

Justice for the Poor?

**An Exploratory Study of Collective Grievances over
Land and Local Governance in Cambodia**



**Center for Advanced Study
World Bank Phnom Penh
October 2006**

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List of Abbreviations

ADB	Asian Development Bank
ADR	Alternative Dispute Resolution
BfD	Buddhism for Development
CAS	Center for Advanced Study
CC	Commune Council
CCSP	Commune Council Support Project
CDD	Community Driven Development
CDP	Cambodia Defender's Project
CLEC	Community Legal Education Center
CMAC	Cambodian Mines Action Center
COPCEL	Conflict Prevention in the Cambodian Elections Process
CPIA	Country Policy and Institutional Assessment
CPP	Cambodian People's Party
D&D	Decentralization & Deconcentration
FUNCIPEC	Royalist Party
J4P	Justice for the Poor
NGO	Non-Governmental Organization
NRM	Natural Resources Management
PLUP	Participatory Land Use Planning
RCAF	Royal Cambodian Armed Forces
RGC	Royal Government of Cambodia
SRP	Sam Rainsy Party
TAF	The Asia Foundation
UNDP	United Nations Development Program
UNTAC	United Nations Transitional Authority in Cambodia
VDC	Village Development Committee
WB	World Bank

List of Key Khmer Vocabulary

<i>achar</i>	Elder in charge of assisting monks and organizing religious ceremonies at the <i>wat</i>
<i>chah tum</i>	Elder
<i>châmkar</i>	(Non-paddy) farm
<i>dey bâmrong</i>	Reserve land
<i>dey sâmpatean</i>	Land for concessions
<i>krom</i>	Group
<i>krom samaki</i>	Solidarity group, a communist era production and administration unit
<i>khsae</i>	Network linkages between people
<i>luk tàm knea</i>	Selling following others
<i>mé bahbaor</i>	Rebel, riot leader
<i>mé krom</i>	Group leader
<i>mé khum</i>	Commune chief
<i>mé khyol</i>	Informal (temporary) leader
<i>mé phum</i>	Village chief
<i>prâkas</i>	Regulation issued by a ministry
<i>prittiechaar</i>	Wise, respected elder
<i>srè</i>	Paddy rice field
<i>srè kraom</i>	Rice field in lower located area
<i>srè leou</i>	Rice field in higher located area
<i>srouv laeng teuk</i>	Deepwater or floating rice cultivation
<i>teuk moat pray</i>	The gift of the gab (literally, salted saliva)
<i>wat</i>	Pagoda

1. Introduction

Cambodia's justice system has proven easy to criticize but hard to reform.

Improving the performance of the sector has been a priority for government and donors since the promulgation of the current Constitution in 1993. This commitment is reflected in the Royal Government of Cambodia (RGC)'s Rectangular Strategy for Growth, Employment, Equity and Efficiency in Cambodia (2004), which states that the development of the rule of law is a crucial element of the RGC's efforts to promote good governance. Similarly, the national Legal and Judicial Reform Strategy, adopted in June 2003, stresses the importance of the legal and judicial sector in upholding the rule of law by 'ensuring effective access to justice for all' (p.6).

In pursuing reform, the RGC and donors have often focused on establishing 'model institutions' or drafting laws which measure up to 'international standards'. Such an approach is reflected in many RGC documents, such as the Cambodia Consultative Group Joint Monitoring Indicators (2002-6), which prioritize such measures as the restructuring of the Supreme Council of the Magistracy (2002) and the passage of eight key laws (2004-6) as indicators of progress in the field of legal and judicial reform. Although these are no doubt important goals which the RGC should continue to pursue, there is an increasing body of literature that identifies limitations in the ability of technical reforms and capacity-building initiatives to achieve pro-poor governance.¹ Without denying that justice systems are crucial to encouraging fairness in the 'political, economic and socio-cultural domains' (World Bank, 2005: 13), this school of thought warns that newly created or reformed institutions of justice in the liberal mold are prone to failure unless supported by the transformation of the power relations that preceded (and to a great extent precipitated) their development in the West. Institutional reform conducted without engaging in issues of power may facilitate reform in a formal sense, but will risk building institutions that find themselves sidelined or undermined by endemic corruption and elite capture (Pritchett and Woolcock, 2004).

A review of the literature on legal and judicial reform in Cambodia reveals a limited but informative body of empirical research. Survey research conducted in 2003 (CAS) showed that Cambodians perceived only a slight improvement in the performance of the courts over the period of 1998 through to 2003. More strikingly, the same survey indicated that, although taking into account improvements, Cambodians retained little or no faith in the courts as institutions of justice. Similarly, respondents identified judges and prosecutors as the public officials whom they were least likely to trust. These findings support other research and expert opinions, which stress the continued weaknesses of the Cambodian judicial system, including endemic corruption, lengthy delays before hearings, difficulties with the enforcement of judgments and a shortage of legal aid, all of which present major barriers to justice for the average Cambodian.² Identifying a range of constraints to reform, including the legacy of an unreconstituted communist judiciary, the continued strength of the executive vis-à-vis the judiciary, and the distance between the average Cambodian and

¹ See, for example, Upham (2002); on the difficulties in transplanting systems of government more generally, see Pritchett and Woolcock (2004).

² See, for example, Nissen (2005); Tollefson (2000); Kato et al (2000); and NGO Forum (2004) Chapter on the Rule of Law. Cambodia's Country Policy and Institutional Assessment (CPIA) scores and other measures of governance indicate little or no progress in relation to transparency, accountability or the rule of law (Kaufmann et al, 2005).

the formal institutions of the law, the literature denotes a state with little room for institutions of justice that are functionally independent or responsive to the needs of the poor.³

Cambodian sociologist and development practitioner Meas Nee, with Joan Healy, argues (2003) that the quest for justice must commence with the consideration of existing relations at the local level. Such views are in line with international thinking, which stresses the importance of building justice sector reform initiatives on the basis of a detailed understanding of prevalent legal cultures (Carothers, 2004).

Drawing on these insights, this work takes social tensions and the localities in which they arise as the starting point for its analysis. Using a comparative case study methodology, it attempts to shed light on the relationships between power and law which emerge around issues of justice in Cambodia.

This paper builds on a number of previous anthropological studies dealing with issues of dispute resolution in Cambodian villages. Drawing together much of this work in a review of the literature on conflict management in the Cambodian context, Hughes (2001) describes patterns of rural life and dispute resolution, undergoing a process of major social and economic transformation. Both pre and postwar studies (e.g. Collins, 1997; Ebihara, 1971) describe a sphere of local influence (at the commune and village level) that is relatively autonomous, or at least isolated from outside influences. Within this sphere, commune and village chiefs along with local elders and religious authorities are portrayed as the main agents of dispute resolution.⁴ Whereas formal grievance procedures allowing villagers to access higher levels of government existed in various forms in both pre and postwar eras, Ebihara notes (p.366) that 'the formal political structure does little to stimulate extra-village contacts'. Although formal sanctions do not generally appear to have been applied at the local level, Collins describes systems where sufficient levels of social control could be achieved through the application of social pressure and the threat of referral to the formal system in case of continued breach. In these circumstances, Luco (2002), Ebihara and Collins concur that most conflicts could be handled locally and that appeals to the district level of government and above occurred only 'exceptionally' (Hughes, 2001: 7).

In consideration of modernization and the increasing penetration of outside forces, particularly market relations, however, Hughes argues that the strength of traditional systems of social control, and thus the role of local leaders, will be weakened. While acknowledging that this process may lead to a decrease in equity, Hughes questions the assumptions, attributed to Collins (1997), that 'all villagers are equally fearful of the outside world' or that the 'villager is piteously weak, and the weak always loses to the strong'. Such statements, she suggests, neglect the possibility that 'external interventions are [not] actively brought into intra-village conflict or power structures through conscious attempts by villagers to manipulate them to their own advantage ...' (p.19).

The actual success of such strategies is open to debate. Opinions as to the associative capabilities of Cambodian villagers are mixed. There are two main schools of thought. On the one hand, it has been argued that social relations in rural Cambodia are fundamentally

³ Fernando (1998); UNDP (2005a).

⁴ While not actively involved in dispute resolution, Collins (1997) and Luco (2002) suggest that local religious figures, including Buddhist monks and laypeople, play an important indirect role in village-level conflict management in that they may attempt to 'use Buddhist teachings to ease the tension' or 'help to reconcile people' (Luco, 2002: 105).

atomized, whether because of the brutality of the Khmer Rouge regime, the ensuing civil war or the underlying characteristics of traditional patronage relationships. On the other hand, recent years have also produced a body of evidence that rural Cambodia is experiencing a renewal of associational activity suggestive of a stronger capacity for collective action.⁵ In any case, it is clear that these issues require further research; it is hoped that this study will represent a useful contribution in this respect.

A final context for our research lies in the literature on markets and their relationship to society. Writing in 1944, Hungarian-American economist, Karl Polanyi argued that an unregulated market “could not exist for any length of time without annihilating the human and natural substance of its society”.⁶ That society had not been annihilated as part of the industrial revolution was, in Polanyi’s view, due to the fact that “markets and societies always existed in a lurching relationship and struggle which progressed unevenly as, in a two stage double movement, markets dis-embedded themselves from social constraint, and were then re-embedded and thereby secured and sustained” by movements of “enlightened reaction” (Craig & Porter, 2006, p. 3). Though this theory was developed to describe transformations in Europe, its relevance to the development context is immediately apparent. If the past 15 years of Cambodian history is characterized as a period when markets have broken out of and disrupted the social norms of previous eras, the question becomes, in Polanyi’s terms, whether and how, a double movement can be orchestrated with a view to “re-embedding” markets the social, governmental and regulatory contexts which, while constraining them, also lead to their long term viability.

In trying to generate a more nuanced understanding of the ways in which this process might be supported, the authors of this report have taken collective grievances as their subject matter. This choice is informed by the possibility that collective action will offer an opportunity for the otherwise ‘piteously weak’ to extract greater responsiveness and accountability from the state than might otherwise be the case (Santos and Rodríguez, 2005).

Within the pool of all possible collective grievances, we have focused on those related to land and natural resources issues, or involving representatives of local government as a party. This choice was guided by recent research findings that land and natural resources disputes are among the country’s most serious social problems, and that it is often not possible to resolve such conflicts using local or traditional dispute resolution methods (UNDP, 2005a). This focus also reflects an assumption that an examination of issues of livelihoods and governance will throw light on the question of power and how it is exercised (or resisted), which lies at the heart of our research interests.

1.1 Objectives

As the first in a series of studies planned as part of the J4P program, this research had the following goals:

1. **Plausibility testing:** The research was designed to contribute to the debate on two central characterizations of village life in Cambodia, one regarding the absence of strong horizontal/associational linkages among Cambodian villagers and the second regarding

⁵ Annex F contains a more detailed discussion of issues surrounding social relations and local-level power structures in Cambodia.

⁶ Polanyi 1944, p.3, as cited in Craig & Porter 2006.

the inability of the poor to pursue grievances effectively against the rich and/or powerful. Without questioning the general assumption that life in Cambodian villages is dominated by hierarchical power structures, and that these limit the ability of the poor to extract responsiveness from the state, the J4P research set out to generate more detailed insights into the ways in which existing institutions and rule systems respond in the face of social tensions unleashed by processes of development. In undertaking this task, it was informed by two central hypotheses. The research was designed to serve as a plausibility test for these:

- (i) Certain types of conflict act as a trigger for collective action; and
- (ii) Such collective action can be harnessed to increase the responsiveness of the state to the needs of the poor, allowing them to achieve improved outcomes in disputes involving power differentials.

2. **Theory building:** Assuming that the reasoning on the utility of collective action was plausible, the research also aimed to identify new variables and causal mechanisms that could allow the development of more refined and predictive hypotheses on the relationship among power, collective action and dispute resolution in rural Cambodia.
3. **Research training and methodology testing:** Taking a group of researchers with limited experience in the design and conduct of qualitative field research, this study was designed as a vehicle to build the capacity of a group of local researchers. To this end, a senior researcher was engaged to guide the group through the research process, from the development of a methodology to the analysis of the data collected and the write-up of this report.

The following research questions were designed in response to the above goals:

- Who comes together around what sort of social tensions (and why)?
- When do these problems transform into disputes/conflicts (and why)?
- What paths do the disputes follow in their resolution (and why)?
- What are the outcomes of these processes (and what factors influence these outcomes)?
- What characteristics of disputants, disputes and dispute resolution mechanisms enable disputants to overcome differences in power?
- How can particular development interventions influence capacity and the trajectories of disputes?

1.2 Methodology

This report is based on a structured comparison of seven collective disputes over land and local governance in two provinces in Cambodia. The findings are based on semi-structured interviews with 91 informants, including representatives of provincial and district-level offices, commune councilors, NGO workers, parties in the disputes, religious authorities, and villagers. Interviews, representing the result of some 150-person days in the field, were conducted between September and December 2005. .

In addition to specific case data, for each of the conflict areas the team gathered background data, especially related to village/commune demographics, local systems of dispute resolution and practices with regard to land administration. As land ownership in Cambodia was subject to major upheavals in the 1970s and 1980s, with complete

nationalization followed by incremental and often informal re-privatization, this background data was essential for understanding present conflicts.

Which cases and why?

The research team undertook a number of steps in order to locate cases that fitted the thematic criteria of the study, namely, *collective disputes related to land and natural resources issues or those involving representatives of local government as a party*. For practical and ethical reasons, however, further criterion for case selection were added, namely that *cases not be so 'hot' that the involvement of the research team could risk inflaming the dispute with negative results for the research team or the parties to the dispute*.

This approach to sampling drew the focus of the research away from the country's largest and most intractable land and natural resource conflicts. Without denying the significance of such major conflicts, some of which have led to serious violence and human rights abuses [see Box 4], it was felt that a focus on meso-level conflicts was justified for a number of substantive reasons (in addition to the practical/ethical consideration expressed above).

