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Uneven Developments: Toward Inclusive Land Governance in Contemporary Cambodia

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Uneven Developments: Toward Inclusive Land Governance in Contemporary Cambodia

Michael B. Dwyer and Young Sokphea

Summary

Cambodia has long had a difficult mix of resource wealth and weak land governance, a function of its legacy of enduring postwar conflict and neoliberal development policies of the 1990s. Since 2012, however, its government has undertaken a series of self-described 'deep reforms' aimed at overcoming the poverty, land conflict, and unequal rural landholdings created during the 2000s, when over 2 million hectares of economic land concessions were allocated to private companies. This paper, commissioned as part of a Swiss Agency for Development and Cooperation (SDC) 'learning journey' on inclusive land governance, inquires whether these reforms constitute durable institutional change, or temporary and calculated forms of social inclusion aimed at managing an increasingly volatile political and economic landscape. We use the example of community forestry in Cambodia's northeastern Stung Treng province to examine (1) rural land scarcity at the village scale, which is caused by a mix of corporate plantation concessions and land markets involving inter-province migrants and other business interests, and (2) regulatory geographies and overlaps among competing state authorities, which are exacerbated by recent reforms. The study concludes with a set of 'ways forward' for SDC and other actors interested in inclusive land governance, both in Cambodia and elsewhere, focusing on the enhancement of tenure-protecting institutions, the cultivation of discussion and debate, cross-sectoral land-related programming, and legal areas for additional possible reforms.

Keywords: land governance; titling; concession; community forest; Leopard Skin policy; Cambodia; Stung Treng; Ratanakiri; rubber.

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Abbreviations

CAO	Office of the Compliance Advisor/Ombudsman
ELC	Economic land concession
FA	Forest Administration
HAGL	Hoang Anh Gia Lai
IFC	International Finance Corporation
LMAP	Land Management and Administration Project
MAFF	Ministry of Agriculture, Forestry and Fisheries
MLMUPC	Ministry of Land Management, Urban Planning and Construction
MoE	Ministry of Environment
MoI	Ministry of Interior
MRD	Ministry of Rural Development
MRLG	Mekong Region Land Governance
NARLD	National Authority for the Resolution of Land Disputes
ODC	Open Development Cambodia
SDC	Swiss Agency for Development and Cooperation
UNTAC	United Nations Transitional Authority in Cambodia

Executive summary

Cambodia has long exemplified a difficult mix of resource wealth and weak land governance, given its legacy of enduring postwar conflict and neoliberal development policies. Since 2012, however, the government has undertaken a series of ‘deep reforms’ aimed at overcoming the enduring poverty, extensive land conflicts, and extreme imbalance in rural landholdings created by the boom decade of the 2000s, when over 2 million hectares of economic land concessions were issued to private companies. Reforms include an ongoing moratorium on new land concessions, a program of accelerated rural land titling targeted specifically at areas excluded from earlier titling efforts, and most recently, a year-long review that claims to have reduced the country’s land concessions by over 1 million ha. With elections on the horizon and the government promising to redistribute this newly reclaimed land to ‘the people’, many are asking whether these reforms are creating durable and grounded institutional change, or are simply temporary, calculated forms of inclusion aimed at managing an increasingly volatile landscape.

This paper, commissioned as part of the Swiss Agency for Development and Cooperation’s ‘learning journey’ on inclusive land governance, examines this question using case study evidence from Cambodia’s northeastern frontier. It draws on three weeks of fieldwork in Phnom Penh and Stung Treng province, including key informant interviews, document analysis, and a validation workshop with experts in Phnom Penh. We begin by reviewing the uneven development of different tenure-creating mechanisms in rural Cambodia, including land titling, land concessions and community forestry. We then examine the *geographic* dimensions of rural land governance and development, drawing on fieldwork we conducted in Stung Treng province. Lastly, we examine the question of conflict *resolution* by drawing on examples from our fieldwork, as well as an ongoing effort by indigenous communities in Ratanakiri province to pursue a land claim with the International Finance Corporation’s Compliance Advisor/Ombudsman against a Vietnamese rubber company.

We argue that since land conflicts are endemic in many rural areas, the success of recent reforms is best assessed through ongoing efforts to mitigate and address them. As such, we do not believe that the question of durable versus temporary reforms can be answered definitively, but rather demands sustained inquiry of a variety of rural landscapes and associated land conflicts. Our case studies suggest that community forestry has played an important, if imperfect, role as a de facto tenure institution of tenure enhancement, even as land titling and concession regulation have failed for various reasons. Nonetheless, current efforts to combat ‘encroachments’ into community forest spaces – and onto village lands more generally – highlight the rise of concession-induced land scarcity and associated tensions as indigenous communities and Khmer migrants end up competing for arable land. Adding to these examples, the case from Ratanakiri suggests that third-party conflict resolution is a viable option when it can be compelled, but that even as the case offers a number of insights and promises, it also highlights the need to reform statutory conflict resolution institutions such as the Cambodian court system.

Our research proposes four general ‘ways forward’: First, we suggest that SDC and other donors continue to support the use and strengthening of *institutions that protect land and resource tenure*. We suggest a context-based approach to deciding *which* institutions to support, and highlight the importance of particular cases (e.g. HAGL) given their wider institution-building potential. Second, we recommend continued support for *broader efforts to create land-related transparency, inquiry and informed debate*; while this is already occurring, more is needed, especially when it comes to using the information that is already available. Third, we suggest building a series of *land-related linkages across donor programming*; current SDC support in a number of areas offers opportunities to capitalize on the lessons learned from this study. Finally, we recommend supporting efforts to *reform Cambodia’s current Land Law*; we focus specifically on refining (and possibly redefining) the category of possession rights, as well as using the state land doctrine for socially protective purposes rather than largely as an incentive to attract foreign capital.

Introduction

In February 2016, Cambodia's Prime Minister announced his government's intention to redistribute over a million hectares of state land to the country's rural poor. The announcement was the latest in a series of promised 'deep reforms' begun in 2012 when, facing an election where land figured as an important symbol of cronyism and patronage (Un 2013), the government began a three-pronged land governance reform. It had placed a moratorium on new concessions, and under the auspices of Government Directive 01, launched a massive campaign of rural land titling; by the end of 2014, 'youth volunteers' overseen by land management officials had titled over a million hectares of land – much of it taken from corporate land concessions – to rural residents across the country (Rabe 2013; Grimsditch and Schoenberger 2015: 14). Directive 01 had also mandated a review of these concession areas, and the Prime Minister's February 2016 announcement signaled that this was now complete. As a result, he said, 'only 1,090,000 hectares of land are allowed to remain for investment and almost a million hectares of land was taken back. So there will be no issue of a lack of social land concessions to give to landless families' (*Cambodia Daily* 2016b).

This announcement signaled, first and foremost, that the pendulum of Cambodian land policy was continuing to swing back toward populism, and specifically toward land *distribution* as a way to right the extreme imbalance between large- and smallholders that had accumulated over the previous two decades. Since the late 1990s, formal land tenure had been created through a mix land titling and land concessions. Cambodia's 'systematic registration' program had titled over a million parcels of smallholder land, but had focused almost exclusively on areas where tenure was already secure; as a result, coverage far less than systematic, and those who needed titles most were often excluded from the process (Grimsditch and Henderson 2009; WBIP 2010; Bugalski 2012; Adler and So 2012). In parallel, the government had also allocated hundreds of large ('economic') land concessions (ELCs) to private developers and, to a much lesser extent, smaller ('social') land concessions to land-poor households, many of them former military personnel. This was a highly uneven process, however, with the vast majority of the land going 'to national and international investors[,] to the detriment of the rural poor who got only a 1 percent share' (Müller 2012: 3–4). The reforms of 2012 had begun to address this imbalance in land allocation and misplacement of titles, but there was still a long way to go. The Prime Minister's February announcement confirmed that populist policies would continue for the foreseeable future.

The announcement also spoke, though more obliquely, to foreign donors involved in long-running efforts to place Cambodian land governance on a more transparent footing. The Prime Minister's speech came only weeks after Germany's decision to withdraw from more than two decades of bilateral assistance to the Cambodian land sector had been finally made public, after years of frustration (Müller 2012) and months of internal deliberation. In a letter quoted at length in the *Cambodia Daily* (2016a), the German ambassador noted that his mission had 'time and again stressed the importance of having a register which shows in an accurate way what public land the government has at its disposal and how it's being used.' Since 2005, Germany had been aiding Cambodia's social land concession program, and the shortage of land for the program had been an ongoing problem – in large part due to the proliferation of ELCs (Müller 2012: 8-9; also see Section 2 below). The Prime Minister's announcement thus signaled not simply the continued swing of the policy pendulum back toward smallholder entitlements, but also a quiet reiteration of a point that Cambodian leaders had been making to donors for some years already: that transparency to outsiders was not a top priority, and while they welcomed assistance, they insisted on retaining sovereignty over the process.

These issues intersect in the question of how the contemporary moment should be understood and engaged by the donor community. Recent reform efforts – the rural titling campaigns conducted under Directive 01, the review of ELCs and repossession of unused ‘state’ lands, the promised redistribution of these (and other) lands to landless and land-poor households – are clearly more socially inclusive than the decade-plus status quo that preceded them. Yet it remains to be seen whether these efforts are establishing durable institutions capable of translating socially inclusive land governance down to the level of systematic and lasting implementation. Are they deep and lasting reforms, or simply short-term and politically calculated efforts to manage an increasingly volatile social and political landscape? This paper, commissioned as part of a multi-country ‘learning journey’ on inclusive land governance by the Swiss Agency for Development and Cooperation (SDC 2016), examines this question of *durable* versus *temporary* forms of inclusion using evidence from Cambodia’s northeastern frontier.

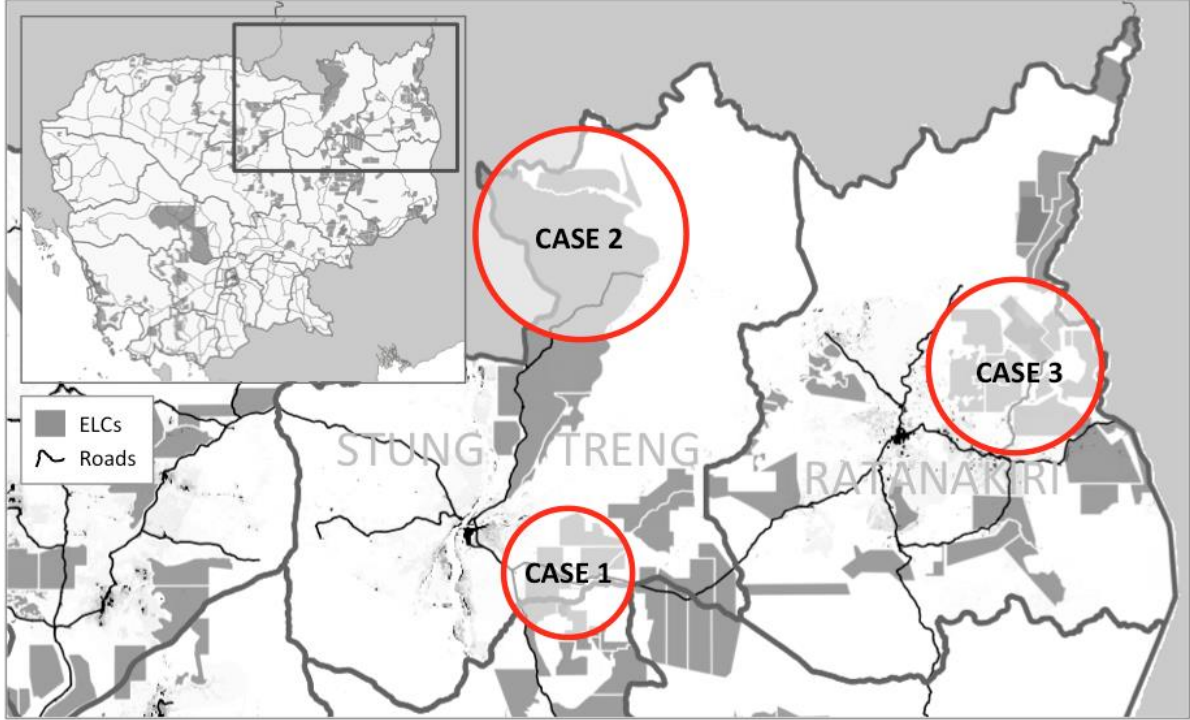
Of central importance to the material presented here is the spatial dimension of land and resource tenure. Given the range of issues that shape and impede the enforcement of policy and law, scholars have emphasized the need to examine land governance, transparency, resource exploitation and policy implementation on the ground and in practice in order to understand their true efficacies and shortcomings (Ferguson 1994; Hart 2004; Bebbington 2003; Biddulph 2011). We thus begin, in Section 2, by describing the array of land and resource tenure regimes that have been used to lay claim to the Cambodian countryside during the past two decades, taking account of their both their timing and spatial distribution *vis-à-vis* one another. We identify the Cambodian northeast as a region of particular interest in the context of recent reforms, given its historical mismatch between ELCs (many) and land titles (very few). In this context, community forestry has emerged as an institution of key importance, given its role as a *de facto* form of community land tenure. We thus use it as an entry point for our fieldwork.

