Sugar Company's relationship with a Cambodian senator give it political influence that allows it to gain advantage from Cambodia's weak legal system.¹⁷

There were other forms of the power of regulation at play that also had significant influence over the process of the change in land tenure. During his interview the NGO staffer described the arbitrary manner in which ELCs are carved out of the countryside in Cambodia. He pictured a government official in an office in Phnom Penh looking at a map pinned up on a wall and arbitrarily drawing a box on

¹⁶ Private land ownership did not exist in Cambodia between 1975 and 1993 (Slocomb, 2003; RGC, 2008).

¹⁷ KSL Group/Koh Kong Sugar Company's close relationship with Senator Ly Yong Phat is evidenced by the fact that both it and the senator's sugar cane ELCs sit side by side, both went through the ELC application process at precisely the same time (MAFF, 2010c) and until 2010 both parties were co-investors in the joint venture (CSC, 2012). KSL Group/Koh Kong Sugar Company has significant access to political influence in Cambodia, as Senator Ly was once Prime Minister Hun Sen's economic advisor and the two are said to continue to have a close relationship (LYP Group, 2011).

the map and declaring it unused land that could be granted as an ELC. The official does so without realizing that the land actually is being used by rural smallholders who have been on the land for decades (Respondent 18, 06 Jul 2012). Although this oversimplifies the process of granting ELCs, it shares similarities of a critique with Vandergeest and Peluso in describing the manner in which a government official allocates land for various uses simply by drawing a line on a map (1995). The respondent's point was just that. It is as though a bureaucrat at MAFF arbitrarily drew the boundaries of the sugar cane plantation on a map without knowing or caring what the reality was on the ground. In this case the arbitrarily drawn boundaries enclosed land that was in use and being cultivated by the local population.

In July 2012 the RGC launched a new policy to measure and title up to 1.2 million Ha of land for as many as 350,000 rural families nationwide (Titthara and Boyle, 2012b). Policy implementation began with dispatching approximately 2,000 college students throughout the countryside to measure individual family plots. Once the measurement phase is complete each family will receive primary title to a "mini concession" of approximately 5 Ha that is good for fifty years (ibid.). The type of title is a new form of title called "primary title." This title can be converted to a permanent title once MLMUPC processes a request by the title holder to have it converted (Respondent 23, 26 August 2012).

One of the more contentious aspects of the policy is that it calls for taking land from ELCs to make 5 Ha plots for families in places where a land dispute exists between the local community and the ELC (ibid.). This new policy represents yet another form of regulation as a power of exclusion in present day Cambodia. From the description provided it appears very possible that land currently under the tenure of ELCs will be partially reallocated to individual families for private farming. This would certainly run counter to what has been the trend for years. In this case the power of regulation would force a change of land tenure in which the ELC becomes partially excluded from its land. It remains unclear whether or not policy implementation will have any bearing on Chi Kha village, but for the Kingdom as a whole it is certainly a step in a new direction.

Some have criticized the policy as nothing but election-year politics. The prime minister is making a calculated move to strengthen his support in rural areas in

the run up to next year's parliamentary elections. The NGO staffer asserts that the new policy isn't clearly formulated and there is no associated legal basis. He believes that there is no clear policy in place and that there is also no process. "It is just a bunch of inexperienced students going out and measuring land with no clear process (Respondent 18, 06 Jul 2012)."

The power of regulation was important in shaping the process that led to Koh Kong Sugar Company's acquisition of the land that was previously cultivated by the villagers of Chi Kha. At the local level it was an absence of regulation that worked to exclude smallholders from their land as there was no legal titling process and nobody held legal title to their land (see Section 4.1). It raises the question of what the difference would have been if there had been a formal legal framework in place. This study contends that there may not have been a dispute in the first place and if there was it would have been decided in favor of the villagers long ago.

As observed in the previous section powers can transcend scale, but some powers have greater presence in one scale than in the others. Regulation was strongest at the national level, as it was ultimately the government policy that promotes ELCs as a means toward economic development with other positive aspects such as social benefit and environmental conservation. Perhaps sensing that this policy has swung too far in favor of large-scale ELCs or perhaps taking steps to prepare for next year's parliamentary elections, the RGC's new policy to create 5 Ha mini concessions for up to 350,000 families across Cambodia is a new and curious development.

4.3.3 The Government and the Power of Force

The government also employed the power of force in the course of the dispute. There are allegations that security forces were involved in forcibly evicting villagers from their land shortly after the company began to seize villager land in 2006 (Kunmakara, 2012) and that security forces have been involved in the harassment and intimidation of villagers. In one case of intimidation in March 2009 the commune chief was accompanied by two police officers when he went to meet with an NGO lawyer to tell him that the lawyer could not meet with villagers without written

permission (CHRAC, 2009). Finally, during research a new Gendarmerie¹⁸ post was observed at the intersection of National highway 48 and the access road leading to the main entrance of the sugar cane plantation. Although the post was built under the pretext of ensuring social order there is the implicit threat of force in its presence, especially in consideration of its proximity to a highly controversial land concession.

The power of force played an essential role in the process of the change in land tenure between the villagers of Chi Kha and Koh Kong Sugar Company. The act of clearing the villager's plots without their consent was in itself a very tangible example of it. Bulldozers literally appeared and flattened fields and orchards and in a few cases even houses. In physical terms this was the process of the change in land tenure. Once the land had been cleared the previous tenants didn't have another chance to access their holdings. Their holdings were enclosed within the plantation and patrolled by armed guards. Following the physical act of the process of change in land tenure is what is best described as enforcement of the change in land tenure. Since 2006, with the support of local and international NGOs the affected villagers have waged what has become a campaign to have their land returned or at least to have fair compensation provided. The campaign has among other things included numerous demonstrations. The pattern of behavior of the company is to resist this campaign and maintain the integrity of its concession.

4.3.4 The Government and the Power of Legitimation

The government uses the power of legitimation on a national scale to justify its position in the dispute and on an international scale to deflect criticism from international human rights advocates. It claims that its policy to promote ELCs leads to development (see Section 4.2 of this chapter). The deputy governor of Koh Kong province supports this policy. One report described him as proud of the factory and plantation and quoted him saying to the effect that the 1,000 jobs created by the plantation are more important than 100 people losing their land (CHRAC, 2009).

¹⁸ The Gendarmerie is one of four branches of the Royal Cambodian Armed Forces (RCAF). Although they are often equated to western military police their role is different because one of their missions is to, "... ensure internal stability, security and social order..." so the Gendarmerie also has civilian jurisdiction (RGC, 2006).

In a sense the government's position is a form of ambient exclusion because in its narrative development is depicted as a common good. Unfortunately achieving development comes at the expense of those who are evicted and otherwise excluded from the land enclosed by ELCs. The right to livelihood and social justice for a few are forced to compete with the value placed on development and its benefits to the broader population.

4.3.5 The Government and the Power of Information

The government also wields the power of information. One form of information it projects is in advertising its own discursive of the potential financial rewards to be derived from ELCs that it employs to attract investors. Government officials travel abroad to pitch the attractiveness of ELCs to potential investors (Sakun, 2011). The other form of the power of information that it uses is the same as in the case of the concessionaire (see Section 4.2.4). The government uses the tactic of withholding information not to project power, but to defend its position. The ELC acquisition process was purposefully non-transparent to hide any wrongdoing. The withholding of information on the legal status of the dispute prevents critics from making any specific allegations that could be damaging to the credibility of the government's position in the dispute. An outcome of this tactic however, is that it reveals the government's tacit support for Koh Kong Sugar Company's forcible acquisition of villager land.