Some grounds for our consideration include the following:

- (1) Local and international human rights and media organizations have focused on and documented major land disputes.⁷
- (2) Meso-level disputes would afford a greater insight into the changing dynamics of power than either micro-level conflict between ordinary citizens or major disputes where differences in power were likely to be at their most extreme.
- (3) Lower level disputes are more widespread and hence more typical of the experience of a broad range of Cambodians, than presented solely through the investigation of major disputes.

Applying the criteria set out in the previous paragraph, possible cases were initially sourced through contacts with field experience in relation to land, natural resources and local governance issues. These included:

- The Ministry of Interior (Department of Local Administration)
- NGOs working with commune councils on dispute resolution (CLEC and BfD)
- An NGO working on issues of local governance (CCSP)

From this information, a national map of possible sites of conflicts was made. Given the training component of the research, an area was chosen that appeared to have a high concentration of relevant cases. Kompong Thom Province, in central Cambodia, was also considered to be an appropriate province for this initial research because it offered a range of the different livelihood profiles that characterize rural Cambodia (e.g. lowland rice farming, fishing, forest exploitation and market trading). Once in Kompong Thom, the team conducted a further conflict mapping exercise. Preliminary visits to provincial level government offices and NGOs provided a wealth of information on possible cases. These disputes were identified by commune and villages and added to the map created in Phnom Penh.

⁷ For example, the following provide illuminating analyses of major land disputes from a human rights perspective: (CHRAC, 2005); (UNCOHCHR, 2004); (NGO Forum 2006); (NGO Forum 2005).

As a final stage in the case selection process, the team visited communes identified in the provincial-level mapping exercise and conducted an initial interview with one or more commune council representatives (usually the commune chief). In this fashion, the research team developed profiles of cases in five districts (see Annex C). From this pool, five cases were then selected for detailed study using the criteria outlined above.

An additional two cases were studied from a commune in Sa'ang District, Kandal Province. This commune on the outskirts of Phnom Penh was selected because it had been piloting a local dispute resolution project in cooperation with a local NGO. Initially, the commune was chosen for field testing the methodology developed by the research team. However, as the cases identified there seemed illuminating, it was decided to include the Sa'ang cases in the analysis.

The seven cases discussed in detail in this report can be seen below in Table 1.

Table 1: Land dispute cases studied

Province	District	Case	Issue	Outcome
Kompong Thom	Prasat Sambo	2001	Appropriation of land by district-level government officials for own use (2001)	Villagers gave up the claim and land was appropriated
		2005	Appropriation of land by district-level of government at request of local high school (2005)	Decision regarding land delayed after villagers protested and submitted a complaint to provincial governor
	Stoung	Village A	Appropriation of land for private dry season irrigation and rice farming project	Decision to build reservoir delayed after intervention from provincial governor
		Village B	Appropriation of land for private dry season irrigation and rice farming project	Decision to build reservoir delayed after intervention from provincial governor
		Village C	Appropriation of land for private dry season irrigation and rice farming project	Land appropriated and water reservoir completed without protest
Kandal	Sa'ang	Road	Access to right of way over private land as part of road widening project initiated by commune council	Owner of land subject to right of way agreed to allow access following intervention of commune chief
		Fish pond	Objection to construction of private fish pond in a public lake	Pending: commune council initially decided that pond was on public land but reneged on intervention of member of PM's bodyguard unit

In selecting these cases, the principle criterion was the potential to enhance understanding of the way in which different sorts of disputes are resolved in different circumstances. In taking this approach, we draw on a similar study from Indonesia. The study stated its objective was to attempt to 'reconstruct in rich detail the social reality faced by the villagers and to understand the actors' perspectives on choices they faced, guiding motivations of the actors, and interventions which would have enabled them to resolve their problems better' (World Bank, 2004). Efforts were made to compare, contrast, and crosscheck findings and analysis with other local and international research in the area. While no claims are made as to the representative nature of the case studies, we believe that the patterns and

consistencies arising make it possible to analytically generalize the results, in the sense that they shed light on the dynamics of social mobilization, government decision making and dispute resolution in the context of a system of governance such as currently exists in Cambodia. They indicate the types of factors and mechanisms enhancing or undermining these processes, and thus the types of interventions that may facilitate the emergence of more equitable decision making and dispute resolution processes.

1.3 A note on terminology

As in English, the Khmer terms used in dealing with conflict situations are similar, indistinct and easily interchangeable, making it difficult to define boundaries of meaning clearly. When people in Cambodia come into conflict one usually says *mean roeung* 'there are troubles', *mean panh'ha* 'there is a problem' or *mean tumnoah* 'there is a conflict'. Conflict management follows the customary practice of *sâmroh sâmruol* (*sâmroh* 'to cause to be together or to be friendly to each other', *sâmruol* 'to make something easy'. This is derived from the verb *sroh srul* – a compound of *sroh* 'in accord, in harmony' and *srul* 'easy, comfortable, healthy'). Thus, the most commonly used terms for dispute resolution refers to the finding of harmony. The word *dohsray* is also used to describe the process of resolving a conflict. It means to untie, to take off, or to solve something such as a puzzle (*doh* 'to take off, to remove, to solve', *sray* 'to untie').

Considerable efforts in building a culture of peace and addressing the changes brought by the transition from war to peace over the past 15 years have introduced alternative concepts of conflict management and thus a new vocabulary from outside. Having these new concepts and vocabulary understood in the local context presents a challenge for Cambodian peace building practitioners. In Luco (2002: 7), *sâmroh sâmruol* has been translated as 'conciliation' or 'reconciliation'. Ok and Wharton (2004: 168) suggest translating it as 'mediation'. *Tumnoah* is seen as 'conflict', although *viveat* or *chomluh* is also translated as conflict whereas *tumnoah* and *chomluh* may also be used to mean 'dispute' (ibid: 157 and 53). *Athi'kâ* is used referred to disputes too but has been used only in pagodas in recent decades. In the past, the word *athi'kâ* (derived from Pali) was used in the context of the court. *Athi'karanak mondul* was the synonym for courtroom. *Chomluh* ('quarrel, dispute, conflict') is derived from the verb *chhluh* meaning 'to quarrel, to argue, to fight'. *Viveat*, derived from Pali/Sanskrit and only appearing as noun, means a situation in which people have a dispute (e.g. *viveateabân* is somebody who is having a dispute) or one where people are in conflict with each other (*kaet viveat noeung knea*).

This variety of interchangeable meanings makes it somewhat difficult to be exact and consistent with the terminology used in this report. In general, however, the word **conflict** as used in this study relates to a situation in which the interests of one or several people or group(s) seem to be in opposition with the interests of one or several other people or group(s). A **dispute** is a particular incident of conflict. A broader conflict may be made up of a number of disputes and a **social tension** may manifest itself in a number of disputes. Disputes often act as triggers for bigger conflicts. While we agree to the definition of Ok and Wharton that a dispute is a disagreement in which opposing views are strongly held (2004: 53), we assume that a dispute also can take a violent form. According to our understanding, violence is not limited to conflict. The word **grievance** is used to open our analysis to the possibility that people, although they may feel wronged, may not respond to a perceived wrong in any concrete manner.

We have used these grievances as our main unit of analysis. As a result, our cases involve instances in which people make claims and take action in response to a perceived wrong as well as those in which they remain silent.

2. Analysis of Cases in Prasat Sambo, Stoung and Sa'ang Districts

2.1 Social tensions, disputes and resistance

There are a variety of reasons why a potential claim may never be made, particularly in Cambodia where, as Luco (2002: 97) points out, 'avoiding the problem' is often the socially appropriate response when one finds oneself in conflict with a more powerful person. This research sets out to investigate how people construct and respond to the experience of injustice. In order to do this, it is necessary to look beyond the study of 'cases' as registered with courts or other authorities (Felsteiner, 1981: 631). As such, the study of how social tensions arise, how injustice is perceived and how people react to it and whether or not they make complaints to formal institutions of justice forms an important part of our attempt to understand the dynamics of dispute resolution in Cambodian villages.

Development with inadequate regulation/consultation: major cause of social tension

In seeking collective disputes for study, the team did not limit itself to land disputes. Nevertheless, in both Kompong Thom and Kandal provinces, the disputes that presented themselves revolved mainly around issues of land. Unsurprisingly perhaps, people are willing to mobilize around issues in which they have a strong material interest. Land is one of these issues. Consequently, grievances relating to the management and allocation of land, natural resources and communal assets⁸ become a primary source of collective disputes in the rural areas studied.⁹

The life of the rice farmer mainly depends on his rice field. When he sells all his rice fields to the investor for constructing a water reservoir how can he earn a livelihood? That is the same as if the rice farmer awaits his death. If a rice farmer has no rice field, his life can rely on what?

(Villager, Stoung village C)

Land is essential for rice cultivation [which] is our livelihood and so our lives mainly depend on land. If we have no land, we have to work as a coolie for others. [...] Land is our life.

(Villager, Prasat Sambo District)

*The villagers here gave up their land - they are nothing but the ghosts of rice farmers (Khmer *nhek sraouch* – *khmaouch nhek srè*)*

(Villager, Stoung village C)

⁸ Non-NRM cases captured in the mapping exercise related to issues of governance and local infrastructure, including one involving the management of a rural road, one involving the construction of a pier (both in Kompong Thom) and one involving allegations of corruption in the commune administration.

⁹ Although reliable national statistics on land disputes are not available, the extent of the problem is significant. A survey conducted by Oxfam GB (2005) of land disputes that roughly fit the selection criteria of this research (disputes involving more than two families in conflict with a 'powerful person') found that there were at least 160,000 families nationwide involved in such disputes in 2005.

These quotes suggest a reliance on land which is material but also cultural. The Khmer word for rice farmer, *Neak Srae*, (literally rice paddy person) connotes both occupation, that of the rice farmer but also identity, that of the land owning rural farmer. The concept of *Neak Srae* is associated on the one hand with poverty and lack of refinement, but on the other with honesty, and authentic Khmer values. Though poor, the rural land owner is significantly superior in status to the landless agricultural laborer, and in some sense, even to possibly richer local business people. With this overlay of material and cultural significance, even disputes involving relatively small areas of land have the potential to become heated if they are not resolved quickly and fairly.

If anybody is still trying to take our land we will use knives, axes and machetes [to prevent that]. And if the story will not find an end it is likely that they [authorities] will hear even much more noise [from us] because younger generations of the village certainly cannot bear it as well, who knows?

(Informal leader, Stoung Village A)

It is notable that each of the collective disputes studied involved a conflict over land that one or the other party claimed was state land. In each of the Kompong Thom disputes, the trigger for people to come together as a group to claim was their resistance to being evicted by local authorities (commune or district) from land to which they felt they had rights. In one case (Stoung), this was lakeside rice farming land that had been allocated to families when farming was decollectivized in the 1980s, but that had subsequently been abandoned or at least not farmed intensively, owing to problems of flooding, drought and lack of security. In another area (Prasat Sambo), it was marginal forest land on the outskirts of a village, which had been incrementally converted into rice fields and family plantations, starting in the mid-1990s.

The cause of the conflict in both of these cases can be traced back to the lack of a commonly accepted basis, in terms of rules and processes, for land use and administration. Thus we observe local norms, which allow villagers to convert scrubby and forested areas into private agricultural holdings, clashing with the position taken by the government, which claims that this is state land that the government can grant/convert into concession areas for investment without the need for prior consultation.

Ownership of established farming or residential land appears to be governed by more widely shared and better embedded norms. People generally agree on the boundaries of these lands; if they do not, dispute resolution at the village or commune level is often effective. The management of state land, including forests, lakes and vacant land is much more difficult. Officials, particularly those at the provincial level and below, are able to conduct a variety of transactions regarding state land with little regard to issues of consultation, transparency or accountability. At the same time, villagers were observed to have expanded their agricultural activities into forests and lakes. The legal regime for the regulation of these issues is poorly understood and bears little resemblance to traditional or current practice with regard to land use and administration.¹⁰ Thus we see complex disputes arising over state land.

¹⁰ Attempts to establish a system of land registration during the colonial period encountered many of the same problems being seen today, as 'property system[s] were treated by the French as individual political issues rather than issues intertwined with other social and cultural factors' (Griffiths: 2004: 22).

At a more fundamental level, we observe that the dividing up of natural resources among national elites has been crucial for Cambodia's post-conflict transition. Zitelmann (2005: 19) describes this process as one whereby the logic of war has been supplanted by that of the market:

In a way Cambodia has used the opportunities given by the global stress on privatization to integrate former enemies into a structure of wealth and power sharing based in elite cohabitation. [...] Political power at the center derives from the art of binding competing factions together. Warring factions are turned into competing factions.

According to this logic, natural resources are the spoils of war and become the object of competition between cohabiting elites. As population increases and market relations become more prevalent, competition over scarce resources is intensified. Emerging in advance of accountable, rule-based or adequately participatory systems of governance, these economic pressures are a major cause of social tension.

The problem emerged because local authorities omitted to inform the citizens. [...] Village and commune authorities did not disseminate the information and so people did not understand. They only heard that the investment would cost thousands of dollars and concluded that the local authority had [secretly] sold the land to the investor in order to share the money with each other.

(High-ranking district official,
Stoung District)

Village, commune, district and provincial authorities allowed the investor to use land of villagers for 25 years without contacting the [affected] villagers first and to distribute information about the implementation of the development plan. That has made villagers very angry accusing the authorities of despising them.

(Commune councilor, Stoung
Village A)

While some government officials, particularly at the higher levels of government, were willing to accept these shortcomings, or at least to identify them in their subordinates, this was by no means always the case. The prevailing view among government officials was that these protests took place people were inciting the population.

There are some politicians backing, they have always incited and pushed [the story] so that it was difficult to resolve and the district finally failed to find a resolution.

(High-ranking district official, Stoung District)

Villagers were influenced by the opposition party and some human rights NGOs. When the story broke out they made people to run to the [disputed] land immediately.