Section 3 uses spatially explicit case studies to examine these themes in more detail. We focus first on a concession-rich area along the road from Stung Treng to Ratanakiri province (Figure 1), where community forestry has played a key role in protecting local communities’ land bases from enclosure by neighboring ELCs. This case highlights the competition for land that has emerged through the interactions between ELC development and migration-driven land purchases, and shows how induced land scarcity is increasingly straining community forest management efforts, especially given the limits of the communal land titling process. We then examine a more remote area, also in Stung Treng province, where the recent reduction of a large ELC has sparked a new land rush, in this case among agribusiness firms, local communities, land-poor migrants, and rival state institutions. Community forestry once again provides a window through which to examine the interaction of tenure regimes and regulatory issues. Whereas the first case highlights issues of village-scale land and resource tenure, the second case foregrounds jurisdictional and regulatory issues in the context of the post-2012 reforms.

In Section 4, we focus on the institutional dimensions of land conflict resolution efforts, drawing on the two cases from Stung Treng, as well as a third case from Ratanakiri province, which involves local communities, a Vietnamese rubber company, local and international civil society organizations, and the ombudsman office of International Finance Corporation (IFC). We focus on the ways in which land conflicts at various stages – latent but systemic (exemplified by case 1), active but early on (case 2), and active and advanced (case 3) – help illuminate both the challenges and the opportunities to improve governance in a landscape where land conflict is widespread, and conflict resolution forums limited. We also examine the issue of transparency and (especially spatial) information *creation*, emphasizing the ways that maps help *reveal* land conflict, but can also help address it if they are mobilized within good-faith processes. At the same time, we highlight the likely limits of even

good-faith processes given the extensive allocation of ELCs, and note the need to address jurisdictional conflict in the search for socially sustainable outcomes.

Figure 1: Study landscape



Source: authors' own. Spatial data: Open Development Cambodia (ODC).

Section 5 offers a series of 'ways forward' that speak to the national context in Cambodia, but are framed in such a way as to also address a variety of other contexts. These focus on (1) specific tenure-specific institutions, given their central role in rural livelihoods; (2) information transparency and public debate more generally, given its role in shaping development policies and politics in particular national contexts; (3) ways to integrate land issues across a range of existing SDC programming; and (4) legal reforms that could help alleviate a number of the problems that appear in the case studies examined.

The research presented here is the product of fieldwork conducted by the authors in May 2016 in Phnom Penh and Stung Treng. We selected the cases in coordination with local SDC staff in Phnom Penh. Cases 2 and 3 have received small grants from SDC through the Mekong Region Land Governance (MRLG) project; examining these allowed us to pursue fieldwork in contexts where SDC had direct connections. Case 1 emerged through the course of our fieldwork, as we sought to study community forestry – a key theme of Case 2 – as it had been operating in practice for some years. For case 3, due to the ongoing nature of the process and a request from the organizations involved, we relied on existing materials and key-informant interviews in Phnom Penh rather than visiting the area.

1 ‘Deep reforms’: land governance and patrimonial rule in contemporary Cambodia

By many accounts, the elections of 2013 figured centrally in driving the governance changes of the last half-decade. The efforts conducted under the auspices of Directive 01, summarized above and elaborated below, are often portrayed as a calculated move to win votes in an election that followed almost a year to the day after the revamped titling program began. Land issues played a major role in the election itself; during the campaign, the opposition party capitalized on popular worries that the government had been ‘selling [the] country’s rich land’ to foreigners; afterward, despite staying in power, many saw the ruling Cambodia People’s Party as being ‘on notice that Cambodians expect substantial reforms regarding inequality, corruption and social justice’ (Un 2013). Two months after the election, the Prime Minister made a six-hour speech, promising ‘deep reforms’ in the legal and judicial sectors, as well as ‘anti-corruption, good governance and land and forest management’ (*Phnom Penh Post* 2013).

Yet as keen observers have pointed out, it would be wrong to see the timing of the reforms – both *vis-à-vis* the 2013 election and upcoming commune and national elections in 2017 and 2018, respectively – as the defining feature of their significance (Grimsditch and Schoenberger 2015). Land has long figured centrally in Cambodian politics, both before and especially in the wake of the Khmer Rouge rule, which created societal-scale displacement against which much of the postwar period is often framed as a response (Chandler 1993; Padwe 2016). One of the key questions policy-makers have had to continually wrestle with is how to balance the power to *allocate* land – a key source of authority everywhere, and especially in agrarian and/or resource-rich societies – with the power to *recognize* the legitimacy of already existing uses. This tension between granting concessions and formalizing possession rights is at the heart of what scholars often call Cambodia’s system of neo-patrimonial rule: the articulation of longstanding forms of patronage (which favors some groups over others) with statutory law, which generally defines rights in a more uniform manner regardless of one’s connections.

In this section, we argue that the reforms of the last few years, even if well timed to fit the election cycle, reflect the structural problems created by the legal regime and accompanying land concession boom of the 2000s, and must be placed in this wider context in order to be fully understood. In the rest of this section, we outline this regime as a way to frame the more grounded examination of these contradictions – as well as efforts to navigate and in some cases address them – examined in Sections 3 and 4.

1.1 A line in the soil: post-conflict stability and the 2001 Land Law

Many of the dynamics of concession allocation and title formalization that helped create the crises against which current reform efforts are aimed, emerged from the provisions of the 2001 Land Law. Cambodia had an earlier land law, written and passed during the United Nations Transitional Authority (UNTAC) that governed Cambodia during 1992-1993. But the transition to peace had been a rocky one, and ongoing conflict with former Khmer Rouge forces (mostly in the northwest) and associated political instability lasted well into the late 1990s; this meant that certain state practices emerged during the mid-to-late 1990s that were not adequately covered by the 1992 Land Law. The 2001 revision was intended to put these practices on a firmer foundation.

One practice that formed a central piece of the post-conflict development toolkit was granting large land concessions to elites, first for logging and then for other ‘economic’ purposes like

agriculture and mining. The government's development policy in the post-UNTAC period followed neoliberal tenets, pushing the privatization of public resources (e.g. RGC 1994b) and the development of concession-based business models to capitalize on Cambodia's rich natural (timber, agricultural and mineral) resources. The belief that economic development was among the best ways to stave off conflict-related political instability led to the widespread toleration of cronyism 'as a necessary evil' (Hughes 2007: 840). This manifested in various forms of patronage, including – as one scholar put it – 'discriminatory enforcement of laws and regulations, discretionary provision of monopoly franchises, concessions and contracts, and diversionary collection of public revenues and disbursement of state lands, funds and employment' (Cock 2010: 263). The creation of the official title *Oknya* in 1994, signifying an extensive contribution to national development and implying a range of privileges in return (RGC 1994a; Biddulph 2010: 139), highlighted that patronage was not confined to the shadows, but was closer to an official pillar of state development policy.

A second piece of the post-conflict policy toolkit was the distribution of smaller parcels of land to military families, often in 'strategic' locations (e.g. in former Khmer Rouge areas near the Thai border). Large numbers of soldiers had been mobilized during the two decades of conflict that had followed the Khmer Rouge's removal from power, and (as elsewhere) the question of demobilization was met at least in part with land distribution. Together, large concessions to favored business elites and smaller land allocations to former soldiers and their families, provided the practical impetus for the economic and social land concession provisions outlined in the 2001 Land Law. The law defined the rules for some dimensions of these allocation practices and deferred others to future sub-decrees, which were issued in 2003 (for social land concessions) and 2005 (for ELCs) (see Timeline of Key Events).

Table 1: Timeline of key events

1975-1978	Khmer Rouge rule
1991	First community forestry pilot projects
1992-1993	United Nations Transitional Authority (UNTAC) period
1992	First Land Law
2001	Revised Land Law
2002-2009	Individual land titling aimed at tenure-secure areas (LMAP project)
2003	Enabling sub-decree for Social Land Concessions
2005	Enabling sub-decree for Economic Land Concessions
2009	Enabling sub-decree for Communal Land Titles
2011	First Communal Land Title
2012	Directive 01
2012-2013	Individual titling campaign aimed at contested rural areas (under Directive 01), 1 st round
2013	Most recent national elections
2013-2014	Individual titling campaign aimed at contested rural areas (under Directive 01), 2 nd round
2015-2016	ELC review (under Directive 01)

In addition to drawing the outlines for a land concession regime that would accommodate large- and small-scale forms of patronage in land allocation, the most important aspect of the 2001 Land Law was its provision of a mechanism to recognize legal rights of use-based 'possession'. For reasons unclear – possibly due to the prioritization of concessions and allocations as a means for granting land rights – the earlier (1992) Land Law had not included recognition provisions for smallholder agricultural lands (Cooper 2002: 17), despite the fact that millions of applications for title had been filed in the months before UNTAC (So 2009: 106). The 2001 Land Law changed this, providing a legal pathway to land titling for occupants with five years uncontested possession. But it also contained a cutoff. Under the

terms of the 2001 Land Law, the ability to establish *new* rights of possession ended with the passage of the law; this meant that possession that began *after* late 2001 would be illegal, even if it were uncontested. This essentially drew a 'line in the soil', reserving the frontier as state land to be allocated through various forms of concession-making. As the decade of the 2000s wore on, this provision helped lay the groundwork for many of the conflicts – and reforms – that would follow.

The 2001 Land Law also provided for the recognition of communal lands in indigenous communities. As with social and economic land concessions, this provision was sketched out broadly in the law and later specified through a government sub-decree. But as with the mismatch between ELCs and social land concessions, legal provisions did not necessarily create on-the-ground impacts. In part, this was because the enabling sub-decree was not issued until 2009, but another issue that has plagued communal land titling is the requirement that beneficiary communities become officially recognized as indigenous prior to registering as the legal entity capable of holding land rights on behalf of the community; in practice this means that communities have to deal with three different ministries – Rural Development (for recognition), then Interior (for legal status), then Land Management (to actually do the demarcation and titling). This has not only slowed down communal titling through the imposition of bureaucratic hurdles; it has also excluded significant portions of the Cambodian population who might have benefited from the protections titling offers. Being deemed non-indigenous, Khmer communities have been categorically excluded from registering their lands as a communal resource, despite the existence of communal lands such as grazing or fishing areas.