4.4 Impact on NGOs

NGOs represent the last stakeholder in the case study. For the purposes of the study, NGOs are limited only to those working directly on the dispute. Other NGOs active in the area with different focuses such as GDI and Care are not considered in the study. Although NGOs play an important role in the study and in the dispute, there was only limited information collected during field research that would be helpful in determining what impact the process of change in land tenure in this case has had upon them. Only once were NGOs mentioned during interviews (see Section

3.2.1), although it appears the respondent was not referring to NGOs working on the case, but an NGO like CARE that has the mission of providing training to lift women out of poverty (CARE, n.d.). Therefore, the impact on NGOs is difficult to measure, but it is also not central to the case study.

Nonetheless, at least for CLEC there has been significant benefit towards the organization's mission. Filing the complaint with the Koh Kong provincial court and the Thai NHRC represents an important test case in addressing land rights, Foreign Direct Investment (FDI) and ELCs. Moreover, taking the case to the Thai NHRC set an important precedent for the NHRC because it was the first case in which the committee assumed jurisdiction over a Thai company's activities outside Thailand. Since then NHRC has taken up other transnational cases in Myanmar and Laos (NHRC, 2012).

4.4.1 NGOs and the Power of Regulation

NGOs have attempted to project the power of regulation against the company, but at this point the efficacy is not known. In 2007 CLEC filed a complaint with the Koh Kong provincial court, but to date there has been no ruling on the case (Respondent 18, 06 July 2012). At one point a provincial judge in Koh Kong even claimed that there was no case because he had not seen the complaint documents (CHRAC, 2009). This reflects the challenge actors face when they attempt to take legal action against entities closely related to the government through the government's own legal system, especially when the government's legal system is known to be weak and non-transparent (LHWG, 2009).

4.4.2 NGOs and the Power of Legitimation

Legitimation was the only power projected by NGOs during the case study, but their success in doing so is a key theme of the discussion. Bringing the issue to the attention of international public opinion, several NGOs pursued different methods to elevate the dispute to the international level. These NGOs wielded social justice on behalf of the villagers who were harmed by the development of the sugar cane

plantation to resolve the dispute in a fair manner. CSC is a coalition of NGOs working to bring justice to the villagers. The goals of the campaign are to end human rights violations and environmental degradation caused by the company, see that the dispute is resolved fairly for the villagers and to ensure that agro-industrial ELCs benefit small-scale farmers and surrounding communities (CSC, 2012a).

CSC's original strategy for achieving its objectives are to make the public in Europe and North America aware of the dispute and to pressure Koh Kong Sugar Company and the Cambodian Government to account for themselves. In July 2012 the Clean Sugar Campaign initiated a boycott against Tate & Lyle, the UK-based company that imports sugar produced by the Koh Kong Sugar Company. The goal of the boycott is to contest the legitimacy of the concession and this holds Koh Kong Sugar Company accountable for its infringements upon the rights of villagers like the villagers in Chi Kha village.

Also projecting the power of legitimation on an international scale is CLEC. In addition to the complaint filed with the Cambodian court system, CLEC filed a complaint with Thailand's NHRC. Once again, NGOs are employing the power of legitimation on an international scale with the aim of holding the parent conglomerate of Koh Kong Sugar Company accountable for infringing upon the rights and livelihoods of villagers in Chi Kha Leu commune. The clean sugar campaign scored a major victory in July when NHRC determined through a preliminary investigation that there was enough credible information against Koh Kong Sugar Company that it warrants a full investigation (NHRC, 2012).

An NGO staffer says that the entire concession is illegal. When interviewed he asserted that the concession is larger than what is permitted by law, it did not follow the process laid out in the sub-decree on ELCs, there was never any social or environmental impact assessment and compensation at fair market value was never paid in advance. According to him, these infringements delegitimize the company's claim to the land that the sugar cane plantation occupies (Respondent 18, 06 July 2012). His NGO is part of CSC.

4.4.3 NGOs and the Power of Information

The power of information in this case is deeply intertwined with the power of legitimation (see Section 4.4.2). A key element of the NGO strategy to resolve the dispute is the previously mentioned information campaign that exposes the information of the harm done to the villagers by the company and tacitly approved of by the government to the global public. Even if the boycott of products produced by Koh Kong Sugar Company fails to have a measurable effect the campaign will still be successful as long as the reaction by the global public is strong enough to put pressure on the company and the government.

4.5 Exclusion's Double Edge

It is difficult to argue that exclusion's double edge was present in the case study because it is not clear that the consequences of establishing the ELC were unintended. It is more likely that the consequences that affected 400 families were considered a tradeoff for achieving a government policy objective. Nonetheless, it is clear that there were consequences, whether unintended or otherwise. This section will discuss to what extent the concept can be applied to influencing relationships between stakeholders on the premise that the consequences were unintended.

One of the key objectives of the case study was to determine the significance of exclusion's double edge in influencing relations among stakeholders. It was certainly significant in influencing the relationship between Koh Kong Sugar Company and the villagers who had their land confiscated by the company. There are several instances in which the comments of the respondents reflect the antagonism between the two stakeholders. The commune chief noted that villagers were protesting against the sugar cane plantation. One of the women in the first focus group related how she couldn't get a job on the plantation because the company staff believed she opposes it. Another woman related how a company guard shot three of her cattle that wandered onto the plantation. A man from the village expressed how

he thinks the plantation is bad for the community both in the short and the long term. In addition to losing land to the plantation he also lost cattle to it when they wandered onto plantation land and they were confiscated by guards. The man opposes the plantation so strongly that he was involved in a demonstration that blocked National Highway 48 for twenty-four hours to protest the plantation's seizure of villager land. Complaints have also been filed on behalf of villagers in the courts and with international governance institutions, but because they were filed by NGOs working on behalf of the villagers they will be reviewed in more detail when NGO relationships with other stakeholders are examined.

The concession has never released a statement regarding the dispute and did not participate in the study so there is no testimony on which to analyze how it views its relationship with the villagers. Instead the analysis has to be based on the concession's actions. On the one hand, the concession hires local people to work on the plantation. On the other hand however, it bans people it believes oppose it from working on the plantation and its guards confiscate and shoot villager livestock that wanders onto the plantation. There is even one instance where a woman was shot in the foot by a guard. Based on the amount of violence the concession has waged against villagers it is reasonable to conclude that the concession views the villagers with animosity as well. In the end the double edge of exclusion has created a great deal of animosity between the villagers and the concession.

The relationship between villagers and the government is not marked by the same level of acrimony as with Koh Kong Sugar Company, but there is still a detectable amount of tension. Several of the comments made by villagers suggests a sense of frustration at the unresponsiveness of the government. When asked about the titling process one woman responded that, "...the local authorities and the government provide no information...and the commune chief doesn't help (Respondent 6 18 Jun 2012).” The sense of frustration is detected in the statement of another villager who says that "...nobody knows where to go or who to talk to... (Respondent 7, 19 Jun 2012)” when asked about the titling process in Chi Kha.