(Commune chief, Stoung
District)

This attitude indicates a degree of unease among government officials in dealing with the emergence of a pluralistic society. Existing hierarchical structures serve the current elite well and they are understandably reluctant to relinquish control. The research team found no evidence of outsiders inciting protest in the cases studied. To the extent that they were

involved, NGOs and the opposition provided advice and supported villagers to make formal claims. They were not found to be involved in the initial stages of the disputes.

From blaming to claiming: factors that enable action in the face of injustice

While a person who feels that they have been wrongly dispossessed of land will almost by definition feel a sense of grievance, it is by no means certain that such a grievance will manifest itself in a formal claim or any other open act of resistance. The hierarchical social structures that characterize village life support a culture of acquiescence. Studies of village-level decision making note a tendency for people to avoid open conflict with those who are seen to be more powerful than they are, lest they be marked as troublemakers (Vijghen and Ly, 1996)

I am poor, if a problem arises with a wealthy person I prefer to drop the issue so the matter will not go too high, because I know I will lose, I try to avoid problems with the rich; they have power...

(Women, 50, Svay Rieng Province, quoted in Luco, 2002: 98)

We are told now that we have a lot of rights but we don't know where they end. [...] The rights of the chiefs will always be stronger than ours. They have the rights of the loudmouth. The people have the right to speak up but they're afraid of doing so. Still it's better than it used to be. Myself, I am not afraid of anything, but us Cambodians are taught that small people mustn't speak up. We are told that 'The mild mannered ones die, the bad people are lucky and enjoy a long life.' We are also told society cannot be changed; that bad people will always be bad and criminals will always be criminals.

(Man, 64, Krong Kep, quoted in Luco, 2002: 98)

A traditional reluctance to challenge those in positions of authority might be expected to generate what Scott (1985) describes as symbolic rather than public forms of resistance. It is noteworthy, then, that our case study research indicates willingness for villagers to claim openly, even against the powerful, in cases where they feel that they have been unjustly dispossessed of their land. Although a review of the literature reveals that the authorities were confronted with major land disputes during the UNTAC period (1992-3) and before (Ashley, 1999), our observations, explained in more detail below, suggest a growing willingness to claim arising from a mixture of (i) an increasing pressure on land and natural resources and (ii) the emergence of a more open society.

The cases selected for study allow structured comparisons of the processes whereby a sense of communal grievance may, or may not, manifest itself in an act of open resistance. In Prasat Sambo District, the fact that land in the same area was the subject of a dispute in the year 2000-1, and again in 2005, offers an opportunity to study changes in dispute resolution practice over time. In Stoung District, the study of how three neighboring villages either mobilized or acquiesced when local authorities allocated farm land for the construction of similar dry season irrigation schemes facilitates a similar type of comparison across villages.

Table 2: Dispute comparison

Case	Claim	Comparison
Prasat Sambo 2000-1	No	Over time
Prasat Sambo 2005	Yes	
Stoung Village A	Yes	Between villages
Stoung Village B	Yes	
Stoung Village C	No	

In both the Stoung and the Prasat Sambo cases, a number of factors seemed to influence people's willingness to take action when confronted by a potential loss of farming land. Primary among these were:

- (i) The extent of material dependence on the resource at risk;
- (ii) The presence of local advocates who were willing and able to organize;
- (iii) Access to information and advocacy support; and
- (iv) The existence of a village-level public sphere.

These points are treated in more detail below.

The extent of material dependence on the resource at risk

In all cases, it is noted that high levels of material dependence on the land that is at stake correlated with a willingness to take action to defend the land. Thus, in 2000-1, when land acquisitions were less regulated and nearby marginal forest was available for conversion into rice fields and market gardens, the villagers of Prasat Sambo, although aggrieved at losing land that they had worked for some years, opted to pursue other livelihood options by continuing to clear new agricultural land rather than undertaking the potentially risky activity of strongly opposing the attempt by local officials to acquire the land. Illustrating a similar point, one of the reasons offered as to why the residents of Stoung Village C did not resist a plan to subsume part of their village lands into a private irrigation scheme related to the fact that they were less reliant on rice farming, and consequently on the land in question. This owed largely to the availability of other livelihood options in trade and commerce in their more centrally located village.

The presence of local advocates willing and able to organize

In each of the cases in which villagers actively resisted the appropriation of their lands, the presence of strong grassroots leadership was evident. These local informal leaders, although in no case holding an official leadership position within their community, showed an ability to build issue-based coalitions across political and social divides and to sustain the cohesiveness of the group, as required to mount an effective claim. The absence of such leadership was notable in the cases of Prasat Sambo 2000-1 and Stoung Village C, in which no formal claims were made.

Box 1: The *mé khyol* as a leadership figure in village-level civil society

Sometimes interviewees used the term *mé khyol* to refer a person who leads dissent. The term is widely known and used in Cambodian society. Literally, *mé khyol* is translated as 'leader of the wind' (Collins, 1998: 27) or 'mother of the wind' (Margallo and Lath 2002: 85-7). Collins describes the word *mé khyol* as 'a category of individuals who were considered to have leadership skills or potential'. This type of individual can convincingly and informally take the lead or mobilize a group of people to do certain things. Collins also argues that '[t]he *mé khyol* is an expression of community solidarity at the grassroots that is connected to a unique concept of participation and feeling about legitimate authority' (1998: 29).

Collins (1998) identified a number of observed common characteristics of *mé khyol*. First, duties fulfilled by *mé khyol* tend to be temporary and connected to a specific project or task. The *mé khyol* would go back to being ordinary people once the task is complete. Secondly, *mé khyol* are observed to have 'salted spit' (*teuk moat pray*), which means that, because of their wisdom, intelligence and experience when they speak, people will listen to them attentively. Thirdly, *mé khyol* tend to get involved directly in the work they organize rather than just playing a supervisory role. Finally, the most significant characteristic of *mé khyol* is 'daring', which suggests that taking leadership for the purpose of a specific task which benefits the community implies 'risk'.

But this term has ambiguous connotations (Collins, 1998: 26). Working outside of the formal power structures the *mé khyol* can be a guide who takes people to cross the Thai border illegally for employment; an opposition political party activist who recruits members; or someone who visits villages recruiting women to work in the city. It is for these reasons that *mé khyol* is sometimes translated (erroneously, we suggest) as 'trafficker' (see, for example, Margallo and Lath, 2002).

It was notable that in the cases studied, the leaders of village level dissent did not hold public office or represent an existing formal group. They were *mé khyol* in Collins' sense. Carving out public space between the state and the market, these individuals represent an important expression of civil society in the Cambodian context. In this text, we generally refer to them as 'informal leaders'.

In Stoung Villages A and B, informal leaders with affiliations to each of the major political parties worked together, firstly to mobilize people against the investment scheme and then to represent them in the resolution process. In this conflict situation, we observe that a strong common economic interest appears to have trumped preexisting political allegiances, allowing the construction of a local constituency based on horizontal rather than vertical ties. We also note, however, that the informal leaders were people with only a loose affiliation to their respective political parties.

Key informal leaders were respected people within their villages. Reasons for this included their ability to read and write and their connections to outside sources of power such as government officials or NGOs. It was also noted that those taking a leadership role on behalf of the people tended to come from the village middle class. Without suggesting that these people were wealthy, they were observed to have simple but well constructed dwellings and significant land holdings. While in many instances key informal leaders were older, with connections to the administration of the local wat, prior involvement in public administration or NGO-initiated development activities also appeared to be paths to the sort of standing required in order to be an effective organizer.

The role of women in local organization is also of interest. In this regard, two trends were noted. On the one hand, many women interviewed professed to have little knowledge or involvement in public affairs. On the other, some of the most outspoken, effective and engaged local advocates were women (see Box 2 below).

Box 2: Portrait of an informal leader (1)

Mrs. Y is about 60 years old and a widow with four children; one son still lives with her. In the early 1970s, her husband left her to join the army of the United Front of Kampuchea, later known as the Khmer Rouge movement. He went to the front with other villagers, such as the current village vice-chief, and never returned. In the post Khmer Rouge era, Mrs. Y received 0.25 hectares of rice field in the higher area (*srè leou*) near the village and two plots of land of the same size (*srè kraom*) in the lower flooded area. Over the years, she and other family members cleared forest land nearby and now her family possesses around two hectares, including 1.75 hectares in the *srè kraom* area. Annually, the total rice production amounts to 100 thang (one thang is equivalent to 24 kilograms). Mrs. Y is one of the popular and influential elders in her village. She is characterized by her courage and bravery, and she is a good orator despite having received only a minimum of formal education.

Mrs. Y played an active role in organizing resistance against the commune council's decision to lease the *srè kraom* land for dry season rice cultivation without consulting the villagers. Having received the information through her contacts within the village first, she did not hesitate to confront the commune chief to complain about the project.

I am extremely regretful, like I'm going to die for giving one vote to you. Do you control people or ghosts? I want you to answer my questions clearly. Do you want to see all poor die and you will control investors?

(Mrs. Y reporting what she had told the commune chief)

Coming to the conclusion that discussions at the commune level were fruitless, Mrs. Y took the lead in gathering people to protest with a view to stopping construction work on the disputed land. Mrs. Y was also involved in collecting thumbprints from more than 100 villagers who opposed the dry season rice cultivation scheme. That, she reports, brought her under pressure from the village chief, who tried to frighten her into not making contact with NGOs lest 'the dog bite'. Feeling supported by a strong network of family and friends at the village level, Mrs. Y continued to push the case, despite feeling intimidated at times. When the provincial governor intervened on behalf of the villagers, she said that this showed the protest was worth the effort. She also said that in case the authorities again tried take the land in the future she would not hesitate to lead the villagers to complain to higher levels of the government.

While local informal leaders were seen to be effective in mobilizing villagers to resist a development initiative, their engagement was also observed to represent a successful strategy in preventing local dissent. In Stoung Village C, a former, communist era, sub-village leader (*mé krom*), widely respected by the villagers because of his administrative and organizing experience, was approached very early by the investor and persuaded, reportedly through financial incentives, to advocate for the investment plan among villagers. People were used to following his advice and when they heard that he had sold his land to the investor they followed, one by one (*luk tām knea*). One prominent villager expressed the opinion that if this former sub-village leader had opposed the project he would have been an effective organizer of village-wide resistance.

The former mé krom kept people back and did not lead the villagers for protest. If he had led [a protest] all villagers would have followed him. But because he had sold his land to the investor he became the one who gathered the land for the investor.

(Member of a pagoda committee in Stoung District)

Box 3: Portrait of an informal leader (2)

Mr. X, in his 40s, is a VDC (Village Development Committee) member with links to an international NGO which has been supporting community-driven development in his commune for the past 10 years. He has been living in his village in Prasat Sambo District since 1970. He is married with young children. In 1998, he was elected to be a VDC volunteer. His work has included collecting information and reporting about disadvantaged children in the village for a child sponsorship program. Villagers often seek Mr. X out for help when they have problems (e.g. human or animal health problems). Besides his work for the VDC, he is a farmer. He grows rice and cashew nuts and raises cattle and fish. He had owned two hectares of land in the 2000 land conflict area since 1979, and now has another three near the previous land conflict area.

In relation to the land conflict in July 2005, villagers turned to Mr. X to represent them and to help when the village chief refused to do so. Mr. X organized villagers to make a written complaint which they all thumb-printed. Villagers say they approached Mr. X to represent them because they had confidence in his ability and knew that he had links to NGOs who could help. Mr. X said that taking up a leadership role in the dispute involved personal risk, but he was willing to do it because the villagers were relying on him. In the course of the dispute Mr. X was told that a district official threatened him saying that he was the leader of villagers and that without him the villagers would not have confronted the authorities. At one stage, the situation in his village became so tense that Mr. X was advised to go into hiding. He was able to do this with the support of the international NGO and a number of local human rights NGOs. After six days he returned to his village. He says that he is now very careful with his daily activities, especially communication with outsiders or strangers.

Access to information and advocacy support

In addition to local leadership, a key indicator of people's ability and willingness to take action in response to a perceived injustice appears to be their access to external sources of advocacy support and information about what to do. These resources may be available at the local level or they may need to be sourced from outside, through NGOs or political parties.

Thus we see that, in the 2000-1 case of Prasat Sambo, villagers explained that they did not pursue a claim because they did not have any idea of how to make a claim or who they might fruitfully approach with their grievance. Intimidated by the power of district officials, even experienced elders in the village felt as though it would be hopeless to take steps to defend their fellow villagers' interests.

At that time villagers did not complain because there was no way. They did not know to whom they should complain when the village chief refused to help. People did not know that there were NGOs [except an international organization with a rural development program in the area], or where to find them.

(Informal leader talking about the Prasat Sambo 2000-1 case)

By way of contrast, when a similar situation arose in 2005, some locals already had contacts with human rights organizations which had started to provide training to people in the commune. Younger villagers had knowledge of their existence and of how to contact them for advice. With 2001 in mind, and facing the same dismissive behavior of local authorities in 2005, villagers were encouraged by the supportive advice of local NGOs on how to proceed to make a claim.

The way in which the district authority tried to resolve the dispute was inappropriate. NGOs, especially human rights organizations, have proper procedures and are diligent. They have left their phone number with us. Villagers

trust them more than local authorities because they experienced many violations by the district which has taken whatever [it] wanted to take without any affection for the villagers.

(Informal leader talking about the Prasat Sambo 2005 case)

One decisive factor that strengthened people's trust in local NGOs seems to stem from the fact that these organizations open offer alternative networks linkages (*khsae*) to the provincial authorities for making their concerns public. Villagers felt that it was essential to gain access to these higher-level decision makers in order to be able to makes claims against local authorities.

The importance of external agencies in supporting village-level claims was also found in one of the Stoung cases. Thus in Stoung Village A, the affected villagers contacted local human rights NGOs for help, as they did not feel that local authorities were taking their complaints seriously.

When the dispute occurred I felt not so afraid because I know human rights organizations that I can rely on and approach at every time.