1.2 The concession boom

Cambodian law thus reflects an uneasy tension between use-based and allocation-based norms of ownership (Adler and So 2012). The devil, however, is in the detail of how these various tenure regimes play out at the scale of particular landscapes. During the boom decade of the 2000s, the spatial configuration of these tenure forms was especially exclusive of rural producers – and especially indigenous communities – who lived in less densely populated areas. This was a function of the rapid and relatively unregulated rollout of ELCs; the restriction of household land titling (also called systematic land registration, or SLR) to densely populated areas where tenure was relatively secure; and the failure to develop the communal land titling program in a way that could compete with the often aggressive development of ELCs on the ground.

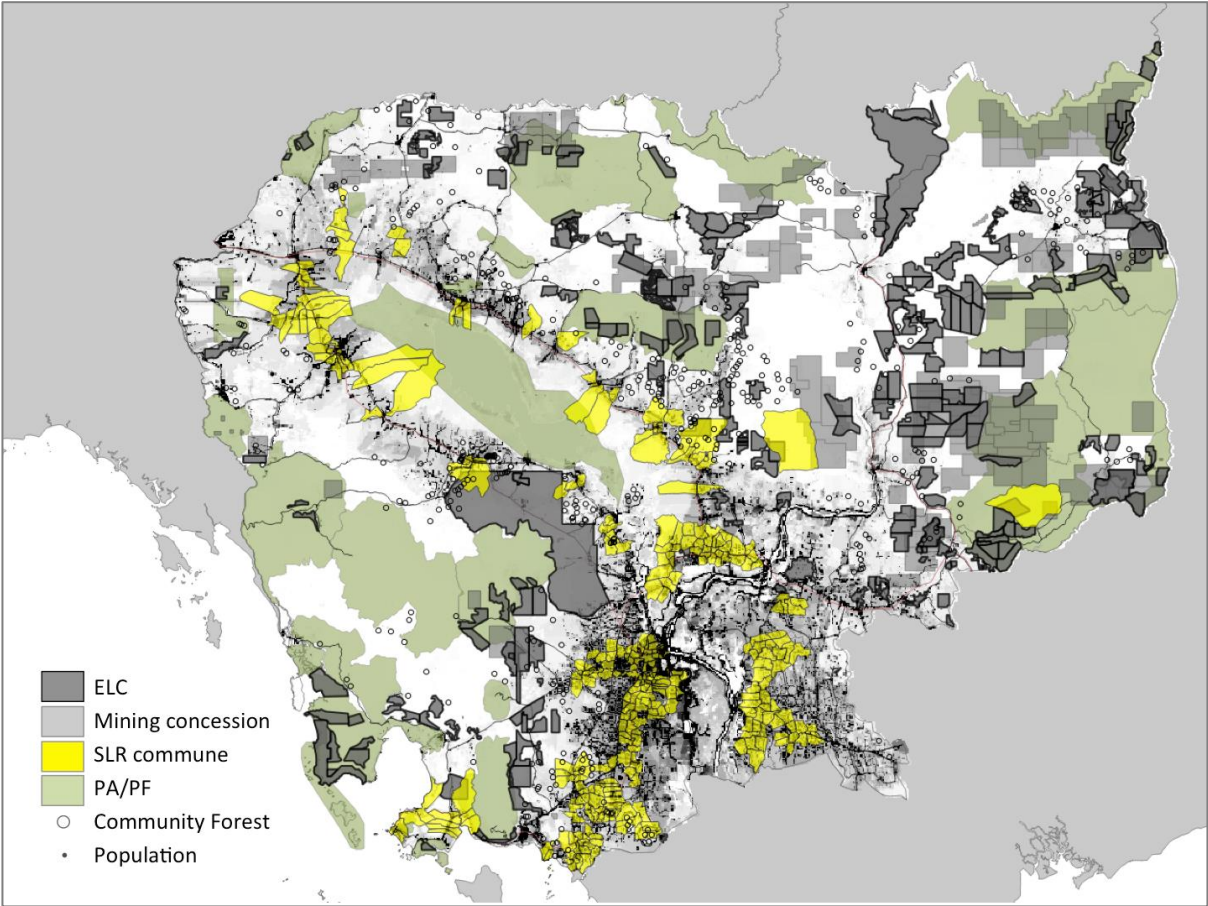
As a result, the spatial mismatch between land titling and ELCs was almost total (Figure 2; also see Dwyer 2015a), with the northeast and the southwest – regions of the country planned for communal titling but not SLR – receiving among the highest density of ELCs in the country. Often following the footprint of forest concessions granted in the 1990s, the allocation of ELCs boomed in the year *before* the 2001 Land Law, likely due to anticipation that the new law would contain restrictions (e.g. on the size of individual ELCs). When the Land Law was revised, there were roughly half a million hectares under ELCs; according to official statistics, this figure passed 750,000 ha in 2005 and 1 million ha in early 2009 (Un & So 2011: 300). A second boom period followed, more than doubling ELC numbers to over 2.5 million ha by the time Directive 01 was issued in mid-2012 (ADHOC 2014).

Given the minimal rollout of social land concessions and communal land titles, and the targeting of individual titles to areas where tenure was relatively secure, land tenure in areas further afield has been relatively precarious. Coupled with aggressive ELC development, tenure insecurity has spurred derivative land markets. In writing about the widespread alienation of land from indigenous communities in Ratanakiri and Mondolkiri, Jeremy Ironside has noted the link between small- and large-scale processes of dispossession. Particularly important, he notes, has been the perceived insecurity that local residents experience due to

large ELCs, partly due to the proliferation of rumor and speculation. Rural residents have often sold their land on the belief that it is preferable to sell while one still has a chance – ‘sell now or you will lose your land anyway’ (Ironsides 2011). In many cases this was not merely an empty threat; often ‘land dealers who told villagers they should sell before the state takes their land off them were right’ (*ibid.*).

One exception to the dearth of formal tenure experienced by many rural communities, however, has been community forestry. Community forest projects came to Cambodia in the early 1990s as part of post-conflict development efforts; by the time the concept was recognized legally (in 2002 and 2003), Cambodia already had more than 200 community forestry projects in various places around the country (Biddulph 2010: 14; Heng and Sokhun 2005); today it has over 400 (FA 2015). As Robin Biddulph notes, the resource geography of community forestry projects is an interesting one: they are frequently excluded from high-quality forest areas that state institutions retain for their own use, often in concert with allies in the private sector; nonetheless, community forestry projects have been allocated widely in areas excluded from the land titling process (*ibid.*: 60). This has meant that community forestry schemes have played an important role as a de facto formalization mechanism for village-scale tenure. While there are limits to this protection, community forestry exemplifies a key fact in land tenure formalization, both in Cambodia and elsewhere: in a context of imperfect options and widespread pressures on smallholder lands, ad hoc solutions are the ones that come to the fore.

Figure 2: Spatial distribution of land concessions and individual land titles up to 2011



Source: authors' own. Data sources: ODC, LICADHO.
 Notes: PA = protected area, PF = protected forest.

1.3 Rebalancing? The opacity of reform since Directive 01

As of 2013, the human rights advocacy organization ADHOC estimated that 770,000 people (roughly 6 percent of the Cambodian population) had been affected by land grabbing of one sort or another, and notably by ELCs (ADHOC, 2014). In both rural and urban areas, ELC-affected communities have lodged a variety of complaints and protests in their efforts to seek remedy for lost land and adverse impacts more generally (Sokphea forthcoming). These efforts, despite their shortcomings, have altered the political landscape significantly, to the point that the reforms of the last half-decade reflect the growing political imperative to respect the claims and needs of agrarian smallholders. The suspension of ELC allocation under Directive 01 and the shift of state efforts toward reallocating land to rural (and especially ELC-affected) communities (Subedi 2012; Sokphea 2016a and forthcoming) both exemplify this realignment.

The spatial extent of the activities undertaken since the issuing of Directive 01, however, remains opaque despite widespread consensus of their impact. Official sources have been limited, and much of what is known thus comes from independent research (e.g. Rabe 2013; Beban 2014; Milne 2014; Grimsditch and Schoenberger 2015; Diepart and Sem 2016). And as is often the case in land-related matters in Southeast Asia and elsewhere, summary statistics are often far easier to come by than precise locational data. Maps are often missing, vague or difficult to interpret, adding to the burden for researchers.

As noted above, at least two batches of roughly one million hectares have been involved in recent government reforms – the first for land titling under Directive 01, and the second for ELC reductions that followed. Directive 01 was reported to have covered over a million hectares, according to official statistics; this took place in two campaigns, the first roughly in the year before the election (July 2012 to June 2013), the second between December 2013 and December 2014 (Grimsditch and Schoenberger 2015: 14). These efforts were among the most extensive interventions into rural land tenure in Cambodia in recent years, and their impact has been significant. While government officials took pains to emphasize the basis of their actions in existing laws and policies, the titling that took place under the Directive 01 campaigns had the de facto result of resetting the cutoff point for new possession rights. In contrast with the 2001 Land Law, the teams that administered the Directive 01 titling effort used 2011 (officially), and as late as days before their visits (in practice), as the cutoff dates for the land they measured (*ibid.*). The campaign thus had the effect of legitimating land clearance long after the 'line in the soil' that had been drawn in the 2001 Land Law. As Section 3 elaborates, this process cut both ways when it came to the tenure impacts on rural communities.

After the titling campaign ended in late 2014, the ELC review promised under Directive 01 began; according to available sources, the committee responsible for doing the review was authorized in mid-2014 (RGC 2014), but did not actually begin working until early 2015 (*Cambodia Daily* 2016b). In some cases, the titling campaign and the ELC review had overlapping targets and different results; one ELC in Stung Treng province, for example, was reduced in size under the Directive 01 titling campaign, as smallholder lands were excised from it and titled to local occupants, and was then cancelled completely by the ELC review only a few weeks later.¹ A complete picture of reforms thus remains elusive. In one of the few large-sample studies to date, Grimsditch and Schoenberger (2015: 73) found that:

Officials interviewed in the study areas stated that the selection of adjudication areas [for land titling under the auspices of Directive 01] was conducted at the provincial level

¹ Sub-decree 314 reduced the size of the (Cambodia) Research Mining Co.'s ELC in early December 2014, while CoM Notification 35 cancelled it completely on 9 January, 2015 (data available from ODC).

based on existing state land inventories. However, although a detailed legal framework exists, to date no coordinated and transparent system has been put in place for state land mapping, and state land maps are not publicly available.

The land allocated to smallholders under the program included former forest, as well as parts of protected areas under the jurisdiction of the Ministry of Environment (MoE) (*ibid.*). The lack of spatial data about where allocations actually took place, however, made the legality of the whole thing difficult to evaluate, given the prohibitions on converting ‘state-public’ land (including forests) into private property. It was, the authors concluded, ‘therefore impossible to assess the extent to which the state land maps used by [provincial authorities to allocate land to smallholders] actually conform with the legal requirements for identification of state land’ (*ibid.*).

Spatial opacity characterized the ELC review as well. While a basic mapping exercise indicates that the review included a significant percentage of the country’s ELCs (see Annex), in most cases the areas specified for reduction have been *quantified* but not actually *located* – at least in the publicly available data. Gazetted sub-decrees refer to *sizes* of areas reduced, and refer to ‘attached maps,’ but these maps are missing from the published versions. As a result, the actual geography of ELC reductions, like the geography of Directive 01 land titling, requires on-the-ground investigation. Section 3 pursues this through the case of Stung Treng province.