What is unclear is the government's perception of the villagers. The only statement available that gives a glimpse of the government's perspective of the villagers is when the commune chief said that the villagers sold their land to the

plantation and now they are protesting to get it back. This statement suggests that the commune chief is not very sympathetic to the villager's cause. There is also a notable lack of activity on the part of all tiers of government in bringing about resolution to the dispute. On the provincial level the provincial court has failed to reach a decision on the villager's complaint for years now. A hearing was scheduled for July 12 but it was then pushed back to July 26 before being postponed indefinitely. Moreover, the Koh Kong deputy provincial governor was quoted by the CHRAC as saying to the effect that the villagers only have limited rights and that 1,000 people getting jobs on the plantation outweighs 100 families losing their land (2009). On the national level, in 2007 villagers delivered a petition to the Prime Minister's residence in Phnom Penh but never received a response. Through the government's inaction and the previous statements it is clear that exclusion's double edge has revealed a lack of compassion by the government toward the affected villagers.

The effect was significant to shaping relationships but it is not certain that the consequences were unintended. Policy makers often face dilemmas where there is a zero sum between policy options and they are forced to accept some cost when they pursue a favored policy. ELCs are promoted as positive by the government because they are perceived to bring development to rural Cambodia with a host of benefits including jobs, FDI and revenues (see Section 4.4 of this chapter). An inevitable consequence given current conditions in Cambodia is that they create landlessness that is ultimately the result of a clash between a customary arrangement of tenureship and the formal laws and regulations governing the use and allocation of land (see Section 4.2 of this chapter). This is certainly what happened in the case study and the consequences for the relationships between stakeholders was enormous.

Exclusion's double edge created a great deal of tension between villagers and the concessionaire. It also created significant frustration among villagers toward the government due to its inaction in resolving the dispute. The consequences of exclusion's double edge drove the stakeholders into two factions. The government and the concessionaire aligned more or less on the principle due to a common interest based on the market. The villagers and NGOs aligned in similar fashion on the basis of human rights and social justice. Relationships between certain stakeholders is not entirely clear due to either a lack of transparency or a lack of information but it is

certain that the effects of exclusion's double edge were significant on these relationships as well.

4.6 Conclusion

Table 4.1 Powers of Exclusion Matrix

		STAKEHOLDERS			
		VILLAGERS	CONCESSION-AIRE	GOVERNMENT	NGOs
P O W E R S	MARKET	Lack of Land Market	International Commodity Market	Promoting ELCs/Agro-Industry	
	REGULATION	No Formal Titling Process		Promoting Development; ELC Grant Process; Land Titling	Complaint to Provincial Court
	FORCE	Demonstrations Road Block	Land Enclosure; Shootings; Beatings; Kidnapping Livestock; Burning Houses	Eviction Enforcement; Presence; Tacit Approval of force by Company	
	LEGITIMATION	Right to Livelihood; Social Justice; Customary Ownership	Jobs; Economic Growth	Economic Development	International Governance; Social Justice; Human Rights
	INFORMATION	Lack of info on titling process; Lack of info on ELC before change in tenure	Info on sugar market and EBA; Info on RGC agro policy	Info on sugar market; Withholding info about ELC	International info campaign

Table 4.1 above summarizes the various forms of powers of exclusion that were employed by each of the primary stakeholders to influence the process of change in land tenure. Rather than focusing on more conceptual aspects, the intent is to depict the forms of power used in the actual implementation of the process. Text in red indicates an absence in a power of exclusion that led to a critical vulnerability for a stakeholder, namely the villagers.

The purpose of this chapter was to provide a detailed account of the findings that emerged during field research and to discuss how each stakeholder *encountered* the powers of exclusion during the process of the change in land tenure. The term *encountered* is used to capture the fact that in some cases stakeholders projected powers of exclusion through various forms and in some cases they were made vulnerable to the projection of a power of exclusion by another stakeholder.

The situation for the villagers in the study area has been made worse by the development of the land concession because it deprived a significant segment of the local population from the primary source of livelihood in Chi Kha village and Chi Kha Leu commune; namely agriculture. These people have overwhelmingly remained in the area and are overwhelmingly poorer than before the concession was established. They also burden the rest of the community as they rely on family and neighbors for assistance.

Not all stakeholders in the study have fared as poorly as the villagers, however. Although the concessionaire's reputation has been tarnished by credible allegations that it acquired the concession illegally and that it violated the rights of villagers, it still enjoys profits from exporting sugar produced on the concession to overseas markets. The impact on the government has also been mixed. On the one hand the government is facing mounting pressure both home and abroad to account for its inaction in resolving the dispute and in protecting its own citizens. On the other hand it can claim that on a larger scale the concession is contributing to achievement of the government's overarching objective of economic development. The government also benefits from revenue it earns off the concession. Finally, there are the NGOs. The impact on the NGOs isn't entirely clear but for one NGO the impact of the change in land tenure has definitely been beneficial. CLEC can claim that filing complaints with the Koh Kong provincial court and the Thai NHRC has been a successful test case in elevating the issue of land rights for rural people in Cambodia to a governance forum with transnational jurisdiction. In doing so it has set a precedent for NHRC's jurisdiction over the overseas activities of businesses based in Thailand.

The previous discussions revealed how and in what form the powers of exclusion influenced the process of the change in land tenure across local, national

and international scales. It also determined the powers and forms of power being employed by each stakeholder to bolster its respective position. It also considered the significance of exclusion's double edge to the case study and the merits of the concept of exclusion's double edge overall.

The problems that befell the people of Chi Kha village are at least partially due to the absence of a land market in the village. Even an informal land market would have at least helped to determine fair market value, but not even an informal land market exists in Chi Kha village or Chi Kha Leu commune. Had a formal market existed at the local level where there was legal protection for private property then it would have provided a level of protection against the forcible seizure of land that Chi Kha's villagers do not currently have. Instead, an international investor lured by the prospect of profiting from the international market for sugar seized land that had been tenured by smallholder farmers for years and converted it into part of a cash crop plantation. The power of the market at the international scale and the vulnerability exposed by the absence of a formal land market at the local scale converged to exclude small scale farmers in Chi Kha from their land.

There was also an absence of regulation at the local level that left villagers vulnerable to exclusion. The power of regulation was most apparent at the national level, but it transcended scales down to the local level with ominous implications for villagers who had no legal framework with which to defend their claims. Policies promoting agro-industry and regulations at the national level that favor investors converged with market forces to bring about the exclusion of local people from their land.

Force was most present at the local level and was the most physical manifestation of the process of the change in land tenure. Koh Kong Sugar Company wielded force against villagers in Chi Kha through many different forms. It forcefully expropriated their land by clearing it with bulldozers and then enclosed it and enforced the enclosure with security guards. The guards in turn perpetrated numerous forceful and even violent acts against local residents including confiscating stray livestock that they discovered on company land and demanding the owner pay a fine before returning the animals, shooting livestock, beating villagers with rifle butts and in one case even shooting a villager in the foot. The company also employed force

when it encircled one families plot with land acquisitions and forced them to sell it for fear of not being able to access it through company land. Although the power of force was used by the company to force the process of change in land tenure, it did not have a monopoly on the power of force. Villagers used the power of force to contest their exclusion to tenure imposed by the company. Villagers participated in several demonstrations including one in May 2012 where they forced the closure of a major highway linking Koh Kong with Phnom Penh for a day. The power of force was not very significant beyond the local level, with the exception that the closure of the highway had implications on the national level.