(Informal leader, Stoung Village A)

On the other hand, in Stoung Village B, local informal leaders played a more active role in organizing a group of villagers to make a claim and did not require support from external actors like NGOs. Meanwhile, in the neighboring village (C), equally without external NGO support, such group formation did not occur. These cases seem to underline the importance of capable and confident informal leaders at village level, as it seems to have been the leadership of a well connected and respected former (Khmer Rouge era) public official in Village B that was a major factor in mobilizing the residents to claim.

Also relevant to issues of access to information and outside sources of support, a comparison of the Prasat Sambo 2000-1 and 2005 cases shows that significant improvements in road access and other infrastructure including media and telecommunications coverage reduced locals' sense of isolation and vulnerability over time. With greater connection to the outside world came a feeling of having to rely less exclusively on local authorities; this seems to have contributed to a sense that villagers could pursue claims against representatives of local government with greater vigor than before.¹¹

The existence of a village level public sphere

Finally, it is suggested that the degree of freedom that exists in the local public sphere is a key determinant of villagers' ability to take collective action in response to land issues. For example, Stoung Village C, where people did not resist the appropriation of their lands, appeared to be highly polarized along political lines. With key potential village-level leaders presumed to support the project because of their strong links with the CPP, and with others feeling marginalized from village life, there was little space to start building a broad

¹¹ See Luco (2002: 97): 'Problems and conflicts are dealt with very differently in remote, isolated areas and in areas close to cities and major roads. The old system – local authority has strong control over the population – prevails in remote areas. Poor road condition does not facilitate travel and limits city influence. As a rule people are poorly educated. Radio and TV are not as common as in the cities and surrounding areas. Opposition parties are particularly discreet. Close to the cities, people are wealthy, better educated, more open to the outside world, and have access to information. We have also noted the pressure from the local authority is not as strong.'

constituency for action. By way of comparison, the leadership of the groups that made successful claims in Stoung Villages A and B included affiliates of each of the major political parties (CPP, FUNCINPEC and SRP).

Collins (1997: 6) develops a concept of village-level civil society existing between the state and the *wat*. Our case studies suggest that the existence of this space should not be taken for granted. In Stoung Villages A and B, both of which congregated at one *wat*, this space appeared to be present. Laypeople associated with the administration of the *wat* were crucial to the organization of village-level resistance to the land appropriation. Thus, for example, a loud-speaker borrowed from an *achar* was used to raise awareness of the issue among villagers. Similarly, space was given at a village festival for a key informal leader from Village B to speak about the issue. By way of contrast, an SRP affiliate in Village C described the local *wat* as being 'especially for the main personalities of commune and district authorities'. The commune chief and district governor were noted often to be involved in activities of the *wat* in Village C but rarely in the *wat* where Villages A and B congregate.

The wat [located in Village C] is an old pagoda to which many people come to celebrate festivities. Most of them have political affiliation and so the wat can hardly escape political capture.

(Former *mé krom*, Stoung District)

In these circumstances, the potential for the tension between *wat* and state to create the space for the development of an independent public sphere is limited.

2.2 Ways of dealing with collective disputes

A comparison of the cases studied reveals certain commonalities in relation to how villagers deal with collective disputes. In short, it was observed that **villagers used a variety of tactics in pursuit of a single strategy, namely to get a powerful administrative decision maker to intervene on their behalf**. In the disputes studied it was not necessary to look for assistance above provincial level, but villagers indicated that they would seek out higher powers if needed. This is a highly pragmatic strategy and one that makes perfect sense in the context of a hierarchical society in which the administration, with its ties to the party structure of the CPP, continues to represent the most coherent national power structure.

I have heard that next year they will try again to construct the water reservoir. If [that is] really so, I will go to [PM] Mr Hun Sen directly and do not care with low-ranking people anymore. If province and district are not able to solve the problem I will go to Hun Sen. Even though I do not know him personally I will go to Phnom Penh and ask people there to take me to him.

(Informal leader, Stoung Village A)

The following sections examine the interactions between the parties to the disputes and the agencies which took charge of the dispute resolution process at various levels.

Initial steps: role of village and commune-level authorities

Initial responses to social tensions are often informal as people try to seek remedies through personal connections at the local level (Luco, 2002: 100). Typical of this process, in the Stoung villages, information about the plan to acquire land to build the irrigation scheme passed informally among influential villagers such as elders and party activists. Immediate concerns expressed by influential villagers to the local authorities, once again informally, seem to have been ignored. The village chief defended the commune council's decision and warned people not to protest too strongly with regard to the land as it had already been promised to the investor.

Go to the meetings and ask him [commune chief]. If you can get it [the land] back you will get it back, if not then not. But don't go too often to the human rights NGO for complaining. Then watch out! The dog will bite.

(Informal leader, Stoung District, quoting his village chief)

In a separate meeting, the commune chief himself also tried to persuade the villagers' representatives by making it clear to them that they would have no other choice than agreeing as the land had been irreversibly given to the investor.

What if I have given the land away and if I do not give the land to you? To whom do you want to complain? [...] This land has absolutely to go to the investor.

(Informal leader, Stoung District, quoting his commune chief)

Although local-level officials and respected community leaders are often sought out to resolve lower-level disputes (Kim Ninh and Henke, 2005), a pattern of not formally engaging with the commune or village levels of government as institutions of dispute resolution was identified in each of the Stoung and Prasat Sambo cases. Reasons given as to why their service as mediators were not sought included (i) that they were not sufficiently high ranking to resolve the disputes, and (ii) that local officials were either involved in the transactions or biased toward their superiors. As such, villagers concluded that it was not worth the time and effort of trying to get them to resolve the disputes.

If people want to have good result [in dispute resolution] they have to seek somebody who is powerful and competent to decide. They do not want to waste their efforts with numerous low-level officials who do not bring any success. People have to spend a lot of money [when claiming and seeking just resolution] and they want to spend it only once for somebody who is able to solve their problem effectively.

(Villager, Stoung Village C)

In Prasat Sambo, both the villagers and the commune chief held the view that, because a high-ranking district official was involved in the dispute, the commune council had no role to play as such a situation was beyond its jurisdiction – despite the fact that the subject of the dispute was land located in, and administered by, the commune.

A village chief in Prasat Sambo indicated an understanding of the villagers' situation but refused their request to take the lead in facilitating the dispute with the district. Instead, he recommended that the villagers go directly to the district authority. A distinction, however, needs to be made between this stance and that of local officials in the Stoung villages, by

whom some villagers felt intimidated or coerced into complying with the decision made by higher-level authorities to give up their land.

In describing the difficulties that commune and village-level officials had in engaging in these sorts of disputes, it is important to note that there were instances in which individual commune councilors played a quietly dissenting role. While councilors from the political opposition did not take the lead in speaking out against the unpopular development schemes, informal communications between SRP and FUNCINPEC councilors and their associates in the villages represented an important way in which information about the planned land appropriations in Stoung got out into the community.

Box 4: The risk of violence in land disputes

Recent cases that became violent (Poipet, Mondulkiri)

2005 saw a number of land disputes erupt into violence. In March 2005, five people were killed by the military in the border town of Poipet when an attempt to evict villagers from a contested piece of land turned violent. In another case, which came to a head in June 2005, ethnic Phnong staged a protest against the development of an agro-forestry project in Mondulkiri Province. The villagers attempted to stop the planting of pine trees in an area which they said infringed upon their traditional farmland, cemeteries and spirit forests. The provincial authority responded by sending police, who dispersed the Phnong using water hoses. As a result, three people were injured. Although episodes of violence around land disputes have been the exception rather than the norm, Prime Minister Hun Sen recently identified the risk that illegal land seizures could result in 'a farmers' revolution against the government' (The Cambodia Daily, Phnom Penh Post, 2005).

Risk of violence in Stoung and Prasat Sambo and how it was averted

The potential for violence existed in both the Stoung and Prasat Sambo cases included in this study. In both of these cases people went angrily to the disputed land, aiming to stop the construction work and to protect their fields. Some were carrying knives, axes and machetes. In Stoung, people threatened to destroy the construction equipment, whereas protesters in Prasat Sambo started to destroy signs that the district Commission had put on trees to mark the confiscated land. Although the situation was explosive in both of these cases, violent clashes between the disputing parties did not come about. There are several reasons for this. First, in the absence of trust in legal methods for dispute resolution, villagers carried their weapons symbolically in order to emphasize their willingness to resist the granting of the concessions and to show the resoluteness with which they would defend their interests against powerful influences. Secondly, where NGOs were involved, they advised the villagers at a very early stage not to use violence but to seek resolution of their dispute through peaceful means only. Thirdly, the situation provided sufficient prospects for the disputing parties to conduct negotiations or, alternately, to seek intervention from higher-level authorities. Finally, the villagers had confidence in their informal leaders who were in charge of negotiations. In these cases, the interventions of NGOs and informal leaders were crucial in providing the means for negotiations to proceed without outbreaks of violence.

By way of contrast, in the Sa'ang disputes we see active engagement of the commune council in the dispute resolution process. The reason for this appears to center around the fact that there were, at least in the first instance, no higher-level authority interventions. As a result, the commune felt empowered to deal with the issues. Also of note, in the Sa'ang cases we see a commune chief and a commune council that felt as though it was within their power to *decide* cases. Thus in the Sa'ang road case, the commune chief eventually ordered a local land holder to allow earthmoving equipment to pass through a piece of disputed land in order to facilitate a road widening project. In a later dispute, the Sa'ang fish pond case, the commune council convened a meeting at which it was decided that a fish pond that had recently been excavated as a private initiative in fact belonged to the

community because it had been dug on communal land. Although this initial stance was decidedly assertive, when a more powerful person intervened, in this case a member of the Prime Minister's body guard, the council seemed to renege on its earlier decision.

In a study of commune-level resolution procedures, Diprose *et al.* (2005:25) find that 'commune councils will often act as representatives, leaders, or mobilizers of the villagers involved [in major land conflicts]'. Our case studies showed no indication of commune councils supporting villagers to pursue grievances with higher levels of government. Rather, they often describe lower-level authorities struggling to reconcile their emerging institutional roles with a strong sense of being subordinate to the district and higher levels of the administration. While commune and village-level authorities were often the state institutions to which people turned first, in a hierarchical system, their ability to resolve disputes was greatly reduced if 'powerful people' were involved in the case.¹² Where this occurred, the commune and village-level authorities were perceived as biased, untrustworthy or simply lacking the necessary authority to resolve the cases.

People did not seek help from the commune to resolve the 2005 dispute because people thought that the land was already taken by district officials. There was no entry point to approach the commune for help. Commune and district authorities are in the same bundle anyway.

(Elder in Prasat Sambo District)

In such circumstances, villagers face the option of either abandoning the case or seeking higher level intervention.

The role of the Cadastral Commission

Similar to disputes over unregistered land, all of the cases selected for detailed consideration in our research fall within the nominal jurisdiction of the Cadastral Commission.¹³ Despite this fact, the Cadastral Commission did not become involved in any of these matters. This is not to say that the Cadastral Commissions do not receive cases. Statistics from the Ministry of Land Management, Urban Planning and Construction confirm that the Cadastral Commission does receive these cases. (see Box 5 below).

¹² This finding is supported by a recent UNDP study (2005a: 11) which concludes that 'it is difficult for the councils to resolve disputes where one party is more powerful than the other'; see also Zitelmann (2005: 26), who finds that 'local forms of ADR cannot really deal with bigger land conflicts that involve conflict agencies that are not within the system of social control of the village or the commune.'

¹³ See Annex D for a detailed discussion of the jurisdiction of the Cadastral Commission and the legal framework for the resolution of these disputes more generally.

Box 5: The Cadastral Commission

The Cadastral Commission, established under the Land Law (2001), is responsible for resolving disputes over possession of unregistered land. The legal framework for the operation of the Commission was further defined with the adoption of a related sub-decree and Prâkas in 2002. The Commission is empowered to promote conciliation between parties and to issue administrative decisions.

Headed by the Minister for Land Management, Urban Planning and Construction, the Commission is staffed by civil servants. It operates at three levels. The District and Provincial Commissions have conciliatory functions only, and facilitate parties to reach an agreement; the National Commission has additional arbitration powers. Unresolved disputes proceed upwards through this hierarchy so long as conciliation is unsuccessful.

The Commission is intended to provide a prompt, inexpensive and less adversarial means of settling land cases. It has nonetheless been criticized for lacking the necessary financial and human resources to resolve cases, lacking the power to decide cases, and engaging in nepotism and corruption. With a reported national case resolution average of 28% (through October 2005), its record shows opportunity for improvement. To date, few cases have been resolved at the national level. Studies suggest that, in particular, the Commissions struggle to resolve complex multi-party cases and those involving powerful interests.

Source: UNDP (2005a).

Key informants suggested a number of reasons why they bypassed the Cadastral Commissions and looked toward representatives of the district and provincial governors' offices to resolve their disputes. Villagers were either not aware of the Cadastral Commission or unclear about its function. Those who did express an opinion were skeptical as to its efficacy:

The district cadastral office has never shown any activity in cases of land disputes. When resolving disputes over land they were never present. It seems that the cadastral office has no function in land dispute resolution at all.

(Elder, Prasat Sambo District)

Related to the Cadastral Commissions we see two problems. First, when meeting them they always complain that they have no money to do anything. Thus, a number of cases we have submitted to them have never been processed and resolved. The other problem is that the work of the Cadastral Commission including this case [Prasat Sambo] affects powerful people, the territorial and district authority who are violators toward the citizens. [...] The provincial level has power over the district. When the province examines [the cases] and sees that these acts were a violation the province authority says only one word and the dispute can be finished.

(Lawyer, Kompong Thom)

Although officials at the commune level and above were aware of the function of the Cadastral Commissions, they made no attempt to refer the cases to the Commissions. Rather than following the legally mandated system for dispute resolution, cases gravitated to those who were perceived as the 'real decision makers'.

The territorial authority has to take responsibility toward the people and when people do wrong the authority should not be indifferent. [...] In some cases the local authority is limited and respective decisions have to be made in prior consultation with the higher level anyway.