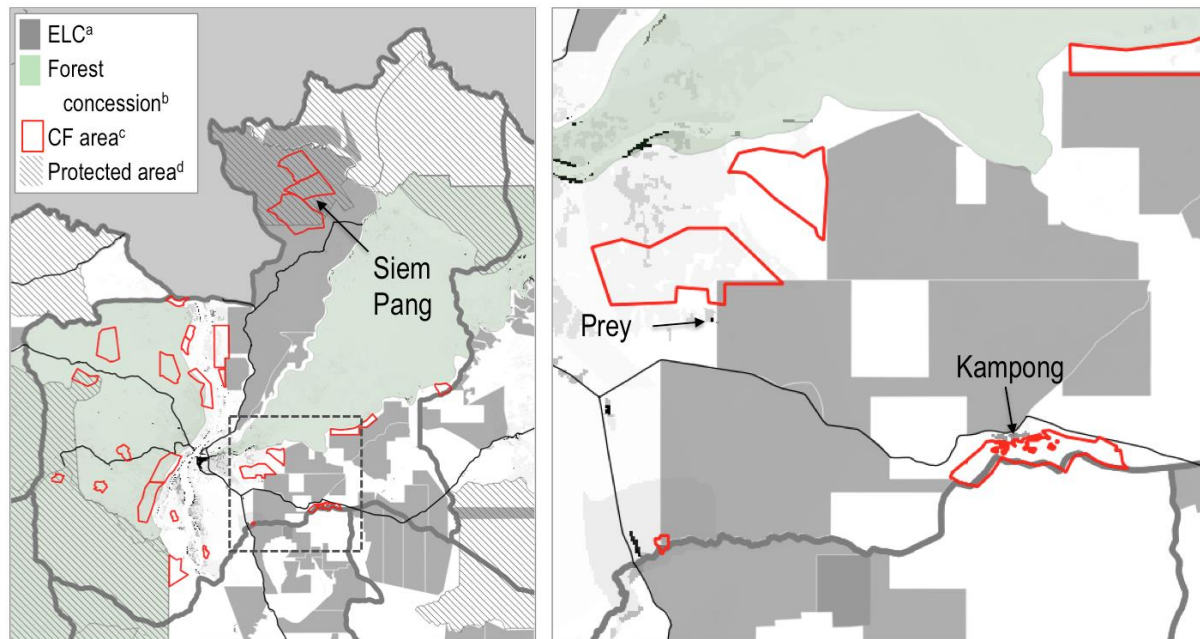
2 The ‘Leopard Skin’ frontier: the case of Stung Treng

In June 2010, almost two years before issuing Directive 01, the Cambodian Prime Minister outlined a policy that used the metaphor of a leopard’s spotted skin to describe the ideal relationship between large and small allocations of rural land. In his keynote address to the Third Cambodia Development Cooperation Forum, the Prime Minister promised to combat the hoarding of land by revoking ELC land when it remained unused, and to allocate social land concessions in and around ELCs in order to make the land productive; he called this division of the rural landscape the Leopard Skin or Leopard Spot policy (CDC 2010). Since then, the term has been taken up in various ways by government actors, donors, the private sector and the media (see Dwyer *et al.* 2015), most famously in the land allocation and titling pursued under Directive 01 (Milne 2014; Grimsditch and Schoenberger 2015). Ranging from individual ELCs that have sought to work around farmers rather than evicting them, to the national titling campaign under Directive 01, the connotation of the Leopard Skin has been a landscape of smallholder plots amidst the growing backdrop of large-scale corporate plantation concessions.

A key question, however, concerns the relative balance between ELC land and smallholdings. The ‘Leopard Skin’ is a flexible metaphor, and the degree to which it implies surrounding small-scale holdings in a way that allows them to continue to be economically productive is far from clear. In this section, we examine this issue of relative landholdings in two areas of Stung Treng province using the entry point of community forestry. First, we consider a pair of adjacent villages along the main road between Stung Treng and Ratanakiri provinces; this area is labeled ‘case 1’ in Figure 1 and shown in more detail in Figure 3 below (inset and right). We then focus on an area of Siem Pang district in the northern part of Stung Treng province; this is labeled ‘case 2’ in Figure 1, and is visualized in more detail in Figure 3 (left) and Figure 8 (below).

As the first case illustrates, community forestry is a useful barometer for land tenure and associated governance issues in areas where ELC development has been particularly aggressive. As the second case shows, community forestry is also implicated in the jurisdictional struggles that have emerged in the reform era, as ELC cancellation has sparked a new sort of land rush. It is thus a useful guide to both of these issues. We begin with the villages of Prey and Kampong (these are pseudonyms).

Figure 3: Community forestry cases examined in Section 3



Source: authors' own. Data sources: ODC, LICADHO, RECOFTC.

Notes: a) ODC data includes some cancelled ELCs and ELC areas. b) suspended but not cancelled. c) includes active and proposed areas. d) includes national parks, protected forests and protected areas (including those newly gazetted).

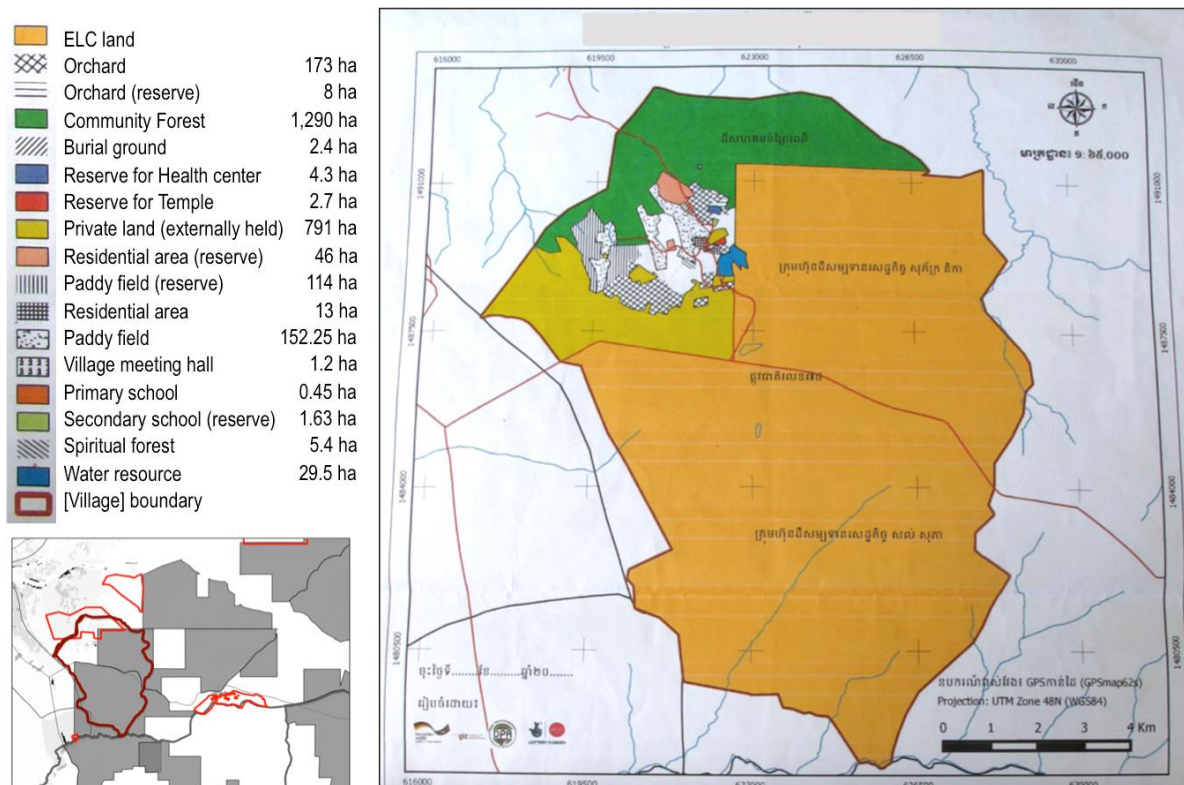
2.1 Protection under strain: community forestry in an ELC-heavy landscape

Located on the main road that connects the provincial capitals of Stung Treng and Ratanakiri, Prey and Kampong villages exemplify the challenges that confront rural communities where ELCs have been actively developing plantations. The concentration of ELCs in this area (Figure 3, right) is typical of other ELC cluster zones around the country, such as those that occur in Ratanakiri, Mondolkiri, Kratie, Kampong Thom, Preah Vihear, Oddar Meanchey, Kampong Speu and Koh Kong provinces (Figure 2). In both Prey and Kampong, the relevant events began in the early-to-mid 2000s, when migrants from other provinces began to arrive and negotiate land purchases with indigenous people along the road. Hinting at the desirability of this land – containing fertile soil and accessible from areas where land scarcity was becoming an increasing issue – these initial land sales were followed quickly by a pair of ELCs, signed on the same day in August 2005 to a pair of Cambodian companies registered in Phnom Penh and Kampong Cham. Both companies had their sights set on the same plantation crop: rubber.

The first village, Prey, is best understood with the aid of a map that was produced almost a decade after the initial land sales and the arrival of the ELCs began. This map, shown in Figure 4, dates from 2015, and was created as part of the communal land titling process discussed below. It shows a landscape created by a decade-plus-long enclosure process that began in the early 2000s, first with land sales to smallholder migrants who purchased small plots (shown in bright yellow) along and just north of the main road; and then,

beginning around 2007, with the development of large rubber plantations by the two ELC companies mentioned above on lands (shown in orange) to the east and south of the main village area. The third major expanse of territory (shown in green) is the village's portion of a larger community forest area that extends north and west into neighboring villages. Community forestry began as a formalized development activity in 2005, just as the ELCs were being allocated on lands east and south of the village's residential area. Given this timing, their trajectories as parts of the village landscape were almost concurrent, with community forestry functioning as a de facto commons area protected from the progressive encroachment of the ELCs' plantations.

Figure 4: Village map produced during communal land titling process, Prey village



Sources: locator map lower left, authors' own. Map on right reproduced by kind permission of the village authorities.

During our visit to the village, community members reported that the planting of company rubber plantations on their former swidden agriculture lands began around 2007, and continued through the years that followed, despite villagers' efforts to intervene in the years 2008-2010 – first with the companies themselves and then with local authorities. Both of the companies, they said, just continued to clear land, encroaching on the village's historical swidden land base and coming closer and closer to the Prey residential area. Village efforts to approach the company and then commune and district authorities centered on gaining compensation for the land lost and/or ending the ELCs' enclosure of village lands; these efforts all failed.

In parallel, residents continued to practice a variety of livelihood activities on the land that remained available to them; these changed over time, reflecting the rise of land scarcity as a key determinant of options. Extensive forms of livelihood such as swidden agriculture (shifting cultivation) and open-range livestock rearing were the most affected by the progressive expansion of ELC plantations onto village lands. Over time, villagers reported an increasing prevalence of sedentarized farming of cash crops such as cassava and vegetables, a decrease in the prevalence of livestock raising, and growing dependence on

wage labor on other farms in the area. While other issues were involved with these transitions as well (increasing monetization of rural life, growing fear of livestock theft), villagers we spoke to directly attributed these changes to the loss of land to ‘encroaching’ ELCs. The community forest reflected this history as well: on the one hand, it continued to function as an important source of forest products such as honey, building materials, food and medicines, as well as a grazing area for those residents who had not abandoned livestock (Figure 5). At the same time, however, agricultural plots were beginning to crop up inside the community forest, in direct violation of community rules (Figure 6). These sorts of developments highlight the extent to which community forests remain important sources of village land tenure even as they increasingly manifest the strains of arable land scarcity in the wider landscape.