Legitimation was wielded by all four major stakeholders. The power of legitimation was also present on all scales. Villagers used the power of legitimation across the local and national levels to claim their right to a livelihood, to demand social justice, to claim ownership to their land and to contest Koh Kong Sugar Company's seizure of their land. The government used the power of legitimation to justify the concession, claiming it would lead to economic development. NGOs wielded the power of legitimation most effectively on an international scale by waging an international information campaign that eventually evolved to include a boycott of sugar produced by Koh Kong Sugar Company. They also brought the case to the attention of the network of international governance, putting pressure on the company and the government to account for abusing the rights of the villagers. Although the company has been silent to date, it too could wield the force of legitimation by claiming that the plantation creates jobs and contributes to regional economic growth.

Information emerged as a power of exclusion in the case study. A lack of information among the villagers regarding laws and regulations on land tenure made them vulnerable to having land seized. They were also left vulnerable to having their land expropriated when the government and the concessionaire withheld information about the plan to develop the sugar cane plantation. Finally, information acted as a power of exclusion as it was used by stakeholders to make decisions and project other forms of powers of exclusion upon competing stakeholders.

Exclusion's double edge is somewhat flawed because the concept assumes that consequences of a change in land tenure are unintended when in fact they may be

accepted as a necessary cost. Still, the mechanism the concept alludes to played a significant role in influencing relationships between stakeholders. The most glaring consequence from the development of the sugar cane plantation is that it caused the landlessness of 400 families and drove them into deeper poverty. But there were other consequences as well. The case triggered the mobilization of a campaign by a coalition of national and international NGOs to bring justice to those who were made landless by the ELC and to bring an end to the practice of forced evictions. This campaign has brought pressure upon both the concessionaire and the government to account for their actions and has undermined the reputations of both stakeholders in the eyes of international public opinion.

CHAPTER V

CONCLUSION

The previous chapters have methodically laid out the case study as a basis upon which to apply the conceptual framework of the *powers of exclusion*. The purpose of this chapter is to review findings and analysis and to link them together in a manner that provides a clear and comprehensive understanding of the manner in which the powers of exclusion shaped the process of change in land tenure. This chapter also considers the overall utility of the conceptual framework and proposes topics for further research that will widen the base of knowledge on land tenure and economic land concessions in the future.

5.1 Synthesis of Findings

A key objective of the study was to determine how the different stakeholders have been impacted to date by the process of the change in land tenure between small-scale farmers in Chi Kha village and the sugar cane plantation. There was wide variation among the stakeholders in terms of impact. By far the biggest losers were the villagers who had their land confiscated to develop the concession. The discourse of the overwhelming majority of the respondents revealed that villagers who lost their land were thrown into poverty, even by rural Chi Kha village's modest standards. Many of these people were forced to rely upon help from their neighbors and extended family, piling additional burden upon a community with extremely limited resources.

For other stakeholders the impact has been mixed. The concessionaire and the government in particular are stakeholders who have enjoyed some benefit from the change in land tenure but who have also absorbed significant costs. Koh Kong Sugar Company and its parent conglomerate are enjoying profits from exporting sugar produced on the concession. This is even more the case since they enjoy the advantages of the EU's EBA arrangement, which eliminates tariffs and quotas on products originating in Cambodia that are exported to the EU. On the other hand, the

company is facing pressure from public opinion brought about by Clean Sugar Campaign's effort to bring international attention and accountability to company activities that have infringed upon the rights and livelihoods of people living in surrounding communities.

For the government the impact of the process has been mixed as well. On the one hand it can claim that it is directly benefiting from revenue generated by the concession and that more broadly the concession is contributing to the Kingdom's economic development. On the other hand, it is facing the same pressure as Koh Kong Sugar Company to account for the damage the concession has done to the rights and livelihoods of people who lost their land and to account for why the Cambodian government has failed to take any meaningful step toward bringing the dispute to a just resolution.

Finally, the findings revealed the impact that the change in land tenure has had upon NGOs. It was more difficult to measure the impact on NGOs because there is less directly at stake in the case study than for the NGOs than for the other stakeholders. In general however, the impact has been positive. The case has drawn attention to the broader issue of land disputes in Cambodia and has created pressure on the RCG to review its ELC policy and the policy's implementation. Another accomplishment enjoyed by the NGOs is the success of bringing the case before the Thai NHRC. When it was originally filed in January 2010 it set a precedent for NHRC's transnational jurisdiction over Thai companies with operations abroad. NHRC's decision to conduct a full investigation of the case in July 2012 reinforced the precedent.

The findings outlined above provide the basis for the analysis that was also central to the study. A brief summary of the analysis is provided in the following section.

5.2 Synthesis of Discussion

Discussions led to several conclusions that provide greater insight into the process of change in land tenure in Cambodia. As the creators of the conceptual framework contend, the powers of exclusion work at different scales and are intertwined. What was discovered during the course of analysis, however, is that some powers function differently than others on different scales, although ultimately they all result in influencing an outcome on the ground in Chi Kha village.

In the case study the power of the market was pervasive across all scales. On the local level it was the absence of a land market that made villagers vulnerable to external market powers. This came in the form of a Thai sugar conglomerate taking advantage of powers of the market at the international level to acquire the ELC in Koh Kong that ultimately forced the change in land tenure, in particular through leveraging the power of regulation. Although not directly related to the case study, a national level real estate market was also observed that may have implications in the future. Aside from its presence across scales, another characteristic of the market was how it transcended scales; powers of the market on one scale ultimately result in changes at the local scale.

The power of regulation was not as pervasive as the power of the market, as its presence on the international scale was not as important in shaping outcomes at the local level in Chi Kha. This contrasted with the influence of the power of the market at the international scale, which had a major influence over outcomes at the local level. However, there was a close interconnectedness of the powers of the market and regulation that created a synergistic effect that profoundly shaped the process of the change in land tenure. The absence of the power of regulation or a legal framework on private land ownership at the local level exposed smallholder farmers to powers of exclusion operating on greater scales. A clash between an informal land tenure arrangement in the village and Cambodia's legal framework occurred because the legally unused state private land was rezoned as an ELC by the government even though at the local level the land had been under a customary form of tenureship for years. The lack of any system of land registration in Koh Kong exposed villagers to the assertion that they had no legal claim to the land they previously tenured.

There are three major points to conclude from the analysis regarding the power of force. The first conclusion of this thesis is that force was limited to the local scale. This is due to the fact that force represents the physical manifestation of the process of change in land tenure, where bulldozers and armed guards literally push people out of the way to expropriate land. The second point about force is the concessionaire did not possess a complete monopoly on it. Villagers wielded various forms of force as they contested the legality and justice of the ELC. The final point about force is that it was not only the use of force, but the threat of the use of force that influenced the process. The clearest example in the case study was the newly constructed Gendarmerie post constructed near the entrance of the sugar cane plantation.

The last power of exclusion to be analyzed was the power of legitimation. This power also bore its own unique characteristics in the case study. The most notable characteristic of the power of legitimation was that all stakeholders attempted to employ it to strengthen the justification for their respective positions. Villagers used the right to livelihood, social justice and tradition to legitimate their claims to their land. The concessionaire (through third parties) legitimated its position through the claim that the concession would create jobs for surrounding communities and improve the local economy. The government had a similar basis for its position, claiming that ELCs will help to develop the national economy and reduce rural poverty. NGOs elevated the dispute to the international scale to delegitimize the concessionaire and the government with the strategy that negative international public opinion would pressure them into reconsidering their positions. Thus, the power of legitimation was embraced by each stakeholder and was pervasive across all scales.

Information should also be considered for integration into the powers of exclusion conceptual framework. During the case study it became clear that access or lack of access to information put certain stakeholders at an advantage or a disadvantage. The power of information is definitely a topic to consider for future research.