(High-ranking provincial official, Kompong Thom)

When a problem emerges one would rather support through one's own network connections.

(High-ranking district official, Stoung District)

A representative of a District Cadastral Commission stressed the difficulty of his position, citing inadequate human and financial resources as major constraints. He stated that his District Commission could only deal with minor cases between individuals and that it had only resolved 'four or five' cases since its establishment in 2002. He suggested that the reason for this was that people 'do not often come to him' as they prefer to 'turn to the village and commune chiefs first'. He further explained that the Cadastral Commission had not played a role in the dispute we were studying as the district governor had already decided to give the land to the investor without involving the cadastral office. In saying this, he emphasized that the role of the Cadastral Commissions was limited in relation to larger cases, particularly those involving the state:

The resolution of disputes by the Commission does not require any formality. It is merely facilitating and teaching people about how to complain. [...] We have only an advisory function. [...] In many cases like reserve land (dey bâmrong) or concessions (dey sâmpatean) only the province governor can decide anyway.

(Member of a District Cadastral Commission)

The official in question expressed the view that the Cadastral Commissions were prevented by law from being involved in land dispute resolution when people as a group were disputing with individuals or when one disputing party had the rank of village chief or higher. This opinion would appear to be based on Article 18 of Prâkas 112/2002, which requires the District Cadastral Commissions to forward certain types of disputes, such as those involving state public land and those involving a 'high-ranking authority' to the Provincial Cadastral Commission. Nevertheless, the law still requires that such cases are first lodged with the District Cadastral Commission and it is noteworthy that this did not occur in any of the cases under study.

Upping the stakes: seeking higher-level intervention

Lacking confidence in the capacity of village or commune-level authorities to address their grievances, villagers in the Stoung and Prasat Sambo cases sought intervention from higher levels of government. In the first instance, this involved an approach to the district. However, the district was not successful in resolving any of these cases. In Prasat Sambo, a powerful district deputy governor was implicated in what villagers perceived as an attempted land grab and, as such, district-level engagement in the dispute resolution process was difficult.

In the Stoung cases, the villagers believed that the district governor had conspired (together with the village and commune chief) to sell their land to the investors. As such, they felt it would not be productive for them to submit their complaints to the district administration. Nevertheless, thumb-printed petitions were submitted through these channels as a way of

formally registering the complaints with the government. The common view among villagers in these cases was that, in order to get a just and binding decision, it would be necessary to involve high-level decision makers – the most effective of these being the province governor. It was widely believed that only this level of engagement would guarantee that all disputing parties accept the outcome.

We thought that the district authority would not respond to this complaint and that's why we have submitted [another] complaint to the provincial level.

(Informal leader, Stoung Village A)

In the Stoung cases, the provincial governor intervened, personally convening meetings with the villagers on two occasions and finally deciding that the development of the reservoirs in Villages A and B could be postponed and alternative sites located for the investors. It seems the provincial governor felt obliged to get involved in the resolution process as he felt the need to balance the interests of the villagers with those investing. Due to the investors desire to ensure that irrigation schemes would continue to be financed by the private sector, they represented an important constituency for the provincial government. Nevertheless, it seems that the villagers were able to mobilize sufficient political capital to make a compromise solution attractive to the provincial governor.

The provincial authority is committed to solve such kinds of dispute always in the interest of the population's wellbeing. We have to consider implications for both sides, especially when people lose the possibility for improving their livelihood. So in the case of Stoung we have tried to find a solution in respecting the interests of villagers while not harming the investor.

(High-ranking provincial official, Kompong Thom)

This method of dispute resolution reinforced the conviction that only well disposed persons in positions of authority have the power to make just decisions.

I received the land back because of the provincial governor. He is very just and has clarified things without having the attitude of wishing to win at all cost. I am really happy to see that I got the land back. He made a good and just decision.

(Informal leader, Stoung Village A)

In the Prasat Sambo 2005 case, the provincial governor played a less public role in the dispute resolution process. Unsatisfied with the prospects of resolving the dispute at the district level, the villagers turned to local NGOs and the opposition SRP for assistance. The representatives of two local NGOs responded with encouragement and advice and an SRP member of the National Assembly visited the village together with a journalist who interviewed a representative of the villagers for the radio. In the following days, the villagers submitted a written complaint to the provincial governor through the provincial branch of a local human rights organization.

Although the villagers' petition was forwarded to his office, the provincial governor did not hold a hearing on this matter. Rather, he referred the case back to district level with an instruction that the province had authorized the appropriation of only 10ha and not the

100ha that the district had measured.¹⁴ Thereafter, district representatives told villagers that the land was state property and that only the province could decide how to use it. Due to these processes, matters returned to the *status quo ante*, with villagers continuing to farm their lands as before and no further attempt being made to claim it on behalf of the state. This position contrasts with the status of the 2001 land, which continues to be treated as the private property of a district official. Although this matter has not reached a satisfactory final resolution, the ability of the villagers to engage in collective action does appear to have triggered increased state responsiveness to their needs.

Power and the resolution of collective disputes: networks, law and politics

The dispute resolution practices encountered in the field showed few characteristics of a modern bureaucratic state.¹⁵ In each of the cases studied, well-appointed individuals within the administration, rather than explicit rules or institutions, dominated the dispute resolution process. Although the individuals exercising power were public functionaries, the extent to which the scope of their authority was defined by their formal institutional role was limited. One example serves to illustrate this point (Box 6).

Box 6: The Sa'ang fish pond case: between personal and institutional power

Of the communes studied, this one, on the outskirts of Phnom Penh, presented itself as the most active regarding dispute resolution. With support from a local NGO, it established a dispute resolution committee and a sub-committee at the end of 2004 and the commune chief took an active role in dispute resolution. The fish pond case arose between a pair of villagers embarking upon a project to dig a large (1,000m²) fish pond on land they considered to be private property and a group of villagers who argued that the new fish pond encroached on a public lake. This claim came to the attention of the commune council in June 2005 when they received a petition complaining about the fish pond thumb-printed by 203 villagers. In response to the petition, the commune council investigated the case and convened a meeting of the parties and other relevant authorities to decide what to do about it. At this meeting, the council decided that the pond had been constructed on public land without permission and as such it should be available for public use. This decision was announced to those present and recorded in the minutes of the meeting.

While it is arguable whether a commune council in fact has the authority to make such a decision, within our small sample of cases this one best fits a rule-based institutional model. What happened next, however, indicates the weakness of this form of decision making in the Cambodian context. Following the decision of the commune council, the two men behind the pond-digging project brought an associate employed in the Prime Minister's body guard unit in Phnom Penh to meet with the commune chief. Details as to what transpired in that meeting were not revealed to the research team, but the outcome was that the commune chief agreed that the pond diggers could use the pond although it might be required for public use some time in the future. Although the commune did not make this final resolution public, at the time of writing the pond diggers were in possession of the pond and other villagers indicated that they would be too scared to use it.

¹⁴ The provincial governor confirmed this decision in a radio interview with the same journalist who came to Stoung before. Pressure was applied by the SRP, ensuring the radio program to be broadcast by loudspeaker in the village.

¹⁵ Following Weber, an 'ideal type' for bureaucracy may be characterized by 'an elaborate hierarchical division of labor directed by explicit rules impersonally applied, staffed by full-time, life-time, professionals, who do not in any sense own the "means of administration", or their jobs, or the sources of their funds, and live off a salary, not from income derived directly from the performance of their job' (Kilcullen: 1996). The senior government officials interviewed as part of this research, although existing within an 'elaborate hierarchical division of labor', resemble in no other way Weber's ideal of modern bureaucrats. They are often part-time officials on very small official salaries, deriving the major part of their income from other sources. Although their function is clearly exercised within a framework of rules or norms, these are far from 'explicit' or 'impersonally applied'.

The case in Box 6 illustrates the tension between institutional authority and other forms of power in dispute resolution. We have an example of an institutional decision, that of the commune council, with which one party was clearly unhappy. When faced with choices as to how to pursue the matter, however, a formal appeal process was not the favored option. Rather, it was considered expedient to bring in a powerful outsider with connections to the Prime Minister's office. This approach was fruitful despite the fact that the outsider had no legitimate institutional role in the case.

Although the law appeared to play only a peripheral role in the dispute resolution process, written complaints and thumb-printed petitions from the aggrieved villagers were in evidence in each of the cases studied. So was the tendency to seek intervention from persons occupying higher positions within the administration or persons with links to such political/administrative power. This degree of uniformity and formality in dispute resolution strategies suggests the existence of a set of norms governing land disputes, albeit one which does not rely primarily on the rules and institutions created by the Land Law (2001).

The situation on the ground is characterized by legal pluralism or multiple competing systems of norms. The tension between local practices of land management, expectations regarding the discretion which government officials at different levels have in dealing with land and the law was recognized by some representatives of government. Thus, in relation to Prasat Sambo District, where villagers had continued their previously accepted, or at least tolerated, expansionist agricultural practices outside of any regulatory framework, provincial-level officials acknowledged the difficulty of simply imposing a new set of rules on existing practices as the law would require.

Strict application of pure law is not possible as it would make people die thus we have to consider habits too ... but of course not bad habits.

(High-ranking provincial official Kompong Thom)

Arguments as to what constitutes lawful possession of land permeated the discussion. These arguments, though only loosely based on the law, appear to reflect an incremental legalization of the field of land administration, at least from the perspective of the government.

In the past this land was forest but people occupied this land by anarchy and without informing the authority. Now the authority is trying to find out who is using which part of the land and how much is already occupied by them. The village chiefs have repeatedly requested that people have to inform the local authority when they want to use fallow land. The occupation of that land by the villagers was unauthorized and so the commune authority cannot accept that. They cannot take public land or lakes but they do it.

(Commune chief, Prasat Sambo District)

Such statements reflect a national policy focusing on the development of a rational regulatory framework for land management and administration. Prime Minister Hun Sen, stated at the Ministry of Land Management, Urban Planning and Construction Conference on 6 February 2006:

The Royal Government has in particular focused on strengthening a secured land ownership by active registration of land ownership and made efforts to add more policy and legal frameworks in order to have sufficient base to continue strengthening the management of

state land [...]. The government has introduced key legal measures such as: sub-decree on 'systematic land registration', sub-decree on 'sporadic land registration', sub-decree on cadastral committee, sub-decree on 'social land concession', sub-decree on 'management of state land', sub-decree on 'economic land concession', sub-decree on 'legal procedure on establishing the level and registration of permanent forestry assets' and so on. [...] Thus, the main matter facing us is that all relevant ministries/departments have to prepare regulations/guidelines to implement all those sub-decrees and designate responsibilities to subordinates to fulfill their technical duties. All those adopted sub-decrees are balanced and comprehensive in resolving different issues. In this regard, all concerned entities must exert efforts to firmly implement in order to avoid negative past experiences.

While there is no doubt that much has been done in terms of the development of the legal framework from the position of villagers in conflict areas, the law can appear distant, abstract and subject to manipulation by the powerful.

Nowadays, the people are poor and ignorant. That is why they [the powerful] grab land, and abuse rights. Even if the people know law, but they are poor, there is still no justice in dispute resolution, because the others have power, money, and they also know law.

(Member of the pagoda committee, Prasat Sambo District)

If we [representing the poor] have absolute proof in our hands and we have clarity we will win [the case]. But in cases that are not clear, normally powerful or rich people will prevail.

(Lawyer, Kompong Thom)

In this equation, the law is marginal but not irrelevant. While the law doesn't determine the dispute, it does constitute one possible reference point for the negotiation of rights, and indeed one out of which more could perhaps be made (cf: Wardell, 2006).

While little faith is put in the law, each of our cases reveals a system of governance which requires a degree of responsiveness to land claims brought by groups of villagers. The officials called upon to resolve these disputes are often overburdened and struggling to reconcile competing interests. Although the processes by which officials make decisions remain something of a 'black box', pressures for the government to be responsive would appear to come from a number of sources. First, there is concern to avoid the social instability that could arise from increasing land conflict. Thus the Prime Minister has repeatedly warned that a failure to improve land management and stop 'land grabbing' could lead to a farmers' or peasant revolution (2002, 2005). Similarly, a pressure to be responsive emerges from the CPP's need to sustain its legitimacy, both democratic and patrimonial, in the eyes of a predominantly rural populace (Hughes and Conway, 2004: 33). Local pressures are augmented by relationships of accountability that exist between donors and government and the desire of the latter to be seen as a responsible member of the international community and one worthy of receiving development assistance (Burke and Nil, 2005). Villagers and their supporters seem to be aware of these sensitivities and use advocacy strategies such as contacting media and national NGOs in order to tap into national and international public opinion.

The incentive framework in which local officials operate is complex. Good performance means maintaining social harmony, ensuring success at the ballot box, achieving the government's policy targets with regards to private sector development and economic growth, as well as identifying sufficient rent-seeking opportunities to ensure both material

and professional advancement. While Zitelmann (2005: 28) is correct in pointing out that the power of the Cambodian elite derives significantly from 'binding elite factions together', the patterns encountered in our fieldwork suggest that the administration is dependent on peripheral (or at least semi-peripheral) clients for its legitimacy and as such is also somewhat sensitive to the articulation of demands from such constituencies. Balancing such diverse political interests requires compromise. It is within this framework that it makes sense for villagers to leverage whatever political capital they can muster so as collectively to attract the attention of influential political decision makers to their grievances.

2.3 The impact of collective disputes

During their time in the field, researchers observed that the disputes they were studying represented major events in the histories of the communities in which they arose. It seemed these disputes were a product of changing economic and social relations and contributing to that process of change. The final part of this analysis examines the impact of the disputes studied. In this, we focus not on the impact of 'winning' or 'losing' a land dispute, but on the effect that the process had on the people, institutions and communities involved.