Figure 5: Open-range livestock grazing in community forest area, Prey village



Source: photo by Michael Dwyer.

Because of their conflicts with the ELCs, Prey village residents began the process of applying for a communal land title. This seems to have emerged somewhat organically out of the efforts described above to engage the companies and local authorities, although it also involved the help of NGOs; residents described a holding series of meetings to create consensus within the community to begin the process, and they then applied for indigenous status with the Ministry of Rural Development (MRD), which they received in 2013. While we were unable to verify the timing precisely, the village’s experience seems typical of communities throughout northeastern Cambodia who have had to wait long periods of time to go through the various stages of the application process (Rabe 2014; Grimsditch and Schoenberger 2015); Prey residents described beginning the communal titling process when the troubles with the ELCs began. They were then able, in 2014, to register as a legal entity with the Ministry of Interior. This allowed them to begin the titling process with the Ministry of Land Management, Urban Planning and Construction (MLMUPC); for this, they developed and agreed on a set of internal rules such as no land sales to outsiders and no conversion of various types of forest- and reserved lands (see list at left of Figure 4). The MLMUPC had then spent two weeks demarcating the village’s communal title area – the various non-yellow, non-orange and non-green parcels clustered at the center of the map in Figure 4 – and had dropped off boundary markers to be set in place at a later date. When we visited in mid-2016, these boundary markers had yet to be placed; villagers told us that they had

begun enforcing the rules of the communal title already, which local land management officials told us that they were awaiting instructions from Phnom Penh.

Figure 6: New agricultural plot in community forest (sign reads ‘do not cut community trees’)



Source: photo by Michael Dwyer.

Prey's neighbors down the road in Kampong had been forced to make due without the protections (limited as they were) of communal titling. Unlike Prey, which has retained its Brao language as a source of indigenous identity, Kampong's original residents had gradually switched to speaking Khmer, in part due to the assimilation of Khmer-speaking migrants into the village's population. (Unlike in Prey, Kampong's residential area is right along the road, and migrants who had purchased land from indigenous residents had ended up living directly among them.) The residents we spoke to described this assimilation as generally positive, given its implications for community harmony. But they also lamented that it had caused their application to the first stage of the communal land titling process – recognition of formal indigenous status by the MRD – to be denied (*cf.* Vize and Hornung 2013: 12). As a result, unlike in Prey, where the community forest and the communal titling area *together* made up the village's remaining land base, in Kampong this land base was limited to the community forest area alone.

This area was under threat from a series of encroachments that highlighted the interplay of land markets, migration, ELC development and the Directive 01 titling campaign. During our fieldwork, we organized our visit to Kampong to coincide with a demarcation exercise by members of the village community forestry association and a representative of the local government (commune-level) Forest Administration (FA) office. Together, the association members (a mixed-gender group led by a woman in her twenties) and the FA officer (a middle-aged man) were visiting areas where land users had recently cleared land that seemed close to – and possibly inside – the village's community forest area. The purpose of these visits was to record these areas' coordinates using handheld GPS in order to assess whether an encroachment had indeed occurred. We joined the demarcation team at two of these sites.

Figure 7: Varieties of ‘encroachment’: a migrant woman explains her family’s expansion to community forestry association members (top); road through a private farm owned by an ELC manager leads to an expansion into the same community forest area (bottom)



Source: photos by Michael Dwyer.

The first site was a few-hectare plot set back about 150 meters from the road. It had been cleared sometime in the weeks prior by a migrant couple that owned the land along the road, having purchased it some years earlier from local residents in the pattern described above. The new clearing was adjacent to their existing plot – it was essentially an extension back away from the road, toward (or into) the community forest. When we visited, the couple walked with the team, and explained to them that they had taken care to clear only *up to* the tree marker that, they said, they believed marked the boundary of the community forest; the photo at the top of Figure 7 shows one of the owners pointing to this sign, which was visible across the clearing. The demarcation visit was amicable but tense, as the team walked the boundaries of the plot, and speculated that the new clearance had been encouraged by the couple having had their plot along the road titled by the Directive 01 campaign just a few

years earlier. Whatever the cause, and whatever the result of the GPS exercise, the visit made it apparent that land conflicts in the area were not limited to those between poor farmers and large companies. This more 'intimate' sort of land conflict among neighbors (Hall, Hirsch and Li 2011) cut against the narrative of relative harmony that Kampong residents had used to describe the history of their village, and suggested a growing land scarcity in this ELC-dense landscape.

The second site suggested the same thing, but with a twist that implicated the presence of ELCs even beyond the boundaries of their direct land use. Just up the road sat another farm (Figure 7, bottom), this one larger than the first, which was allegedly owned by a foreman at one of the ELCs in the area. Here, the owner had allegedly hired a group of laborers to clear additional land off the back of the original farm (also titled during the Directive 01 campaign); the community forestry team had visited the site a few months earlier, and the F.A. officer described having arrested the laborers after they had challenged his authority. The owner allegedly escaped prosecution due to his higher-level connections, despite the encroachment having been verified using GPS; two neighbors had, in turn followed his example and also cleared plots in the forest, but had fled rather than be confronted by the community forestry group and the F.A. officer. When we visited, the demarcation team's goal was to measure one of these additional plots, which had recently been abandoned. The other plot had since been resold; we spoke briefly to the new owner, a man making charcoal, whose presence highlighted the limited enforcement capabilities of the team. They explained to us that this man had purchased the land in good faith, and could only be prosecuted if he had been caught in the act of clearing the land himself. The combination of high-level connections (with rumors of a bribe), arrested laborers, others who fled, and a charcoal maker who was hardly a wealthy man, all provided a variation on theme from first site of growing land conflict at the community forest edge.

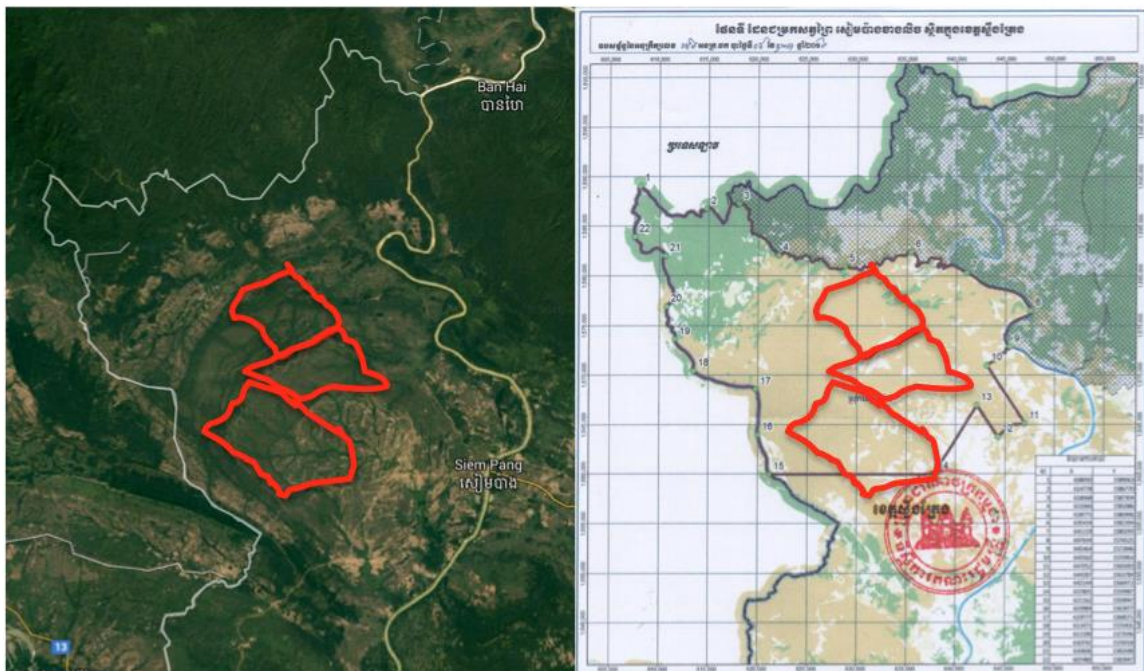
2.2 A farther frontier: community forestry and state formation in Siem Pang

A different sort of land rush was underway in the northern part of Stung Treng province, but there the conflict centered on competing state institutions. Many of the same actors were present: the area was host to a number of ELCs – one of them, Green Sea, formerly Cambodia's second-largest – as well as migrants from other provinces, long-established communities trying to maintain their livelihoods, and a local FA office trying to maintain its grip on forest management through partnering with local villages in the development of community forests. But two things made the area significantly different from the Kampong-Prey landscape examined above. First, the area still had been recently remote: it was now accessible by road, but this was a fairly new development, and much of the landscape retained a covering of dry and wet-riverine forest. As such, despite bearing the marks of anthropogenic change, northern Siem Pang was still seen as a conservation priority by government officials and conservation organizations (BICP 2012). And unlike the ELCs examined above, the largest concession in the area – the 100,000-plus hectare Green Sea ELC, held by a powerful Cambodian senator, businessman and *Oknya* – had developed only a small portion of the land it had been allocated on paper. As a result, it had been reduced to less than 10,000 ha in early 2015 as part of the ELC review conducted under the Directive 01 reforms. The revocation of over 90,000 ha of putatively state land had inaugurated a different sort of land rush in northern Siem Pang. As our visit revealed, the management questions created by this new land rush had created conflicts within the state, over issues of jurisdiction, community cooperation and empowerment, and the proper relationship between economic- and conservation-oriented land uses.

Like many other resource frontiers (Tsing 2005; Barney 2009), one of the defining characteristics of the northern Siem Pang landscape is the proliferation – and overlap – of territorial claims. Virachay National Park sits just to the east of this area, stretching from the so-called 'dragon's tail' where Cambodia, Laos and Vietnam meet, to the eastern border of

Stung Treng province (Figure 2). As Figure 3 shows and Figure 8 elaborates, however, recently gazetted protected areas have extended this conservation landscape westward, first into the area between Virachay National Park and the former Green Sea ELC (visible as white space in Figure 2), and then – following Green Sea’s 90,000 ha reduction in January 2015 – into the northern part of the former concession. As Figure 8 illustrates, however, this area, which is covered by a large expanse of open forest (left), was gazetted as a new protected area (right side map) just as three new community forestry projects (red polygons) were being developed. Both of these efforts had been under development for some time (e.g. BICP 2012), and both sought to seize the moment when the reduction finally happened in early 2015.

Figure 8: Overlapping forest management projects in northern Siem Pang



Sources: Imagery courtesy of Landsat² and locational data courtesy of Google;³ Siem Pang West National Protected Area gazettement map from Cambodian Ministry of Environment.⁴

Note: proposed community forests (red polygons, both sides, superimposed by the authors).

On the one hand, this conflict over jurisdiction represents a brand of territorial politics within the state that is hardly unique to Cambodia (Dwyer 2013; Dwyer and Ingalls 2015). A major part of the post-2012 reforms has been the reassignment of territorial responsibility to Cambodia’s ministries of Agriculture, Forests and Fisheries (MAFF), which received a mandate for economic production, including the governance of ELCs; and Environment (MOE), which received a mandate for conservation. This has forced both ministries to wrestle with the loss of some lands under their control and the gaining of others; the conflict described above is but a small piece of this process, which is still being worked out more broadly. On the other hand, there is an even wider context that shapes *both* ministries’ efforts in important ways: the land rush by large and small private actors alike. Northern Siem Pang has been the site of extensive natural forest logging in recent years (Singh 2014; NGOF 2015), exemplary of the wider (and often illicit) nexus of timber extraction that makes many undeveloped ELCs anything but dormant (Milne 2015). In addition, the presence just to the

² Landsat imagery courtesy of NASA Goddard Space Flight Center and U.S. Geological Survey.