Exclusion's double edge was also considered in the analysis. Exclusion's double edge was significant in shaping relations among stakeholders as government policies to promote development in rural areas and private sector motives to profit

from an international commodity market converged to create consequences such as creating increased rural landlessness and deepening poverty in Chi Kha village. Another consequence was the backlash created by the forceful expropriation of land as a coalition of human rights NGOs mobilized an international campaign to hold the investor and the Cambodian government accountable for the violation of human rights and flouting of Cambodia's laws on land tenureship. The problem with the concept however, is that it is based on the assumption that negative consequences are unintended when in fact it is likely that they are anticipated and deemed as an acceptable cost for undertaking a project.

5.3 Utility of the Conceptual Framework

A fundamental question considered by the thesis is the overall value of the conceptual framework and whether or not applying it to this particular case of change in land tenure has revealed anything beyond the base of knowledge that existed previously regarding the case. As the previous sections of this chapter reflect, there is tremendous value in the conceptual framework because it provides a perspective of analysis that brings about a more thorough understanding of the complexities involved in the case study and in other cases like it. The framework closely analyzes the process of the change in land tenure rather than the negative consequences of the change. In doing so it views the process through four different lenses – the powers of the market, regulation, force, legitimation and now information – and how they converge and interact with one another to provide a more vivid perspective.

Integrating the *power of information* into the powers of exclusion conceptual framework not only highlights the importance of information even in remote areas of rural Southeast Asia, but also deepens the level of understanding in how information shapes the process of the change in land tenure. The creators of the conceptual framework acknowledge that there are other powers of exclusion involving land tenure aside from the market, regulation, force and legitimation; their contention is just that those four powers of exclusion are extremely important (Hall, Hirsch, Li, 2011: p. 197). This thesis has uncovered that one other significant power at play is

the *power of information* and contends that it is of equal significance as the powers of the market, regulation, force and legitimation.

To date the only other known research on the topic of the land dispute has been NGO reports that view the dispute through the lens of either human rights or rule of law. Their work so far has tended to villainize stakeholders like the concessionaire and the government while victimizing villagers without giving proper attention to the processes at play or to the interaction between various forces such as the market, the legal framework or the use of force.

5.4 Significance of Research

This research is significant because it more thoroughly analyzes the process of change in land tenure in Cambodia rather than only focusing on the negative aspects of its outcomes. As a case study it is representative of a nationwide trend in Cambodia that has been accelerating for years. There are few studies that look at land tenure beyond the aspect of land grabbing and this is the first formal study that applies the powers of exclusion framework to a land dispute related to ELCs in Cambodia. The research is also significant because it identified the *power of information* as an additional element that could be incorporated into the *powers of exclusion* framework. Doing so would further deepen understating of the process of change in land tenure in Cambodia as it relates to ELCs, and perhaps as it relates more broadly throughout Southeast Asia.

5.5 Further Research

There are several important issues that emerged from the case study that would serve as suitable topics for research in the future. A study of the significance of access to information in issues of land tenure will bring new insight that will benefit those who specialize in land tenure as well as policy makers whose decisions have implications on who uses land and how it is used. This research can be conducted by applying a *powers of exclusion* framework that has been modified to incorporate the *power of information* or it can adopt an entirely new framework. The

objective of the research would be to examine how information shapes changes in land tenure in Southeast Asia.

Another topic encountered during the case study that is worth future research is the new land-titling program that recently began implementation in Cambodia (see Section 4.2). There are important questions about the program and how it will affect land tenure. The land-titling process has yet to be clearly defined, the degree of ownership contained in the title is unclear and it is unknown how the program will affect the government's rural development strategy. Until now the strategy has been based on promoting agro-industrial ELCs, but if the government enforces a policy that takes land away from ELCs it may make investors cautious of investing in Cambodia in the future. The objective of the research would be to analyze how effective the new policy is in addressing rural landlessness and land disputes between ELCs and neighboring communities.

The last recommended topic for further research is land categorization and zoning in Cambodia. During the course of preparing this thesis numerous categories of land were encountered under the jurisdiction of several ministries that made the land use system in Cambodia seem confusing and unclear. One contradictory example is the Dong Peng MUA. Although it is a restricted use protected area under the management of the MoE, it encompasses several villages and even the Srae Ambel district center and large cultivated areas including wet rice paddies and sugar cane fields. It raises serious questions about how the land is managed and what the definition of a protected area means. The objective of this research would be to more clearly understand the manner in which the RCG categorizes land and what is at the root of apparent contradictions like the previous example.

REFERENCES

- Asia NGO Coalition (ANGOC), (2009). "Overcoming a Failure of Law and Political Will." *Lok Niti*. [online] Available at: <<http://www.angoc.org/Agrarian-Reform-and-Access-to-Land/View-category.html>> [Accessed 28 August 2012].
- Asia Real Estate Cambodia (ARC), (2010). *About ARC*. [online] Available at: <<http://www.arccambodia.com/website/vision.php>> [Accessed 31 July 2012].
- British Broadcasting Corporation (BBC) (2012). "Cambodian Suspends New Land for Companies." *British Broadcasting Corporation* [online] 07 May. Available at: <<http://www.bbc.co.uk/news/world-asia-17980399>> [Accessed 13 May 2012].
- Bridges Across Borders Cambodia (BABC) (2010). *Bittersweet: A Briefing Paper on Sugar Production, Trade and Human Rights in Cambodia*. D. Pred. Phnom Penh, Bridges Across Borders.
- Bunthy, S. (2012). "Rubber Drives Agro Investment." *The Phnom Penh Post*. [online] 14 March. Available at: <<http://www.phnompenhpost.com/index.php/2012031455013/Business/rubber-drives-agro-investment.html>> [Accessed 25 March 2012].
- Cambodian Human Rights Action Committee (CHRAC) (2009). "Losing Ground: Forced Evictions and Intimidation in Cambodia." Phnom Penh, Cambodian Human Rights Action Committee.
- Cambodian League for the Promotion and Defense of Human Rights (LICADHO) (2009). "Land Grabbing and Poverty in Cambodia: The Myth of Development." Phnom Penh: LICADHO.
- CARE, (n.d.). *About CARE*. [online] Available at: <<http://www.care.org/about/index.asp>> [Accessed 28 August 2012].
- Channyda, C., (2012a). "Court Date Set for Koh Kong Farmers." *The Phnom Penh Post*. [online] 25 July. Available at: <<http://www.phnompenhpost.com/index.php/2012072557605/National-news/court-date-set-for-koh-kong-farmers.html>> [Accessed 01 August 2012].
- Channyda, C., (2012b). "Roadblock Ends as Protesters succumb to Drivers' Demands." *The Phnom Penh Post*. [online] 14 May. Available at: <<http://www.phnompenhpost.com/index.php/2012051456153/National-news/roadblock-ends-as-protesters-succumb-to-drivers-demands.html>> [Accessed 14 May 2012].