Impacts on village life

Each of the cases studied left a clear mark on the villages in which they took place. Looking at the Stoung and Prasat Sambo cases, the groups of villagers that made claims were generally happy with the provisional outcome; that they would not be dispossessed of the land. However, the fact that these outcomes were provisional led villagers to express concern, first that their rights to the land were not secure, and secondly that more disturbances affecting not only the foundation of their livelihood but also their relationships in the community could arise in the future. In both districts, villagers indicated that their trust in local authorities was diminished because of the disputes. Traditionally, people consider the village and commune chiefs as the parents of the community, and so people felt betrayed and cheated.

I have voted for you [commune chief] to be our father and why did you not ask your children's need before you decide? Have you ever raised your face to ask? You only see that your children do not cultivate rice and you just give my land away!

(Informal leader, Stoung Village A, describing what he has said to his commune chief)

Highly disappointed about the failure to act in a way reflecting their perceptions of the local interest, people suspected that local authorities had received financial incentives from the investors. This led to a perception that local authorities were primarily beholden to more powerful outside interests rather than being true representatives or protectors of the local people.¹⁶ Although villagers know that they need to continue to contact the village chief and commune chief for administrative purposes, relations have become considerably strained.

¹⁶ This finding seems to correspond with that of Rusten (2003: 2): councilors tend to be more accountable to their party than to the government (or the public). See also Ninh and Henke (2005: 33 and 36): '... between a quarter to a third of all councilors surveyed feel that they cannot ignore party orders even if they are against the wishes of the people' and '... 37.70% of the commune councilors endorse the statement that they are subordinated to district and province level authorities'.

Villagers said that my life is cheaper than a dog's life. They hate me because they thought that I was involved in selling the land to the investor. They accuse me of being a traitor to the people.

(Village chief, Stoung Village A)

Trust is even further diminished if villagers perceive that non-responsiveness becomes the norm. When the district governor of Prasat Sambo tried to call a meeting to discuss the 2005 dispute with villagers, people tended to disperse before the meetings had finished. With the unsolved case of 2001 in mind, and perceiving similar patterns of behavior, villagers doubted whether the district authority had a genuine desire to seek a fair resolution of the issues. Their prior disappointment with the district administration strengthened the conviction of villagers in turning to NGOs or other external actors to seek help and support. The effect that these disputes have had on village-level social cohesion is moot. In Stoung Village A, villagers expressed the view that their village was more polarized following the dispute, with divisions between those who had supported and those who had opposed the development, creating an uncomfortable sense of distance.

The land we got back from the disputed project will not be shared with those who supported the project, not even my daughter who did not thumbprint the protest. It should be given to those landless who protested against it.

(Informal leader, Stoung Village A)

On the other hand, those opposing the development felt an increased sense of solidarity among them, and indicated that they would again act collectively to resist if the provincial government finally reneged and decided to allow the development. Similarly, in other cases, people felt empowered by having seen how their fellow villagers were able to put pressure on the government and achieve results by pursuing a complaint as a group

Impacts on the state and its representatives

As noted above, lower-level officials often continued to blame resistance on NGOs and the opposition party who 'incite' villagers to protest. For those who take this position, the disputes demonstrate a widening gap between the people and their government. Thus in Stoung District, village chiefs and some commune councilors expressed the sentiment that they had lost interest in pursuing future development projects.

Everybody in the village hates my husband and me as immediately after the protest they often criticized my husband indirectly. They often blame him. I want my husband to stop getting involved in such development plans and actually I want him to resign from the village chief position.

(Wife of a village chief, Stoung District)

Other officials, particularly at the district and provincial level, were more open to acknowledging shortcomings on the government side, particularly with regard to its ability to communicate effectively with the people. For these individuals, having been involved in managing a dispute appeared to provide an opportunity for reflection on how the processes of development and conflict management might be handled better. The extent to which such realizations will be sufficient to support the emergence of a more responsive state, however, remains to be seen.

Impacts on the private sector

Land disputes can damage the prospects for private sector development. Local entrepreneurs rely on local-level authorities to provide them with the authorizations needed to undertake new projects. If these are issued and then revoked without any sense of due process, as they were in the Stoung cases, an atmosphere of uncertainty is generated.

Both of the businessmen involved in the Stoung cases expressed disappointment about the inability of the authorities to enforce their decisions despite the fact that the request to be allocated land for building water reservoirs had been approved by various authorities from the commune council up to the deputy provincial governor.

If I would have known that I can build [only a part of] the water reservoir in Village C [not the other part in Village B] I would not have invested. I spent a lot of money for building it. Herding one cow or herding 10 cows requires spending the same time of one day.

(Investor in Village B and C, Stoung District)

Due to the dispute, the investors experienced a loss of confidence in the 'official stamps' on which they had relied as evidence that their project had been approved. This lack of bureaucratic certainty was observed to encourage dealings with high-ranking individuals, who are perceived to have the personal power to protect the initiatives they authorize. Thus, one of the investors suggested that in the future he would follow the lead of an associate who also invested in water reservoirs and 'waited for the signature of the provincial governor himself' rather than dealing with the deputy governor.

The Stoung investors also expressed regret at having relied too much upon the commune council to conduct consultations with villagers prior to initiating the project. However, they indicated that there was a lesson learned from this experience. After the experience of having had a project fail because of resistance from the villagers, they indicated that they would now take a different approach. Rather than relying on the commune council to liaise with villagers they suggested that in the future they would talk and work with villagers directly to get their consent first and then address the authorities for approval later. This approach was used and was successful in Village C.

The resolution is a good experience for my future investment. Before, I trusted local authorities to deal with the villagers, but now I will contact villagers directly. Only then I will inform the authorities.

(Investor in Village A, Stoung District)

These findings portray a private sector in a state of flux. On the one hand we see close cooperation or even collusion between investors and local authorities, in that the former need government approval for their projects and the latter have immediate personal interests in the approval of such projects. We also see government officials with a high level of direct involvement in private sector initiatives as for example the district official in the 2001 Prasat Sambo case. These factors blur the distinction between the private sector and the state and make it difficult to rely on the state as an honest broker in such transactions. However, our research also suggests that the interests of the government sit less than completely flush with those of the private sector. Investors demand quick secure decisions from the state. As we have seen in our case studies, however, the absence of well embedded legal / bureaucratic processes for making such decisions means that

administrative decisions are subject to review as political circumstances change - for example in response to collective action. Uncertainty in decision-making leads to dissatisfaction in government among the business community. While the immediate response expressed above may be to seek ever higher level support for projects through the patronage system, this is unlikely to be a viable long term strategy in a growing and diversifying economy. In these circumstances the business community may emerge as an important advocate for clearer and more certain administrative decision making according to law.

3. Conclusions

As the result of an exploratory study the findings of this report are not representative. They are drawn from detailed studies of only seven cases regarding land and local governance in just two of Cambodia's 24 provinces and municipalities. Cambodia is geographically and socially diverse. Villages, parties and, as such, cases differ greatly. Other disputes will not have the same characteristics as those studied. These case studies are, however, drawn from a variety of empirical sources, including 92 informant interviews, and background data related to village/commune demographics, local systems of dispute resolution and practices with regard to land administration. The findings have also been compared and contrasted with other research in the area. As such, they can, to a degree, be generalized analytically in the sense that they shed light on the dynamics of social mobilization, government decision making and dispute resolution in a context like Cambodia, as well as the factors that enhance or undermine these processes. With these caveats in mind we suggest a framework with the following elements.

3.1 Collective action in response to land disputes is prevalent and can be effective

With pressure on land and natural resources increasing, there exists a willingness for villagers to pursue claims, even against people who are rich or powerful. While the propensity for people to organize around land disputes is known in cases covered in the national media, it is noteworthy that similar claim-making behavior exists with regards to smaller disputes. It is also noteworthy that the state is not impervious to these claims. Without suggesting that the disputes studied were resolved satisfactorily, it was apparent that where they acted collectively villagers were able to achieve more equitable outcomes than might otherwise have been the case.

This conclusion resonates with the argument made by Santos and Rodrigues (2005: 15), that 'political mobilization' will be a necessary precursor to 'the success of rights based strategies'. In the absence of equitable rule-based systems for allocating resources and resolving disputes, it seems that collective action is a crucial mechanism for improving the responsiveness of the state to the needs of the poor.

Three key factors were identified as enabling villagers to make effective claims. First, **villagers needed to be able to organize as a group**. One factor influencing group formation was the existence of village-level leaders with strong coalition-building skills and who were willing to take the lead in opposing the authorities. Such individuals were able to build issue-based coalitions across political and social divides and to sustain the group cohesion required to mount an effective claim. In cases where no formal claims were made, the absence of such leadership was notable.

Secondly, in order to extract increased responsiveness to their claims, **villagers needed to be able to attract the attention of higher-level decision makers**. Pathways to these decision makers were found through personal contacts, local and international NGOs, the media and the political opposition. It was notable that a lack of prior training on the law did not hinder villagers in pursuing their claims. Given the political/administrative paths which the disputes followed a lack of legal knowledge was not a major issue and it was generally

sufficient that information and advocacy support was available from trusted resource people once disputes arose.

Finally, **success hinged on villagers' ability to persuade sufficiently influential administrative decision makers of the merit of their cases.** Although decision makers in the cases studied displayed a degree of responsiveness to villagers' claims, the basis on which the state, or its officials, engaged with the claims was opaque. Assuming that decision makers in these cases are responding to the political pressure that constituencies bring to bear, one important binding constraint to effective advocacy was the scale on which people were able to organize. In the cases studied, this occurred only on the village level, despite the fact that the issues around which people were mobilizing often raised matters which could have been dealt with on a larger scale. The issues dealt with in our case studies would have lent themselves to joint claims involving multiple villages but this did not occur. For the moment, advocacy would appear to be based on ephemeral groups that form around personal connections. The absence of broader social movements around land and natural resource issues in Cambodia is notable. As is the lack of an institution that serves as a public forum around which such collective action might be structured, at once amplifying the voice of the poor and channeling land conflict away from violence.

3.2 The gap between law and practice in land management: a key trigger for disputes

The past 10-15 years have seen an effective privatization of significant areas of state land within a weak regulatory framework. This has allowed officials, particularly those at provincial and district level, to conduct more or less formal land transactions over state land without the need for consultation, transparency or accountability. At the same time, villagers have expanded their agricultural activities onto unused land. Expectations of continuing usage rights are developed on this basis even where these are not supported by the law. The legal framework for state land management is poorly understood and bears little resemblance to current practice or understandings with regard to land use and administration. In the absence of adequate processes for consultation or a commonly accepted basis for decision making, issues of state land management are prone to complex disputes. The involvement of higher-level interests in issues of state land management makes effective dispute resolution of these disputes at the commune or even the district level very difficult.

3.3 The predominance of patrimonial over legal/bureaucratic forms of power

In attempting to engage the state in the dispute resolution process, villagers employed a variety of tactics in pursuit of a single strategy, that is, to get a powerful administrative decision maker to intervene on their behalf. In a sense, this reflects a clear framework for decision making, namely, that a more powerful figure within the administration can override a decision of a subordinate. With regard to any particular decision, however, a great deal of uncertainty prevails, as it is not clear in advance (i) what the basis for decision making will be; (ii) whether a particular decision will be overturned or not; or (iii) where particular individuals sit within the hierarchy of power.

Formal institutions of justice such as the Cadastral Commissions or the courts were perceived as costly, time consuming and biased toward the rich. Villagers were observed to refer their disputes to individual representatives of the state who are seen as having the

political power to broker a resolution. Officials also avoided referring the cases to the Cadastral Commissions or the courts, stating that they found such institutional solutions to be time consuming and unreliable.

The greater the power differential between the disputing parties, the less likely it became that the commune and village-level authorities would be seen as effective agents for dispute resolution. In these situations, villagers tended to see local government as too weak to act or as complicit with the more powerful party. While smaller disputes could be resolved at the lower levels, when cases involved higher-ranking officials or influential outsiders, a commensurately high ranking or influential interlocutor needed to be found to resolve the dispute.

The formal legal system was marginal to the dispute resolution processes studied. However, this does not mean that it was without effect. At times the law was seen to constitute a reference point to the negotiations which were observed, even though it was not enforced.

3.4 Impacts of the current system: uncertainty, frustration and political pressure

Few of our informants expressed satisfaction with the dispute resolution processes described in this report. Most disputes were only partially resolved and had not reached a final and mutually accepted agreement. Higher-level intervention prevented lower-level authorities from taking responsibility for the dispute resolution process. At the same time, higher-level authorities looked for interim solutions in order to avoid decisions that could lead to an escalation of the conflict. From the villagers' perspectives, this meant that the processes were unreliable and the outcomes uncertain. Similar sentiments were expressed by representatives of the private sector, who felt frustrated by their interactions with a state constantly reversing administrative decisions based on political pressure. In these circumstances, we observed a deterioration of trust between citizens and the state, particularly at the local level. To the extent that this is a widespread phenomenon, and research such as that by Oxfam GB (2005) suggests that it is, these disputes risk undermining the hard won progress which is being achieved through the RGC's local governance reform program. At their most frank, representatives of the provincial and district levels of government acknowledged that these disputes represented a significant challenge for their rural development agendas. They described a state which was struggling to maintain trust and communication with the people during a period of rapid economic and social change but lacked strategies to address these problems.

4. Recommendations and Further Research

The above findings generate a number of operational challenges. In particular, in as much as they show collective disputes being dealt with by powerful individuals within the administration, they paint a picture of a formal justice system that is of marginal importance. To the extent parties were successful in extracting increased responsiveness from the state, they did so largely by putting political pressure on key decision makers and not by relying on the law or seeking access to officially mandated dispute resolution process. Written laws, legal processes or rule-based forms of decision making were notable by their absence, in the sense that they played little role in the dispute resolution process. Institutions established outside of the central patronage system of power are at risk of being ineffectual. As such, these studies provide few insights as to how transparent, rule-based systems for handling grievances might be established in the Cambodian context.