³ Map data: GoogleEarth.

⁴ Source: www.moe.gov.kh/userfiles/image/download/1463458563115.pdf.

south of active ELCs in the form of large oil palm plantations, as well as increasing numbers of migrants developing roadside farms along the road to Siem Pang (Figure 9) were two signs that the area’s newfound accessibility is a sign of more activity to come. How to deal better with this range of land conflicts and competing pressures and institutions – both in newly accessible landscapes like Siem Pang and longer-established frontier areas like Prey and Kampong – is the topic of Section 4.

Figure 9: The land rush for northern Siem Pang: oil palm plantation trial (top); migrant land development (bottom)



Source: photos by Michael Dwyer.

3 Toward inclusive governance: institutional dimensions of land conflict and resolution

At the heart of the question posed in Section 1 – whether recent reform efforts should be read as steps constitutive of durable institutional change or merely selective, fleeting political work – is the issue of how existing land conflicts are actually dealt with. A definitive answer to this question is beyond the scope of this study, as this would require a more exhaustive treatment of land conflicts in contemporary Cambodia. Nonetheless, we believe that such an approach is highly instructive, and that analyzing land conflict resolution efforts (or, in some cases, the lack thereof) through a limited number of cases can help point toward future steps in the area of land governance reform. In this section, we use the two cases examined in Section 3 and a third case from Ratanakiri province (elaborated below) to examine this larger question of institutional reform and inclusive governance.

Scholars who have studied economies built on sustained resource extraction have pointed to the importance of periodic legitimacy efforts as one way that patronage networks maintain their control over the heights of the economy in the face of perpetual instability (Gellert 2010; Sokphea 2016b). As Sarah Milne (2015) has noted, this situation applies to contemporary Cambodia, where land conflicts such as those examined above are an integral feature of many development projects. Conflict resolution efforts are thus a useful entry point into questions of governance reform because they pinpoint the extent to which particular cases match the rhetoric of policy: they show the extent to which reforms at the policy level are ‘trickling down’ to the level of individual landscapes, communities and cases. Without effective trickling down, it is tempting to interpret reform efforts as operating merely at this higher level of legitimacy-oriented image politics. On the other hand, to the extent that recent policy changes are starting to shape actual conflict resolution processes, they may be indicative of durable, meaningful institutional change, even if that change is only just starting.

3.1 Land conflict resolution forums: a plethora – and a dearth – of options

It is instructive to return to the German withdrawal from the Cambodian land rights sector, noted briefly in Section 1. Of all the issues involved in this decision, conflict resolution was perhaps the one that the German ambassador dwelled on at greatest length:

In view of all the land disputes that exist ... it is important to have an institution, an independent institution, which decides on how to settle these disputes, an institution where people who do not have the money to pay a lawyer, pay fees or whatever, can get justice and can effectively defend their property to which they are entitled. ... [I]t seems that the government is not yet prepared to have such an institution. ... So it's a very colorful array of institutions dealing with this in what seems to me a fairly uncoordinated manner. This is – and perhaps I'm very German in this – this is not the way you will get the social peace you want.
(German ambassador, quoted in *Cambodia Daily* 2016a)

This passage is interesting because it highlights, on the one hand, the lack of a legal system that is capable of serving the majority of people who are caught up in some kind of land conflict. In doing so, it also highlights the fact that a range of institutions, from local authorities to high-level petitions to two specially created commissions designed to deal with conflicts on lands without title, have proven equally frustrating to those who have tried to use them. On the other hand, the quote hints, ever so slightly, at the subjectivity of the ambassador's critique: maybe he is being too quick to impose his view of a single institution. Ultimately, it is not clear whether the issue is the multiplicity of forums, the lack of

coordination between them, or the ineffectiveness of the forums that exist. These are questions that plague land conflict resolution efforts in Cambodia to this day.

The cases examined in Section 3 mentioned two variants on the most common institution that most communities have access to in addressing land conflicts: the appeal to local authorities. In Prey, this occurred after residents approached the company directly, while in Kampong, this was embedded in the person of the FA official who worked directly with the community forestry association to try to deal with a variety of encroachments on community forestland. As we saw, the successes were mixed at best: in Prey, the appeal proved unsuccessful when the conflict was with an ELC, while in Kampong, local state authority was able to mobilize *some* form of response when the conflict was with other, relatively poor, citizens; but when corporate power appeared on the other side of the conflict (in the figure of the ELC foreman), the challenge – even with local state authority on the side of the community – proved ineffective.

These experiences are fairly typical, and exemplify the limited options rural communities face. The courts are distanced by multiple barriers, both bureaucratic and otherwise. In 2003, a joint declaration by the ministries of Justice and Land Management barred citizens without land titles from pursuing claims in the Cambodian courts, and (despite the dubious constitutionality of the move) instead appointed an institution called the Cadastral Commission to deal with them. Due to the Commission's ineffectiveness in addressing 'difficult' cases, a second institution called the National Authority for the Resolution of Land Disputes (NARLD) was established in 2006. By all accounts of the people we spoke to, neither of these institutions was a functional option for rural smallholders since their lack of independence prevented them from resolving cases that pitted smallholders against Cambodian elites – a fairly common occurrence.

With the rural titling campaign conducted under Directive 01 and, on a much smaller scale, the success of a few rural communities in obtaining communal land titles, the courts are not so far away from rural residents anymore. Here, however, costs and lack of independence, both noted by the German ambassador above, loom large. As one of our key informants put it:

Imagine you're a Cambodian judge. Judges are part of the elite – they have cars, they have money. But they're trapped. They can't just step out of line or they lose it all. Judges just know which cases – the 'hot' ones involving land especially – not to do anything on.
(Key informant interview, Phnom Penh)

While some of our key informants noted that 'things are changing', they also pointed out that legal system is among the laggards in the current reform process. As a result, rural residents continue to have limited options to actually deal with land conflicts. In many instances, this means that land conflict remains an endemic fact of life, a feature of the social landscape that must be navigated rather than resolved. This was the pattern in the examples described above. We now turn to a third case, however, that has emerged from the collaboration between local and transnational advocacy efforts in the context of growing public pressure internationally for accountability of private capital. While exceptional for reasons explained below, this case is worthy of examination because it is seen by some in the donor and civil society community as a potential model to be replicated. Contra the search for 'a single' state institution, the HAGL case suggests that the search for improved land conflict resolution may continue in multiple forums, at least in the near term while other efforts continue to improve the Cambodian court system.

3.2 Leverage, mapping and power: the HAGL case

Large-scale rubber plantations have been a feature of transnational agribusiness investment in the Mekong region for much of the last decade (Hicks *et al.* 2009; Woods 2011; Sturgeon *et al.* 2013). In the so-called 'Triangle Development' region where northeastern Cambodia and southern Laos meet the Vietnamese central and southern highlands, Vietnamese companies have figured centrally in this investment boom (Yem *et al.* 2011; Kenney-Lazar 2012). While many firms, such as the members of the Vietnam Rubber Group, have depended on their links to the Vietnamese state to raise capital for their operations, at least one purely private Vietnamese company turned to the private sector; in doing so, the firm – Hoang Anh Gia Lai (HAGL), a real estate-turned-agribusiness company – found itself indirectly financed by the International Finance Corporation (Global Witness 2013), whose Compliance Advisor/Ombudsman (CAO) office offers a conflict resolution process as part of its operations. The case described below emerged from a complaint filed with the IFC's CAO in February 2014.

This case is currently ongoing, and we thus examine it only in light of information that is either public or uncontroversial. One dimension of interest concerns the case's advantages over other conflict resolution forums that are currently available in Cambodia; a second concerns creation of spatial data as part of the conflict resolution process itself. A third dimension concerns the case's limits, given HAGL's unique financing arrangements and political exposure. We discuss these each in turn.

A key feature of the HAGL case is that it is experimenting with a model of accountability based not on independence, but on connections. Judicial models of conflict resolution and accountability rely on their distance from the parties involved; this distance creates the impartiality that allows the law, in theory, to be exercised in a fair and consistent manner. The IFC does not claim to be independent – as a financier, it could not possibly do so. Rather, its claim to fairness stems from its need to balance the interests of particular firms (in this case, HAGL) against the wider interests to which the IFC is itself accountable; these interests include other companies, lenders and institutional investors who demand certain levels of social and environmental performance, and ultimately, various segments of the global public who are able to exert pressure far beyond Cambodian territory. In contrast, one problem that other conflict resolution institutions in Cambodia share – from the courts to the Cadastral Commission to the NARLD to many provincial and district authorities – is that they are *too* independent of the constituents to whom they should be accountable. The 'follow the money' approach, of which the HAGL case is one of a few other examples (Hodal 2013), has the advantage of using financial links across jurisdictions to leverage reputational risk and, where possible, formal accountability mechanisms in places like Thailand and the United Kingdom (Blackmore *et al.* 2015; Oxfam *et al.* 2015). While not necessarily a recipe for success, this re-scaling of accountability based on economic connections rather than judicial independence has opened a new front in Cambodian land conflict resolution efforts.

Given its uniqueness in the Cambodian context, the CAO process took some time to get started. After the initial complaint was filed in February 2014 (by five organizations on behalf of a group of impacted villages in Ratanakiri province (IDI *et al.* 2014)), the CAO met numerous representatives of the Cambodian government; these included four ministries, their provincial departments, and local authorities at the district, commune and village level. These meetings were necessary to gain the state's trust as a conflict mediator in an already crowded field. In addition to the sectoral ministries that dealt with land and natural resources issues, the CAO had to develop an understanding – and eventually an MOU – with the Ministry of Interior, which (as noted in the above discussion of communal land titling) plays a managerial role in issues related to jurisdiction and decision-making authority. Even though it was independent of the Cambodian state, this process of navigating the Cambodian bureaucracy ensured that the CAO process was not operating without its blessing. In March

2015, thirteen months after the initial complaint, the CAO announced that the parties – HAGL and its subsidiaries, and the communities and organizations listed on the complaint – had agreed to a mediation plan, and promised to keep the public updated on their progress (CAO 2015).

A key breakthrough came roughly six months later. In September 2015, a pair of joint statements⁵ announced HAGL's commitment to suspend land clearance in eleven villages where it had already occurred, and 'to not clear, develop, interfere, encroach upon or impact the land' of three other villages, 'including lands they customarily use and access.' As a symbolic measure, HAGL offered all fourteen villages 'its sincere apologies' and 'a gift [of] one cow (400 kg in weight) and 500 USD to each of the villages for use in their spirit ceremonies.' More importantly, HAGL and its subsidiaries committed to a joint mapping exercise that carries major implications:

A joint visit by the Parties and other stakeholders, including NGO advisors, CAO and local authorities to each of the eleven affected villages in order to identify the boundaries of HAGL's plantations and the boundaries of the affected villages for the purposes of demarcation. If through the joint visit it is ascertained that HAGL has cleared and developed land that belongs to the villagers, then the company will (a) offer compensation to the villagers for this land; and (b) if the villagers do not accept compensation, HAGL will return the land to the villagers.
(Joint Statement available at second URL in footnote 5)

As of June 2016, this mapping exercise is still ongoing. Given the history of ELC development in this part of Cambodia, and the publicly available information about these cases in particular (Global Witness 2013; Bugalski and Ratha 2015), the maps from the eleven villages in question are likely to look something like the map (above, Figure 4) from Prey village. There, a mapping process undertaken as part of the communal land titling process revealed that ELC plantations now cover roughly three quarters of the village's historic land use area. While the numbers will certainly vary by village within the HAGL area, the types of livelihood transformations that have taken place in the years since company plantations began – less shifting cultivation and livestock rearing, more concentrated cash cropping, a greater reliance on off-farm labor as a source of livelihood (Bugalski and Ratha 2015) – are qualitatively similar to the changes reported in Prey. In this sense, the HAGL case wrestles with a question of land redistribution that is a step beyond what has already taken place in the ELC review, which has only dealt with ELC land that was uncleared and undeveloped. In contrast, the joint agreement commits HAGL to return or compensate the villages in the agreement for any 'land that belongs to' them (quoted above); HAGL's agreement with the other three villages implies that it interprets ownership in line with villagers' historical practices of use and access rather than the (often narrower) letter of the law.