- Clean Sugar Campaign (CSC) (2012b). *Koh Kong*. [online] Available at: <<http://www.boycottbloodsugar.net/the-companies/the-producers/>> [Accessed 11 July 2012]
- Clean Sugar Campaign (CSC) (2012a). *The Campaign*. [online] Available at: <<http://www.boycottbloodsugar.net/the-campaign/>> [Accessed 11 July 2012].
- Clean Sugar Campaign (CSC) (2012b). *The Producers*. [online] Available at: <<http://www.boycottbloodsugar.net/the-concessions-2/koh-kong/>> [Accessed 11 July 2012]
- Constitution of the Kingdom of Cambodia* (2008). Phnom Penh: Royal Government of Cambodia (RGC)
- Cotula, L., (2012). “The International Political Economy of the Global Land Rush: A Critical Appraisal of Trends, Scale, Geography and Drivers.” *Journal of Peasant Studies*, 39:3-4, pp. 649-680.
- Defending the Kingdom of Cambodia 2006: Security, Development and International Cooperation*. Phnom Penh: Royal Government of Cambodia (RGC)
- Di Certo, B. and Sokchea, M., (2012). “PM Institutes Land Concessions Moratorium.” *The Phnom Penh Post*. [online] 08 May. Available at: <<http://www.phnompenhpost.com/index.php/2012050856036/National-news/conceding-a-problem.html>> [Accessed 15 May 2012].
- Equitable Cambodia, (2012). *About Equitable Cambodia*. [online] Available at: <<http://www.equitablecambodia.org/aboutus.php>> [Accessed 11 July 2012]
- Fall, O. J. (2010). “Chinese Koh Kong Under Construction.” *Estates Report*. [online] Available at: <<http://www.estatesreport.com/a369972-chinese-koh-kong-development-under-construction>> [Accessed 01 September 2012].
- Few, R., (2001). “Analyzing Mechanisms of Interaction in Negotiations Over Space.” *Area*, 34: 1, pp. 29-38.
- Hall, D. Hirsch, P. and Li, T. (2011). *Powers of Exclusion: Land Dilemmas in Southeast Asia*. Singapore: NUS Press.
- Haq, M., (1995). *Reflections on Human Development: How the Focus of Development Economics Shifted from National Income Accounting to People-centered Policies, Told by one of the Chief Architects of the New Paradigm*. Oxford University Press: New York.
- Hayami, Y., (2001). “Ecology, History and Development: A perspective from Rural Southeast Asia.” *The World Bank Research Observer*. 16: 2, pp. 169-198.

- Hayes, A., (2002). "Population and Poverty in Asia and the Pacific; Country Report: Cambodia." *5th Asian and Pacific Population Conference, Economic and Social Commission for Asia and the Pacific and the United Nations Population Fund 11-17 December 2002*. Phnom Penh: Ministry of Planning.
- Interntional Federation on Human Rights (FIDH) (2011). "Cambodia Land Cleared for Rubber - Rights Bulldozed." A. Bernard. Paris: FIDH.
- International Labor Organization (ILO) (2011). "Cambodia's Garment Industry Rebounds from Global Economic Downturn." *Better Factories Cambodia*. Phnom Penh.
- Khon Kaen Sugar (KSLa) Group, (2009). *Business Partners*. [online] Available at: <<http://www.kslsugar.com/en/profile/partners>> [Accessed 08 August 2012].
- Khon Kaen Sugar (KSLb) Group, (2009). *CSR Projects*. [online] Available at: <<http://www.kslsugar.com/en/social>> [Accessed 08 August 2012].
- Kiernan, B. (1996). *The Pol Pot Regime: Race, Power and Genocide in Cambodia under the Khmer Rouge, 1975-1979*. New Haven and London, Yale University Press.
- Kunmakara, M., (2011). "Rubber Industry Growth a Priority." *The Phnom Penh Post*. [online] 28 November. Available at: <http://www.phnompenhpost.com/index.php?option=com_jcs&view=jcs&layout=form&Itemid=0> [Accessed 30 November 2011]
- Kunthier, M., (2012). "Villagers Turn to Leaflets in Hope of Intervention." *The Phnom Penh Post*. [online] 29 May. Available at: <<http://www.phnompenhpost.com/index.php/2012052956455/National-news/villagers-turn-to-leaflets-in-hope-of-intervention.html>> [Accessed 17 July 2012].
- Land and Housing Working Group (LHWG) (2009). *Land and Housing Rights in Cambodia Parallel Report 2009*. Phnom Penh.
- Land Law* (2001). Phnom Penh: Royal Government of Cambodia (RGC).
- Lindt, N. (2011). "In Cambodia, Koh Kong Emerges as an Eco-tourism Destination." *The New York Times* [online] 04 March. Available at: <http://travel.nytimes.com/2011/03/06/travel/06nextstop-kohkong.html?_r=0> [Accessed 07 December 2011]

- Ly Yong Phat (LYP) Group (2011). President Profile. [online] Available at:
<<http://lypgroup.com/president-profile.php>> [Accessed 30 August 2012].
- Meas, N. (2009). *Roads to Development: Insights from Sre Ambe District, Southwest Cambodia*. (R. Griffiths, Ed.) Phnom Penh, Cambodia: American Friends Service Committee.
- Merriam-Webster, Incorporated, (2012). *Information*. [online] Available at:
<<http://www.merriam-webster.com/dictionary/information>>
[Accessed 14 September 2012].
- Ministry of Agriculture, Forestry and Fisheries (MAFF), (2010a).
Economic Land Concession: Objective. [online] Available at:
<<http://www.elc.maff.gov.kh/en/objective.html>> [Accessed 08 August 2012]
- Ministry of Agriculture, Forestry and Fisheries (MAFF), (2010b).
Economic Land Concession: Overview. [online] Available at:
<<http://www.elc.maff.gov.kh/en/overview.html>> [Accessed 08 August 2012]
- Ministry of Agriculture, Forestry and Fisheries (MAFF), (2010c). *Profile: Koh Kong Sugar Company, Ltd*. [online] Available at:
<<http://www.elc.maff.gov.kh/en/profile/17-kkg/60-kk-sugar.html>>
[Accessed 14 March 2012].
- Ministry of Agriculture, Forestry and Fisheries (MAFF), (2010d). *Sugar Cane Cultivated Area/Ha*. [online] Available at:
<http://www.stats.maff.gov.kh/en/index.php?page=stat&mode=sugarcane CultivatedArea&option=com_content&Itemid=75> [Accessed 26 July 2012].
- Ministry of Land Management, Urban Planning and Construction (MLMUPC), (2011). *The Five Steps of the Systematic Land Registration Procedure*. Phnom Penh: MLMUPC.
- Ministry of Tourism (MoT) (2012). *Tourism Statistic Reports in 2011*. Phnom Penh, Statistics and Tourism Information Department.
- National Committee for Sub-National Democratic Development (NCDD), (2005). *Strategic Framework for Decentralization and De-concentration Reforms*. Phnom Penh: NCDD.
- National Committee for Sub-National Democratic Development (NCDD), (2009). *Srae Ambel District Data Book 2009 (District Code Nr. 906) Koh Kong Province*. Phnom Penh: NCDD.