The findings do, however, place Cambodia in a position that is historically common, given that the model of a modern judiciary emerged in an iterative process, with independence from the executive secured over time in response to a myriad of social, political and economic pressures. This observation supports the argument for exercises in interim institutional design when thinking about justice sector reform in Cambodia, as opposed to attempts to engineer externally what are considered the institutional components of an 'idealized' rule of law system. Concretely, this would mean developing systems for accountability and dispute resolution that would (i) emerge from an understanding of existing structures of power and governance and the ways in which they are changing; (ii) support increased state responsiveness in the short term and (iii) be expected to gain legitimacy, strength and independence over time, although these institutions might not resemble model institutions of the rule of law. Given the political nature of decision making described in the cases studied above, it is likely that such institutions will, in their initial manifestations, be about social dialogue as much as they are about law. The Cadastral Commissions; the Arbitration Council (for labor disputes); the COPCEL (Conflict Prevention in the Cambodian Elections Process) for management and resolution of electoral disputes; the pilot district ombudsmen's offices (in Battambang and Siem Reap); and the recently created Provincial Accountability Boards for the Commune/Sangkat Fund: each represents an attempt to design such interim institutions for dispute resolution and/or accountability. More detailed studies of the functioning of these institutions are likely to be informative to understanding what may and may not work in the Cambodian context.

At a more practical level, this research indicates that peaceful collective action by citizens is a crucial mechanism for leveraging increased state responsiveness to the needs of the poor. Structures that encourage such action and enhance its effectiveness should be supported. Some ideas along these lines include:

- Development of grassroots leaders with high-level facilitation and coalition-building skills. These skills might be best built by supporting local-level engagement in local-level collective action around livelihoods, governance and common pool resource management.
- Enhancement of access to information and advocacy resources from trusted sources.
- Countering the fear of speaking out by supporting dialogue among citizens, government and political parties through, for example, more interactive media and local public forums.

- Given that collective land disputes are so difficult to *resolve*, more effort should be invested in their *prevention*. Based on the findings of this report, it should be clear that land titling will be insufficient to do this. Thus, support for consultative land use planning processes (e.g. PLUP) should be considered. These should ensure that local residents are consulted before economic concessions (or other developments) are approved. Given the attitudes of business and investors noted in this report, tripartite consultative structures which actively engage private sector interests should be considered.
- Given that many of the disputes we are looking at involve villagers who are occupying land to which they are unlikely to be awarded ownership through the systematic titling process, an integrated approach to state land mapping and possible regularization of current usage rights through social land concessions or other instruments may be a useful way to resolve and prevent disputes. Thus, for example, areas at high risk of collective disputes, such as the Prasat Sambo villages described in this report, could be earmarked for an integrated process that involves simultaneous titling, state land mapping, land use planning and allocation of social land concessions. However politically and technically intensive, such a process might serve to generate lasting resolutions to existing disputes while at the same time establishing a basis for the prevention and management of future land and natural resources conflict.

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Annex A: Case Descriptions in Detail

A.1 Two land disputes in Prasat Sambo District, Kompong Thom Province

Background to the disputes

Since its establishment in the late 1960s, this district has been characterized by chronic instability. The area first came under the control of the Khmer Rouge in 1971, early in the civil war between the Khmer Rouge and Lon Nol's Khmer Republic. At that time, the Khmer Rouge introduced a cooperative system of farming. In 1979, the area was liberated from the Khmer Rouge, but the situation remained unstable for a further two decades. Frequent struggles between Khmer Rouge and government troops, especially at the border between Prasat Sambo and Sandan Districts, forced the local population to relocate often.

In the mid-1980s, local authorities increased efforts to protect the district administration center from Khmer Rouge attacks by digging trenches and laying landmines. However, around 1989-90, the Khmer Rouge made incursions up to the Prasat Sambo district office and burned down the district market and the houses of the district governor and the deputy district governor.

The situation eased somewhat after 1990 and more people began to clear forest for agricultural purposes. Several years later, a CMAC unit also removed the landmines from the zone around the district administration. This land was only partly given back to the previous owners. The majority remained in the hands of the district administration. It was only after 1998, when the last Khmer Rouge officially surrendered to the government, that the area became stable enough for development activities, such as road construction, to begin.

Generally, economic life has improved in this district over the last five to six years. Recent road construction has provided the villagers with much better access to the market and to other government services such as health, education and telecommunications. Over the past few years, several local NGOs have run programs in the district, conducting trainings and providing some support for agriculture, environment, forestry and wells. One international NGO has a longer-term presence in the area, having conducted integrated rural development activities there since 1995. Recent economic and social changes, including population growth, have put increased pressure on natural resources, including land, forest and lakes used for fishing.

The commune studied has 15 villages, with a total population of about 12,000. The majority of the residents of this district are ethnic Khmer. In two villages, the majority of the inhabitants belong to the Kuy ethnic minority group. The residents of these Kuy villages, as well as some of the neighboring villages, have supplemented their traditional rice farming by practicing rotating agriculture, clearing some areas of the forest, farming it for some years, and then leaving those areas fallow while cultivating other plots. However, this practice has been scaled back as the population keeps growing fast and families are finding it difficult to locate new land for their children when they get married.

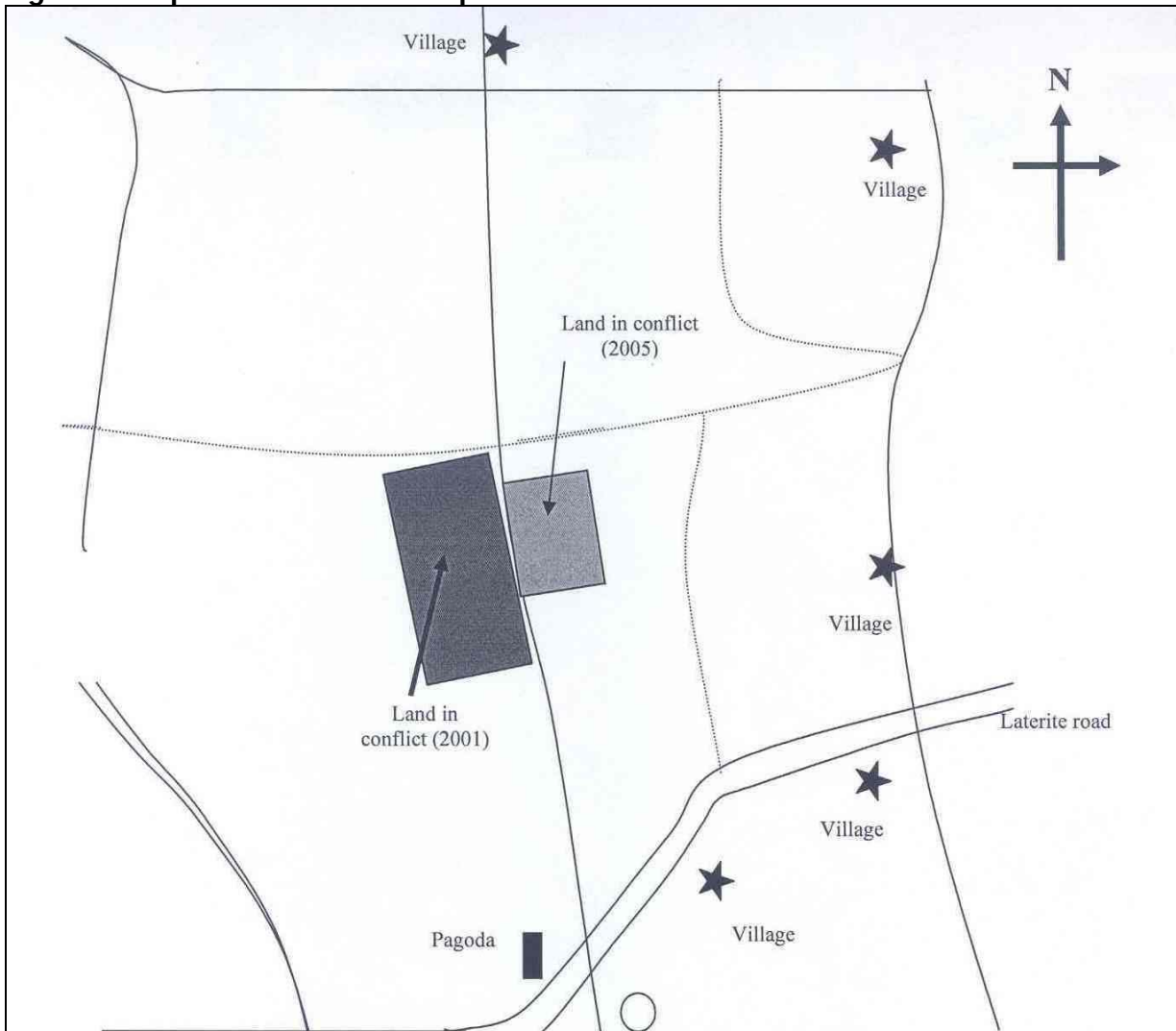
Land occupation was extremely unregulated in Prasat Sambo District during the post war era. In late 1980s land was distributed to district residents. Land was often allocated for strategic rather than agricultural purposes. Despite pressure from the local authorities, people were not happy to accept

the land distributed. Instead, they tried to get back their respective prewar land, confusing the situation. This movement was further encouraged as district officials took their prewar land back. Consequently, land distribution was not successful, and generally only those who repossessed their prewar land were satisfied with it.

As part of efforts to improve the security in the isolated parts of the district, villagers were encouraged to move to unoccupied land around 1989-90. New villages were created in 1993. This move was carried out without going through any formal procedures.

In the commune studied, the relationship between villagers and the commune council is strained. Local authorities themselves report that villagers have little trust in the commune council or other local authorities. According to villagers, this is partly the result of dishonest behavior on the part of some officials, who have sought opportunities to profit privately from communal resources at the expense of villagers. Among the concerns that villagers express about their local officials, there is a particularly high sensitivity to land issues, as the vast majority of the commune's population still rely mainly on agricultural activities, especially the cultivation of rice and *châmkar*.

Figure 1: Map of Prasat Sambo dispute area



The disputes

An initial case involving a claim to formerly forested land between two villages arose in 2001. A similar case relating to an adjacent piece of land arose in 2005.

In 2001, a high-ranking district official claimed 280ha for use by an outside company for a plantation. Villagers from four neighboring villages claimed that they had been using this degraded forest land for *châmkar* at least since the early 1990s without having established clear ownership. The district officials considered the forest to be state property, and told the villagers using the land that they had to leave their *châmkar* (mostly around 2ha each). To protect their land, the villagers sought the help of the village chief and local elders. However, after an initial and fruitless meeting with the high-ranking district official behind the project, the aggrieved villagers gave up their claims.

Once in possession of the land, the high-ranking district official engaged villagers to build a dike around the land and planted some timber trees. The land was, however, never the subject of plantation agriculture as was originally claimed. Over time, the dispossessed villagers came to believe that the district official had cheated them and was using the land for personal purposes.

In 2005, a similar situation arose when a district Commission started to measure 100ha of land bordering the land disputed from 2001, claiming it was state property and prohibiting its further use. This land was being used by villagers of two villages for *châmkar*. According to the district authority, the land was for a local high school that had asked for about 10ha land to be used as an agricultural training facility.

Dealing with the disputes

In 2001, responses of villagers were thwarted by threats from district officials and lack of access to sources of assistance. The dispute in 2005 was pursued with far more vigor.

In 2001, the aggrieved villagers first sought help from the village chief, but he preferred to remain in the background and recommended that they involve village elders, particularly one *achar*. The *achar* and another respected village elder approached the district officials in an attempt to request the land back. The two elders were respected by the villagers because of their commitment to the community and their influence on maintaining good relations between villagers.

Both went to negotiate with a high-ranking district official to return the confiscated land but failed to reach an agreement. The *achar* reported that during the meeting he was told that he should not 'play with his life' by becoming involved in this dispute. When he reported the events of the meeting back to the villagers, nobody dared to resist further and people resigned themselves to finding other locations in the forest for cultivation. Reasons given for not pursuing the issue further included (i) a feeling that any further action would be risky and most likely unsuccessful; and (ii) a lack of knowledge regarding what other options might be pursued. Instead of pursuing the return of the disputed land, the villagers simply cleared other areas of degraded forest and continued their *châmkar* farming.

When, however, in July 2005 villagers heard that the district was again measuring out land for appropriation, they immediately went to their *châmkar* armed with knives and axes to protect their fields. By the time villagers arrived at the area being measured, the district officials had already left, so there was no clash between the groups. However, the villagers did start to destroy the signs the district had put up declaring that the area was state land that could not be used by private citizens.

After returning from their *châmkar* that day, the villagers went to the village chief to ask for help, as they did in 2000-1. Again, he refused to take an active lead in the dispute resolution, explaining that he did not want to become involved in a confrontation between villagers and authorities.

The following day, at a meeting, a deputy district governor tried to explain to villagers the purpose of the measurement and invited the affected villagers to sign up on a list so that the district would be able to assess to what extent the measured land was already in use and by whom. However, the villagers refused to sign as they feared that the district officials would later claim that their thumbprints stood for their consent to leave the land. The meeting eventually dispersed without calming the heated atmosphere.

Believing that a positive resolution would not come from local authorities, some villagers suggested contacting local NGOs in the provincial capital. This idea was initiated by a student who had returned home from studying in a neighboring province; other villagers had the telephone number of a local human rights NGO that had previously done some training in the area. The representatives of two local NGOs quickly responded with encouragement and advice, which prompted the villagers to select a village representative to take the lead in the protest. This representative was trusted by the people as he was a leading village development committee member with several years of organizing experience in the village and good contacts with NGOs.

With NGO support, he organized a petition with the thumbprints of 102 villagers. A second petition was also created in which the group claimed the land they had lost in 2001. Both petitions were submitted to NGO representatives who forwarded the lists to the provincial branch of a human rights NGO in Kompong Thom, requesting the NGO to ask the provincial governor for support in resolving the dispute.

The next day a SRP parliamentarian accompanied by a journalist from Voice of America radio met with villagers and encouraged them to continue to use their fields as before. He ensured them that the SRP would help resolve the dispute. An interview with the villagers' representative and a report about the dispute was broadcast on Voice of America the same day. Shortly thereafter, a number of villagers together with the local branch of the SRP took the initiative of re-broadcasting the radio segment by walking around the district town with a loudspeaker.