The HAGL case is merely the tip of the iceberg, however. As the examples in Section 3.1 illustrate, ELCs that *appear* to have encroached merely on the *edges* of villages, may have actually taken significant portions of these villages' historical land bases; only mapping can reveal the extent of this overlap. The importance of the mapping exercise in the HAGL case is that it provides a forum for this data to be produced and used as a basis for conflict resolution; in cases such as Prey, documenting land lost may be better than nothing, but it is not the same thing as creating a forum to address this loss. Given that many of the ELC companies do have the same sorts of accountability possibilities through the private sector as HAGL – a number of them are Vietnamese state-owned enterprises, for instance

⁵ http://www.cao-ombudsman.org/cases/document-links/documents/JointStatement-VillagesGroup2-16Sept2015-Eng_Kh.pdf; <http://www.cao-ombudsman.org/cases/document-links/documents/JointStatement-VillagesGroup3-19Sept2015-Eng.pdf>

(Blomberg and Van 2015) – there is a risk that the HAGL case may end up being a successful model, but nonetheless an exception that proves the rule of corporate unaccountability once land has been cleared and developed.

3.3 Transparency politics: land conflict and spatial data

Given the current direction of land-related governance reforms, however, it seems possible to both learn from the various cases examined above without letting their limits define them. Ultimately, it is necessary to bring the power of the state behind land conflict resolution efforts – without this, land conflicts will continue to languish unresolved, whether in forums like the NARLD or in villages like Kampong. But the question remains: how to actually do this *well*? One theme that emerged from the three cases examined above is the importance of spatial data to not only revealing the existence and extent of land conflicts, but also to governing the trajectories of these conflicts. As a prelude to the ‘ways forward’ proposed in the Conclusion, we develop this theme by examining the latter dimension: the relationship between land-related spatial data transparency and the *dynamics* of land conflict. We focus on three issues: data quality and completeness, the level of abstraction that spatial data capture, and control over spatial data itself.

It goes almost without saying that if better data existed ‘up front’, many land conflicts would not happen at all; land conflicts are often the result of incomplete information, bad information, or both. One particular problem with the way that ELCs have accessed land in recent years is that they have used a legal workaround that avoids doing a detailed on-the-ground survey in advance of gaining legal rights. In the mid-2000s, the Cambodian Ministry of Agriculture, Forests and Fisheries (MAFF) issued a model ELC contract, the first clause of which clearly distinguished between the initial survey area (called the ‘total land area’) *within which* the concession would be located, and the concession itself, which would be formed after the subtraction of state-public (e.g. forest or wet-) land and private land belonging to individuals and communities (MAFF n.d.). Rather than pursuing this approach, however, many companies received legal declarations that converted these survey areas *in their entirety* to the category of state-private land; they thus approached rural communities with a map that carried not just the right to look for land, but the right to develop it. This was legal in a narrow sense – it relied on a provision in the 2001 Land Law that state-public lands could be converted to state-private ‘when they lose their public interest use’ (Article 16), but it put many companies on a collision course with rural communities. The ‘Leopard Skin’ policy adopted in the last few years is basically a restatement of this vision of land access outlined earlier in the model contract. As the cases examined above illustrate, however, it is one thing to pursue this vision when a project is starting; it is another to create it retroactively, as in the HAGL case. With any luck, the HAGL case can highlight not only the possibilities of achieving a remedy even after the bulldozers have come, but also the advantages for all parties of beginning with better data up front.

A related issue is the level of abstraction: even if data is correct, it is sometimes beside the point. One problem with ELC maps that only draw polygons on top of topographic lines is that they are too abstract, and miss much of what is actually relevant on the ground. This manifests in other ways, too, as became clear in the jurisdictional conflict we encountered in Siem Pang (described above in Section 3.2). As part of the recent reforms (*Cambodia Daily* 2016c), the territorial mandates of the ministries of Agriculture, Forestry and Fisheries (MAFF) and Environment (MoE) were reshuffled: rather than both managing ELCs, as had been the case previously, as of early 2016 MAFF was made solely responsible for ‘productive’ areas and MoE for ‘conservation’; this became the basis for a shuffle in ministerial territory which – perhaps not surprisingly – also led both sides to try to expand their reach. The conflict we observed was a result of this process, with MAFF trying to develop new community forestry areas and MoE trying to get new conservation areas gazetted.

A problem with this approach, however, is that production and conservation may not be so easily separated on the ground. Siem Pang remains a landscape of conservation priority, especially for large birds, but it has been significantly altered by humans over the course of the last half-century, most importantly by the loss of large mammal species like elephants and wild buffalo (BICP 2012); in the interim, domestic buffalo have come to play an important ecological role – namely, maintaining small wetlands called *trapeangs*, which endangered birds rely on for habitat, by wallowing in them during the dry season (*ibid.*; Wright 2012). This blending of production and conservation in local practices of landscape management challenges jurisdictional divisions based on the distinction between the two concepts, but seems essential to the resolution of the challenges that confront the various parties on the ground: protecting habitat, managing forests, and sustaining rural livelihoods in the face of diverse challenges. In the HAGL case as well, where negotiations will presumably touch on not just who claims which land, but also *why*, it is likely that any resolution will hinge on the parties coming to terms not just with each others' abstract territorial claims, but also with the concrete and specific activities upon which these claims are based. For it is in this back-and-forth between abstract (production, conservation, modern, backward) and concrete (birds, buffalos, rubber trees, fallow lands and fishing grounds) that the all-important principle of legitimate use gets negotiated.

All of this turns on the issue of data control. If anything is clear from the land governance challenges in contemporary Cambodia, it is that there is no consensus on what development *should* be. Since the 1990s, the impacts of large-scale ELCs have driven one iteration of this debate (LICADHO 2009; Milne 2015; Bugalski and Ratha 2015); the reforms in the wake of Directive 01 have prompted another (Rabe 2013; Vize and Hornung 2013). Data figures centrally into these debates, and it is indicative of communities' structural weakness that they have often been unable to dictate how their lands are represented in official data sets, much less control which data gets mobilize for what purposes. The cases above showed this beginning to change – the community forestry groups, the communal title in Prey, community ownership of the new data being created in the HAGL case – but these only touch the surface of what communities need to control their own livelihoods, and ultimately their own development pathways.

4 Conclusion: ways forward

Development is messy, complex, hard to control. Events on the ground are inevitably the products of multiple causes – some deliberate, but many stemming from unanticipated consequences, legacies of earlier events, or the agency of actors beyond one's reach. Seeing development-in-practice as a mix of these deliberate interventions – and sometimes *competing* deliberate interventions – and other, more immanent processes and historical events (Bebbington 2003; Hart 2004; Biddulph 2011) is one of the intellectual legacies of development studies that we would do well to inherit. Thinking clearly about ways forward requires that we know where our power and influence lies, where it is likely to fade out, and where it might be mobilized to create new connections and possibilities.

As this study has argued, it is essential to approach these questions geographically. Two important longer-term lessons from international development cooperation in Cambodia focus on land concessions and land titling. Both of these interventions were proposed and adopted in the late 1990s as pillars of what we might call post-conflict neoliberalism: an effort to recruit foreign capital and mobilize domestic natural resource wealth to the hard tasks of postwar nation-building, and at the same time to empower and protect rural Cambodians from some of the greatest risks that these efforts entailed. As elaborated in Section 2, however, these development interventions did not come together in space and time: titling was first focused elsewhere, and then delayed by bureaucratic hurdles while ELCs developed the countryside, a process that Robin Riddulph (2010), in reference to the

relationship between western donors and the Cambodian state, has called the geography of evasion. On the other hand, as Section 3 suggests, at least in some places, community forestry was mobilized – despite its shortcomings as a *forestry* intervention – to provide some of the tenure enhancement that communal titling might otherwise have accomplished. The larger lesson here is that this arrangement ultimately was the result of complex and immanent process – multiple actors and forces, some of which competed, others of which worked together. Donor assistance efforts had a hand in some of the pieces, but not in others.

As SDC and other donors strive to contribute constructively to land governance reform, the present moment in Cambodia exemplifies a larger question: How to best engage when reforms are allegedly ongoing, yet foreign actors advised to steer clear of anything that could be read as interfering with national sovereignty? In this section, we begin by describing four ‘ways forward’ that follow from the lessons learned above; each of these speaks to areas where SDC either works already or might contribute additionally in the arena of land governance. Each point contains sub-themes that build on more general ideas. Each has clear application to the Cambodian context, but is also written in a way so as to help guide the way forward elsewhere in the region, as well as globally.

Continue to support institutions of tenure protection. As one of the most important social relations in Cambodian society, land and resource tenure remains embattled and should be supported as a core concern. How to actually do this is not always obvious; supporting location-specific tenure-strengthening interventions like land titling may be warranted, but this requires analysis and deliberation to figure out what is most useful and effective.

- ***Support village tenure in forest landscapes.*** One of the key lessons from studying community forestry is that location and timing matter as much or more as the details of the intervention. Community forestry, community protected areas, and communal and individual land titles are all vying for space in the landscape of rural tenure, both in Cambodia and elsewhere. The cases examined above highlight the benefits of getting *any* tenure-protecting institutions into rural areas when concessions are present, even as they also highlight the limits. Additionally, the community forestry cases we examined highlighted the potential for community-scaled tenure protection to enable participation and leadership by women and young people, in contrast to the domination of some tradition-focused institutions by men and elders.
- ***Look beyond land titling.*** Titling can strengthen land tenure, especially if it is done at scale, but titling’s ‘central conundrum’ is that doing it in one place can undermine tenure in another (Hirsch 2011). Rather than thinking of tenure as *weak* and needing strengthening on a case-by-case basis, it may be more effective to treat the threats to smallholder and customary tenure as overly *strong* and needing to be addressed directly. The ELC land access mechanism described in the cases above – mapping from afar, minimal surveying, legal reclassification, and minimal or no consultation with local land users – is one such example of an overly strong institution that demands re-regulation.
- ***Make titling flexible.*** If titling is desirable for other reasons (creating access to credit, generating state revenue, regulating land markets), the impacts on tenure should be considered first and foremost, as there are often tradeoffs (Dwyer 2015c). In cases where communities have been told that they must choose between communal and individual titles, this advice should be reconsidered. According to our key informants, there is no legal reason that both types of title (individual and communal) cannot be present in a single village.
- ***Continue to support institution-building cases.*** Efforts like the HAGL case described above consume immense amounts of resources, in part because they have to create institutions as they go rather than relying on existing ones. SDC is already supporting this and other cases that have the potential to protect land tenure as a social institution even beyond the individual villages concerned; this support should be continued and, given the

organizing required and benefits to socially constructive state-building, expanded. In time, it may be beneficial for the Cambodian court system to expand its beyond titled land only (see Section 4). SDC, as part of its efforts to promote the FAO Voluntary Guidelines on the Governance of Tenure (FAO 2012), might consider supporting a lawsuit that challenges the exclusion of non-titled land cases from the Cambodian courts. This would not only help expand the protection of the courts to a larger swath of citizens, but would also make ELCs more reactive to citizen accountability efforts even outside the court system by putting the force of state power behind the concept of *tenure* rather than title – a key distinction in the VGGTs. Such an effort would articulate with global efforts to promote corporate and investor accountability to place-based risk, including but not limited to tenure risk (Munden Project 2012; De Leon *et al.* 2013; Dwyer 2015b).