- National Human Rights Commission (NHRC), (2012). *Findings of the Subcommittee on Civil and Political Rights of the National Human Rights Commission of Thailand on the Koh Kong Sugar Cane Plantation Case in Cambodia 25/07/2012*. Bangkok: NHRC.
- National Institute of Statistics (NIS), (2008). *General Population Census of Cambodia 2008 Final Census Results: Figures at a Glance*. Phnom Penh: NIS.
- Neef, A. and Touch, S. (2012). "Landgrabbing in Cambodia: Narratives, Mechanisms and Impacts." In: *2nd International Conference on International Relations and Development*. Chiang Mai, Thailand 26-17 July 2012. Kyoto: University of Kyoto
- NGO Forum. (2010). "Statistical Analysis on Land Disputes in Cambodia, 2010." P. Yu. Phnom Penh.
- Office of the High Commissioner for Refugees (OHCR), (2007). *Economic Land Concessions in Cambodia: A Human Rights Perspective*. Phnom Penh: OHCR
- Open Development Cambodia (ODC) (2011a). *Companies*. [online] Available at: <<http://www.opendevdevelopmentcambodia.net/concessions/>> [Accessed 17 July 2012]
- Open Development Cambodia (ODC) (2011b). *Maps*. [online] Available at: <<http://www.opendevdevelopmentcambodia.net/maps/>> [Accessed 12 March 2012].
- Orapan Nabangchang-Srisawalak (2006). "Land Tenure Data and Policy-Making in Southeast Asia." *Land Reform: Land Settlement and Cooperatives*(1).
- Pellechi, G., (2012). "Koh Kong King Bowed out of 'Blood Sugar' Firm." *The Phnom Penh Post*. [online] 03 August. Available at: <<http://www.phnompenhpost.com/index.php/2012080357793/National-news/koh-kong-king-bowed-out-of-blood-sugar-firm.html>> [Accessed 05 August 2012].
- Protected Area Law* (2008). Phnom Penh: Royal Government of Cambodia (RGC).
- Reuy, R. (2011a). "Rice Output Increases even Despite Heavy Floods." *Phnom Penh Post* [online] 09 December. Available at: <<http://www.phnompenhpost.com/index.php/2011120953254/Business/rice-output-increases-even-despite-heavy-floods.html>> [Accessed 11 December 2011].

- Reuy, R. (2011b). "Ly Yong Phat Mill's Sugar to Reach Market in March." *The Phnom Penh Post*. [online] 22 December. Available at: <<http://www.phnompenhpost.com/index.php/2011122253555/Business/ly-yong-phat-mills-sugar-to-reach-market-in-march.html>> [Accessed 20 March 2012]
- Reuy, R. (2012). "Senator's Sugar Plant to Open by Year's End." *The Phnom Penh Post* [online] 08 May. Available at: <<http://www.phnompenhpost.com/index.php/2012050856021/Business/senators-sugar-plant-to-open-by-years-end.html>> [Accessed 09 May 2012].
- Rist, G., (2002). *The History of Development*. Zed Books, London.
- Sakun, C. (2011). *ELC Granting in the Kingdom of Cambodia*. [online] ASEAN-Korea Centre. Available at: <<http://aseankorea.org/program/event/detail.jsp?menuID=002005001001&eventYear=2011&eventGroupID=2&searchSelect=&eventCategorySelect=&keyword=¤tPage=6&eventID=298>> [Accessed 14 April 2012].
- Sen, A., (1999). *Development as Freedom*. New York, Anchor Books.
- Slocomb, M., (2003). *The People's Republic of Kampuchea 1979-1989: The Revolution After Pol Pot*. Bangkok, Silkworm Books.
- Sokheng, V., (2012). "Land Volunteers on Way: PM." *The Phnom Penh Post*. [online] 02 July. Available at: <<http://www.phnompenhpost.com/index.php/2012070257144/National-news/land-volunteers-pm.html>> [Accessed 12 July 2012].
- Sub-Decree on Economic Land Concessions 2005 (No. 146 ANK/BK)*. Phnom Penh: Royal Government of Cambodia (RGC)
- Sub-Decree on State Land Management 2005 (No. 118 HNK/BK)*. Phnom Penh: Royal Government of Cambodia (RGC)
- Titthara, M., (2011). "Koh Kong Protest Heats Up." *The Phnom Penh Post*. [online] 07 December. Available at: <<http://www.phnompenhpost.com/index.php/2011120753196/National-news/koh-kong-protest-heats-up.html>> [Accessed 08 December 2012].
- Titthara, M. and Boyle D., (2012a). "Kingdom's Arable Land All but Gone." *The Phnom Penh Post*. [online] 01 March. Available at: <<http://www.phnompenhpost.com/index.php/2012030154799/National-news/kingdoms-arable-land-all-but-gone.html>> [Accessed 05 March 2012].
- Titthara, M. and Boyle, D., (2012b). "Taking Measure of a Plan." *The Phnom Penh Post*, 06 July. Pp. 1,4.

- United Nations (UN), (1990). *Human Development Report 1990*. [online] UN. Available at: <http://hdr.undp.org/en/media/hdr_1990_en_overview.pdf> [Accessed 12 September 2012].
- United Nations Environment Programme (UNEP), (2007). *What is Land Tenure?* [online] UNEP. Available at: <http://www.unep.org/training/programmes/Instructor%20Version/Part_2/Activities/Economics_of_Ecosystems/Land/Supplemental/What_is_Land_Tenure.Pdf> [Accessed 14 September 2012].
- United Nations Food and Agriculture Organization (FAO) (2002). *Land Tenure and Rural Development*. [online] FAO. Available at: <www.fao.org/docrep/005/Y4307E/Y4307E00.HTM> [Accessed 18 May 2012]
- Vandergest, P. and N. Peluso (1995). "Territorialization and State Power in Thailand." *Theory and Society* **24**(3): 385-426
- Vandergest, P. and N. Peluso (2001). "Genealogies of the Political Forest and Customary Rights in Indonesia, Malaysia and Thailand." *The Journal of Asian Studies* **60**(3): 761-812
- Vrieze, P. and Naren, K., (2012). "Carving up Cambodia One Concession at a Time." *The Cambodia Daily*. [online] Available at: <<http://www.licadho-cambodia.org/land2012/>> [Accessed 25 April 2012]
- White, B., Borras, S., Hall, R., Scoones, I. and Wolford, W., (2012). "The New Enclosures: Critical Perspectives on Corporate Land Deals." *Journal of Peasant Studies*, 39: 3-4, pp. 619-647.
- Will, R., (2012). "New Twist in Cambodia Sugar Firm Saga." *The Phnom Penh Post*. [online] 16 August. Available at: <<http://www.phnompenhpost.com/index.php/2012081658027/National-news/new-twist-in-cambodian-sugar-firm-saga.html>> [Accessed 18 August 2012].

APPENDICES

APPENDIX A

CHRONOLOGY OF RURAL LAND TENURE IN CAMBODIA

Pre-colonial (before 1863):

Land in principle was the property of the King but in practice it was open for use by those willing to clear and cultivate it. The main constraints to developing land were labor and draught animals due to Kingdom's small population and scarcity of livestock. Most agricultural land was concentrated around the Tonle Sap and the Mekong (Hall, Hirsch and Li, 2011).

French Colonial Era (1863-1953):

The first law regulating land use was the 1884 Land Act, but it was not fully implemented until the 1930s. In 1912 the colonial administration introduced the Cadastral system, but this was mostly intended to establish investment security for French investors. In 1920 the Civil Code was enacted, which officially recognized the right to own land (ibid.).

Post-Independence Period (1953-1975):

The legal basis for land ownership continued until 1975 when the Lon Nol Government was toppled by the Khmer Rouge. The 1956 Constitution under then-Prime Minister Prince Sihanouk codified private property rights. The right to private property was reconfirmed in the 1972 constitution under Lon Nol, but there was only partial progress in land registration that mostly focused on rice-growing areas where populations were more concentrated. The upheaval caused by the war in Vietnam and Cambodia's civil war seriously disrupted rural land tenure, as millions of rural Cambodians fled the violence in the countryside for the safety of the cities (ibid.).