- **Encourage respect for possession rights regardless of title status.** One source of land conflict has been that decisions about where titling happens were often made on the basis of where state officials and technical staff *think* state land is, rather than empirical investigation of actual histories of possession (O’Leary 2006, cited in WBIP 2010: 49); this seems to have been the case in 2012-2014 as well (Grimsditch and Schoenberger 2015). Anecdotal evidence suggests that title status rather than legal (possession right) status still frequently determines compensation rates; since the geography of titling coverage is still opaque and to some degree arbitrary, this should not be the case.

Continue to support transparency, inquiry and discussion. There is an ongoing need for new data, research and informed debate about land governance and development in Cambodia. The country has come a long way since Philippe Le Billon published ‘Logging in Muddy Waters’ (2002), on how political disorder fuelled the post-conflict timber economy. Nonetheless, from the legal ambiguities of accelerated land titling in 2012-2014, to the opaque geography of recent ELC reductions, to the jurisdictional issues over different categories of rural state land, the instrumentalization of disorder for private benefit (Le Billon 2002: 564) is a risk that haunts current reforms.

- SDC has already helped facilitate much-needed **dialogue on land governance and conflict resolution** under the Mekong Region Land Governance (MRLG) project, both within Cambodia and regionally; these efforts should be commended and continued.
- But there is a larger need for development- and governance-relevant information and analysis in the public arena; the former is being partially met by Open Development Mekong (again, both nationally and regionally). SDC could nonetheless help and expand such efforts by **(a) supporting the creation and release of additional data** of relevance to ongoing land governance debates (identified through various means, including the dialogues mentioned above), and even more importantly **(b) supporting the improvement of capacity to analyze and mobilize the information that is available** by universities, state research institutes, the Cambodian courts, and non-government groups with mandates to work at the nexus of public debate, policy design and regulatory enforcement. We believe that the approach identified above – **using land conflict resolution efforts as a barometer of the success of current reforms** – will remain applicable for some time.

Build land governance and conflict sensitivity across programming. Given the commonality of land conflicts in rural Cambodia, SDC would do well to build links between its land-specific programming and other activities, including but perhaps not limited to teaching staff in non-land-related projects how to recognize land-relevant indicators. Land governance is likely to intersect with current SDC work in a number of areas.

- SDC currently supports efforts to make private sector activity more socially equitable through its **Sub-national Democratic Development** and **Regional Economic Development** support programs; the relationship between rural communities, agribusiness firms and local authorities are likely to figure centrally in both sets of

activities. Recent reform efforts have likely increased the room to maneuver in terms of non-ELC agribusiness presence in rural communities; contract farming is often promoted as an especially pro-poor ‘market linkage’ activity. Yet in addition to the direct land losses to ELCs, indirect mechanisms such as indebtedness have emerged as a dangerous land issue in recent years (Kemp 2012; Wong 2014; Woods 2016). Given women’s frequent involvement in both household economic affairs and agricultural work, gender-specific programming might profitably target this nexus of land issues, local economic development and local governance. Additionally, the role of local authorities – communities’ first line of appeal, as discussed in Section 4.1 above – could be engaged, not only on land issues, but also as regulators of fair business interactions more generally (Vongvisouk and Dwyer 2016).

- SDC’s work on ***Empowering Women Migrant Workers*** is also likely to relate to land issues – in a few ways. Research on migration in Southeast Asia is increasingly showing the links between land governance and development, and labor-related migration. This happens, perhaps predictably, on the ‘drivers’ side, as land loss (often due to enclosures from ELCs, as in Sections 3.1 and 4.2 above) pushes households and communities to rely increasingly on wage work. But linkages are also built as remittances get channeled back into agrarian livelihoods ‘back home’ – as recent work has shown (Peluso 2016), this can happen even when communities are nominally landless, since investment can be channeled into assets such as cattle. As the scope of labor migration support expands beyond basic protections, linkages to land may become an area for expansion.
- SDC’s ongoing support for the ***Cambodian Parliament*** could have multiple linkages to land governance. The limits of both the 2001 Land Law and the Cambodian courts have emerged in earlier sections of this study – the first in Section 2.2, the second in Section 4.1. As a key guardian of the rule of law, the Parliament may be in a position to help oversee a transition to a conflict resolution process that does not rely on extra-judicial authority; this would presumably need to go along with continued efforts to strengthen the court system, but given the centrality of land issues in charges of lawlessness, land governance is one area where rule-of-law improvements would have significant political benefits.

Push to amend the 2001 Land Law. In addition to allowing citizens access to legal institutions, a key part of developing the rule of law is having laws that can be practically enforced. The issuing of Directive 01 was in essence an admission that the possession rights enshrined in the 2001 Land Law are out of date and politically unworkable. Yet the legality of the land titling conducted under the Directive’s auspices was often unclear (Grimsditch and Schoenberger 2015); as one of our informants put it, the 2012-2014 titling campaign conducted by the ‘student volunteers’ was ‘the real break’ with earlier efforts to follow land-related laws and regulations. Amending the 2001 Land Law could help address a number of the issues identified above by:

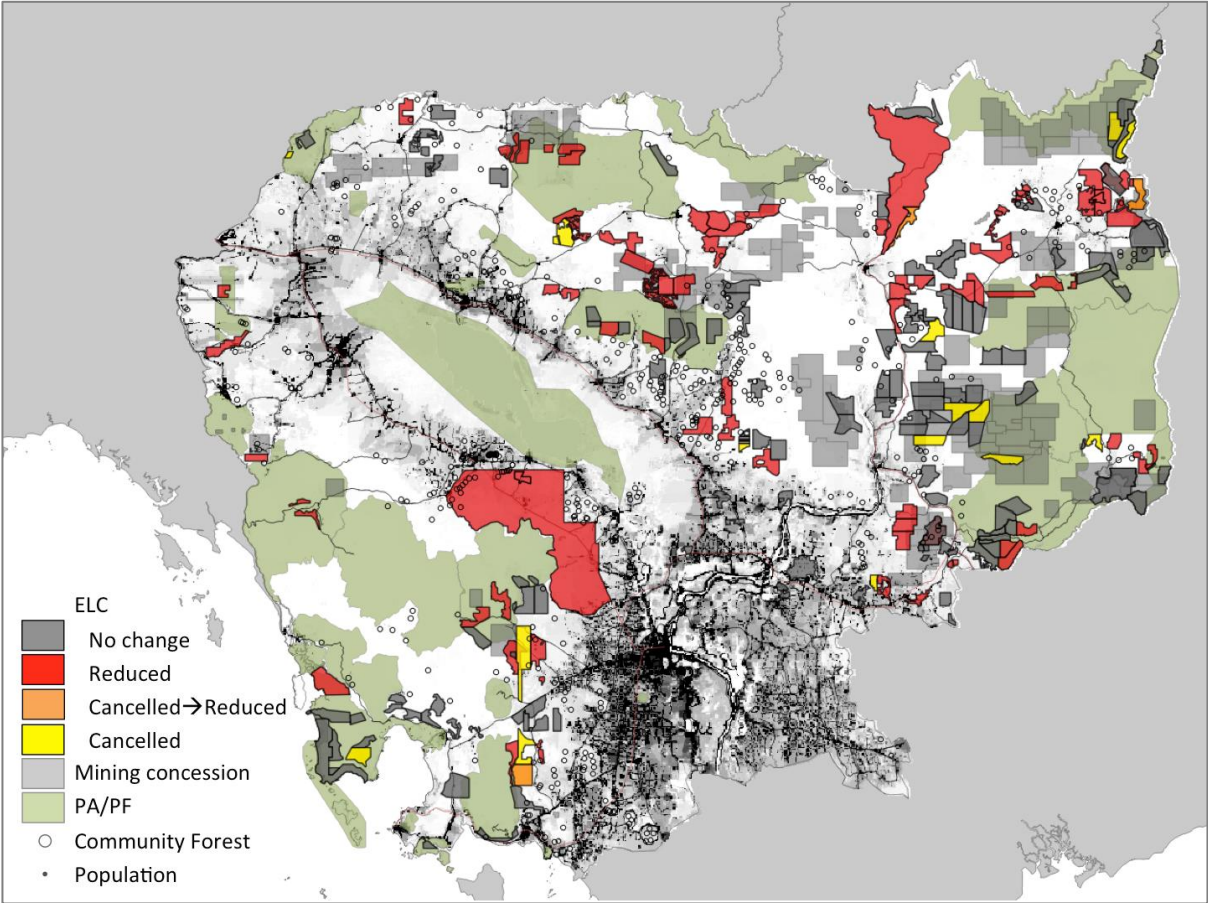
- ***Expanding possession rights – and possibly redefining them entirely:*** Rather than having the cutoff for possession be mid-2001, as under the current law, the possession cutoff date could be moved forward in order to reflect the legacy of exclusion from title that has led many rural land users to acquire new possessions without the protection of the law. Alternatively, an amended land law could eliminate the ‘line in the soil’ approach entirely and expand adverse possession⁶ to state-private land to make it more usable by the rural poor. The recent ELC review has shown the government’s desire to impose a ‘use it or lose it’ policy on concessionaires; an adverse possession doctrine that includes state-private lands could help enforce this approach.
- ***Expanding access to communal land title:*** As Section 3.1 illustrates, and as others have argued, the indigeneity requirement for communal land titles – especially when interpreted narrowly, as it currently is – needlessly excludes many rural communities

⁶ Although rarely discussed, Cambodia’s civil code recognizes adverse possession, but not on state land (JICA n.d.: 65).

(Baird 2013; Vize and Hornung 2013). The interpretation (common in some sectors) that communities must choose *either* communal *or* individual titles is also needlessly exclusive. Even if land titling may not be the best defense against land loss to external actors, it may be desired as part of communities' process of internal self-governance, given that it is one of the few mechanisms for enforcing a ban on land sales to outsiders – something that many communities debate, and some communities ultimately want.

- ***Decommodifying land more generally:*** Despite the correlation between ELCs and a raging (and often speculation-fuelled) land market in contemporary Cambodia, state landownership can be a powerful tool for pulling land *out* of the market. This is often used in urban contexts in order to control housing costs, but Cambodia's commitments to social land concessions and communal land titles show that the principle is already established. Given the adverse impacts of land speculation and rapid land turnover in rural Cambodia, the protective uses of state land could be expanded significantly.

Annexe: Map of ELC reductions



Source: authors' own. Data source: ODC.

As noted in Section 4.3, area reductions in specific ELCs undertaken during the recent ELC review process have not been provided in publicly released maps. This map shows ELCs colored by category of available information, based on data available on ODC: <https://cambodia.opendevlopmentmekong.net/profiles/economic-land-concessions/> (accessed April 20, 2016). This data has numerous caveats; please contact the authors or ODC for details.

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