Khmer Rouge Period (1975-1978):

The 1976 constitution of Democratic Kampuchea (DK) abolished all private property including land. The Khmer Rouge Regime instituted a radical policy of forced collectivization, which included evacuating the country's urban areas and forcing virtually the entire population to work on agricultural collectives under appalling conditions. Between one million and three million people (out of a total population of seven million people) perished from murder, malnourishment or overwork. During this period all cadastral records were destroyed, along with physical markers representing the boundaries of land ownership (ibid.).

People's Republic of Kampuchea (PRK) Period (1979-1991):

The 1981 Constitution codified all territory within Cambodia's borders as State land (ibid.). Although the government implemented a new form of collective farming known as *khrom samakhi* (solidarity group), it also experimented with other more individualized land use programs short of full ownership. The *family economy* program allowed exclusive use of unused State land by families to increase agricultural production and improve food security (Slocomb, 2003). Following the transition from PRK to the State of Cambodia (SoC), a new constitution was enacted in 1989 that reinstated private land ownership (Hall, Hirsch and Li, 2011).

Transition Period (1991-1997):

This period was influenced heavily by the flow of migration as Khmer people attempted to restart their lives or otherwise reunite with family members and resettle. Rural land allocation was based on family size and not prior occupation or claim. The 1992 Land Law allowed people to apply for occupancy certificates but did not legalize full ownership in rural areas. Only 14 percent of 4.5 million occupancy certificate applications were successfully processed, mainly for plots near Phnom Penh and Siem Reap. During this period a rural land market also developed (ibid.).

Cambodia People's Party (CPP) Consolidation of Political Power (1999-Present):

This period is characterized by the growth in large-scale private interests linked to the military and CPP leadership. There is also an accompanying growth in the incidence of “land grabbing” and land disputes. Private interests produce cash crops such as rubber and palm oil. The 2001 Land Law is enacted, superseding the 1992 Land Law. A key difference is that the 2001 Land Law differentiates land into three categories: State public land, State private land and privately owned land. Several land registration programs are implemented with varying degrees of success including MLMUPC's SLR program. Rural landlessness emerges as a national issue (Hall, Hirsch and Li, 2011; MLMUPC, 2011).

APPENDIX B

SYSTEMATIC LAND REGISTRATION (SLR) PROCESS

Step 1 (Preparation):

- Define adjudication area.
- Establish Administrative Commission.
- Notify residents of Opening Meeting of Adjudication Area for SLR.

Step 2 (field Work):

- Demarcation, survey and adjudication to establish Cadastral Index Map and List of Owners.

Step 3 (Public Display):

- 30-Day Period of Public Display of Adjudication Documents (Cadastral Index Map and List of Owners) for land owners and stakeholders to check details of adjudication documents.

Step 4 (Decision):

- Adjudication documents decided. Reports of adjudication documents are sent to governor of capital/province to confirm the contents of the land register of undisputed land parcels.

Step 5:

- Adjudication records are confirmed for all undisputed parcels and Land Register is confirmed at district, provincial and national levels (Provincial level is primary level).
- Land certificates are issued to the legal land owner. (Source: MLMUPC, 2011)

APPENDIX C

PROCEDURES FOR INITIATING, REQUESTING AND GRANTING ECONOMIC LAND CONCESSIONS (ELCs)

1. Solicited Proposal where a Contracting Authority proposes a project for solicitation from investors or Unsolicited Proposal where investor proposes a project to the State for approval.
2. Develop initial documents proposing ELC project in a form established by the Technical Secretariat.
3. Send the initial project documents to the Technical Secretariat for preliminary study and recommendations.
4. Consult with relevant provincial Land Use and Allocation Committee and regulatory institution regarding project.
5. Arrange initial environmental and social impact assessments.
6. If initial environmental and social impact assessments indicate a medium or high degree of adverse impact arrange for full environmental and social impact assessments.
7. Prepare a complete set of project documents including all recommendations and reports generated from previous steps, which will serve as the basis for the Terms of Reference for Solicited Proposals.
8. Once the Technical Secretariat receives a complete set of documents from the Contracting Authority the Technical Secretariat will prepare a solicitation for proposal that includes a notice, Terms of Reference and an application form.

9. The Technical Secretariat disseminates a Notice for Solicited Proposal and provides a notice to the Council for Development of Cambodia (CDC). The notice specifies the manner, place and time and specifies the window for proposal submission. The submission window will be no less than 60 days. The terms of Reference must include the project description and supporting documents, criteria for evaluating the technical, financial and commercial content and any necessary non-negotiable contract terms.

10. At least 30 days prior to the proposal submission deadline the Technical Secretariat must organize a public meeting to clarify all points of the solicitation documents and must afterward prepare a public document containing all clarifications.

11. The Technical Secretariat reviews proposals and recommends responsive proposals to the Contracting Authority.

12. The Contracting Authority prepares a ranked short list of all responsive proposals and provides a copy to each proposer.

13. Before signing the ELC contract the proposer must be registered with the Commercial Register.

(Source: *Sub-Decree on Economic Land Concessions*, 2005)

APPENDIX D

LIST OF QUOTED RESPONDENTS

- Focus Group 1. Villagers residing in Chi Kha village. *Interview*, 19 June 2012.
- Focus Group 2. Villagers residing in Chi Kha village. *Interview*, 20 June 2012.
- Respondent 3. Commune Chief, Chi Kha Leu commune, Srae Ambel district, Koh Kong province. *Interview*, 18 June 2012.
- Respondent 4. Chi Kha village resident.. *Interview*, 18 June 2012.
- Respondent 5. Chi Kha village resident.. *Interview*, 18 June 2012.
- Respondent 6. Chi Kha village resident.. *Interview*, 18 June 2012.
- Respondent 7. Chi Kha village resident.. *Interview*, 19 June 2012.
- Respondent 8. Village Chief, Chi Kha village, Chi Kha Leu commune. *Interview*, 19 June 2012.
- Respondent 10. Chi Kha village resident.. *Interview*, 19 June 2012.
- Respondent 13. Chi Kha village resident.. *Interview*, 20 June 2012.
- Respondent 18. Staff member, Equitable Cambodia. *Interview*, 06 July 2012.
- Respondent 23. Official, MLMUPC. *Interview (by e-mail)*, 26 August 2012.

APPENDIX E

PICTURES

E.1 Main Rod in Chi Kha Village Center



E.2 Team Member in Chi Kha Village Center



E.3 Chi Kha Village Pagoda



E.4 Chi Kha Leu Commune Hall



E.5 Chi Kha Village along National Highway 48



E.6 House in Chi Kha Village



E.7 Researcher Conducting Interview (with Respondent 6) in Chi Kha Village**E.8 Researcher with GDI Staff**

BIOGRAPHY

John Cherry was born and raised in San Diego, California in the United States of America. His parents were both medical professionals. After finishing high school he moved to Washington D.C. to begin college. He earned a B.A. in International Affairs from George Washington University in May 1996.

After George Washington John entered the U.S. Marine Corps as a second lieutenant. John served in the Marines for more than fifteen years, holding many assignments in many places around the world. The most memorable assignments were as a foreign area officer in Japan and Cambodia and as an advisor in Iraq. He also earned a M.A. in National Security Affairs from the Naval Postgraduate School in Monterey, California while he was training to become a foreign area officer. During his last tour in Japan he was among the first U.S. military personnel to arrive in Sendai to assist in the disaster relief effort after the massive earthquake and tsunami that struck northeastern Japan in March 2011.

John finished service with the Marine Corps in September 2011 and is now pursuing work involving international relations and international development in the private sector or in government, or possibly with an international organization.