Several days later, at a second meeting, another deputy district governor made an attempt to placate the villagers by explaining to them the purpose of the measurement and the steps that were planned to select the requested 10ha for the high school. However, the two sides were still unable to reach a mutual understanding. At one point, the deputy governor emphasized that villagers would have no other choice than to leave even if they would not agree. This caused the villagers to break out in loud protest. In an escalation of the issue, the deputy governor then threatened the villagers with imprisonment if they did not stop using the forest.

After this, villagers pursued their protest against district officials by sending a letter of complaint to the provincial governor through local NGOs. As a result, the situation in the village became tense and the protesters' representative was told that a district official had threatened him by saying that he was the leader of the protest and that without him the villagers would not have confronted the authorities. He was advised to go into hiding for some time. After six days he returned.

The outcome

In the months following the events described above, the district authority did not take any further measures to prevent the villagers from using the disputed land. The provincial governor rejected any involvement in the dispute resolution by referring the case back to the district authority. He felt no responsibility as he instructed the district authority to seek no more than 10ha of vacant land for the school. The district authority told the villagers that the disputed land was state property and that only the province could decide how to use it. The villagers expressed their continued intent to struggle for their land and, if necessary, to resort to violence.

At the time of writing, the villagers dispossessed in 2001 had not returned to their earlier *châmkars*.

A.2 Three land disputes in Stoung District, Kompong Thom Province

Background to the disputes

Located in Stoung District of Kompong Thom Province, the commune studied has seven villages with a total population of around 9,000, some of whom are of Chinese descent (Sino-Khmer). The commune is located near the Tonle Sap Lake; and some areas in the commune flood during the rainy season and can be used for deepwater (or floating) rice cultivation [*srouv laeng teuk*].

At the end of the French colonial period, the area was densely wooded and the flooded areas served as spawning areas for fish. However, in the 1960s population growth in the area resulted in increased forest clearing for deepwater rice cultivation. During the Khmer Rouge time, the land in this area became state property and cooperative farming schemes were imposed. After 1979, the new authorities distributed the land according to recreated village and commune administrative units. At that time, the villagers still worked the land in 'solidarity groups' [*krom samak*]. In the early 1980s, these groups had largely lost their agricultural function and the local authorities redistributed the land again, this time to individual families.

Around 1984, the security situation deteriorated again; the Khmer Rouge made frequent incursions and burned down one of the commune offices in 1985 or 1988. In addition, the rice harvest was threatened by natural disasters (drought, flash floods, pests and roaming cattle). Due to insecurity and other pressures, some people began to abandon their fields in the flooded area at this time.

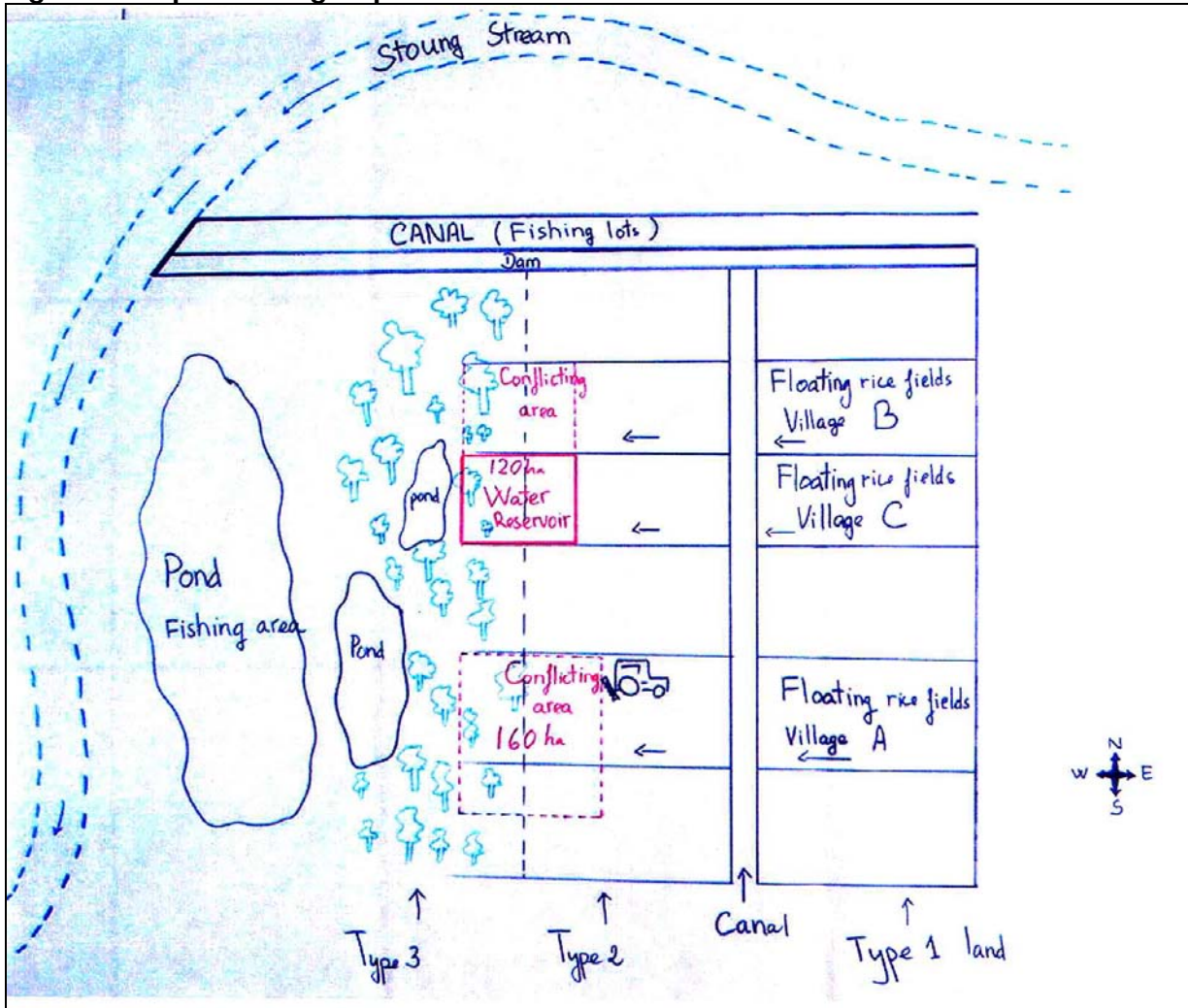
The situation in the commune began slowly to improve after a road was built in 1990 connecting the commune with the district center of Stoung, making access to the district market (built in 1988-9) easier. But it was only after 1998, when the last Khmer Rouge officially surrendered, that living conditions improved considerably. Today, three out of seven villages in the commune, those closest to the district market, depend significantly on non-agricultural sources of income.

Villagers in this commune expressed an ambivalent relationship with the local authorities. Views varied from village to village according to the extent that people had experienced dismissive and dishonest behavior on the part of the commune and village chief. In Village A, a number of villagers had demanded that the village chief be replaced for some years, as trust in him had considerably deteriorated. In some cases, villages in the commune seem to be highly polarized along political lines: this again has significant repercussions for collective disputes. In Villages A and B, informal leaders and influential villagers are affiliated to all major political parties; Village C is dominated by the ruling Cambodian People's Party.

The disputes

In 2005, two local investors from Stoung sought to dig water reservoirs to irrigate dry season rice crops. According to the district authorities, nearly 20 such water reservoirs had been built in Stoung District over the last few years.

Figure 2: Map of Stoung dispute area



The local authorities (village chiefs and the majority of the commune councilors) welcomed the project, and helped to submit the proposals to the district and provincial authorities for further approval. When the investors received permission from the provincial authorities, and signed a 25-year loan with the commune authorities, they started construction work on the assigned land. Once they started construction, they met with substantial resistance in two of the three villages in which they had planned to construct the reservoirs.

The villagers were upset with the construction because they believed that the land belonged to them. In their view, it was only because of the insecurity of the late 1980s that they had ceased to work in the disputed area – the land's distance from the villages meant that it was not included in the strategic defense system around the district town. As security improved, some villagers had resumed floating rice cultivation there but not in regular cycles, so the land partly transformed back

into scrubland. Some villagers continued to use the land for cattle grazing. Some of the affected families were angry because the local authorities had not informed the village about the development project prior to approving it.

On the other hand, the local authorities believed the disputed land was state property because people had abandoned it, arguing that the land automatically reverted back to the local authorities. Therefore, once the provincial authorities approved the construction of the reservoir the commune chief felt that he was authorized to sign the contract with investors.

Dealing with the dispute

Although there were three villages with an equal stake in the disputed land, responses varied depending on the village. Only two villages mounted an organized challenge to the proposed development plan.

Village A was the only place in which the villagers became aware of the proposed plan while the commune council was still negotiating with the two investors. When the villagers realized that the project involved land that they believed belonged to them, they immediately informed the village chief of their disagreement with the proposed investment plan.

The village chief responded by issuing threats. He said that they should watch out and not complain to NGOs because 'the dog will bite'. Soon after, the commune chief invited four influential villagers of Village A to discuss the case and to convince them to agree to the investment project. At the meeting no agreement was reached because the commune chief insisted that the land had already been given to the investor whereas the villagers' representatives argued that the land belonged to the people and only they could decide about its use.

The villagers' representatives sent a letter to the district authority requesting a halt to the investment plan because they needed the land for their livelihoods. Receiving no response from the district, the villagers assumed that the case had been resolved in their favor. In fact, the commune council and the investors had proceeded to prepare the necessary documents to obtain approval for the investment from the district and provincial authorities.

Not long after, some of the villagers mentioned the dispute at a meeting with a parliamentarian from the SRP who was visiting the area. The parliamentarian encouraged the villagers to stand up for their rights and not give up defending their land.

The next day the commune chief invited the four representatives to meet again in an attempt to reach a consensus in favor of the investment, but again failed. Several days later, a high-ranking district official renewed the pressure on the four representatives to agree to the investment project by accusing them of being SRP supporters who would oppose any project for political reasons and prevent any development in the commune. He also accused the opposition party of inciting the villagers to protest.

Although the villagers' did not agree to the project, the investor received approval for the plan from the provincial authority and started to bring his construction equipment to the location. This movement prompted the villagers to go to the fields armed with knives and axes to prevent the occupation of their land and to threaten to burn down the equipment if construction proceeded.

The village chief and a commune councilor immediately appeared at the scene and appealed to the angry villagers not to use violence but to solve the dispute peacefully. Both sides agreed to stop the

construction work provisionally until the dispute between villagers and the investor could be resolved.

The villagers later consulted local human rights organizations and the four representatives organized a meeting of all the protesters to draft a complaint, of which one copy was submitted to the district authority, one copy to the provincial governor and one copy to a human rights NGO based in the provincial capital.

10 days later, a provincial working group met with the representatives to negotiate further but again failed to reach any agreement. The villagers continued to refuse to give over their fields to the investor because they could not see what benefit they would obtain. In addition, they feared that after the end of the 25 years they would have lost their land altogether without compensation.

Four weeks later, the provincial authorities instructed the district governor to invite the villagers to the CPP district headquarters for additional negotiations; the meeting, to which a representative of the provincial administration had also been invited, was rescheduled to take place in a villager's house nearby. Local authorities wanted to avoid causing rumors or unease among villagers by holding the meeting at a location not seen to be neutral.

At the meeting, the representative of the provincial administration explained to the villagers that land that had been abandoned for longer than five years could be taken back by the authorities according to the Land Law. Therefore, he argued, it was correct for the local authorities to give the land to investors to build a water reservoir as this project would benefit everyone. However, this attempt at resolution also failed because the villagers did not trust the local authorities and feared that the land would be secretly sold, leaving the villagers in a difficult situation in the future.

Some days later, the provincial governor's office invited the representatives of the villagers for a meeting at the provincial hall. On this occasion, a provincial official told the participants that they could use the land for rice cultivation for this year only but that they would have to allow the investment to go ahead the following year. The villagers' representatives decided that they needed to discuss this proposal with the other villagers before making any decision.

After several fruitless attempts by the provincial authority to craft an agreement with the villagers, the provincial governor decided to stop the implementation of the investment plan and allow the villagers to use the disputed land on condition that they cultivated rice there that year. If they did not, the governor decided that the land would be given to the investor without any further negotiation.

Despite this decision, the investor did not agree to remove his construction equipment from the disputed land and so two representatives of the protesters went to meet the provincial governor again. They informed him that if the dispute was not resolved according to the previous decision of the provincial governor they would submit their complaint to the central government and/or the National Assembly. Immediately after this, the equipment was removed on the instructions of the district administration.

The way in which the dispute in Village A was handled influenced the course of similar disputes in the two neighboring villages.

In neighboring *Village C*, the second investor became concerned by events taking place to block the construction of a similar reservoir in Village A. He approached the village chief in Village C, who

referred him to the group leaders [*mé krom*] whom the chief had enlisted to convince villagers to consent to the project.

An important concern for the villagers in this area was the difference between selling their land and leasing it. According to the terms of the 25-year loan, the investor would be responsible for paying annual tax to the provincial authority, while the villagers would be able to farm the land on a profit share basis, splitting the harvest of the dry season rice with the investor 50/50 in exchange for using water from his reservoir. People feared that they would not receive sufficient benefit from leasing their land and some expressed concern that they would lose the land altogether after 25 years without compensation. Most villagers felt that selling the land, rather than leasing it, would ensure that they were at least compensated.

The investor visited the site accompanied by the group leaders [*mé krom*], with whom he had built a relationship. When the investor heard about the protest in Village A, he decided to buy, rather than lease, some of the land from the villagers of Village C.

The land purchase was well coordinated. The investor assigned former *mé krom* (allegedly with some incentives) to go from door to door of those in their *krom* to convince them to sell the land. One particular *mé krom* who served as a focal point for the investor administered the money to pay the villagers who agreed to sell their land. Villagers had been told that the *mé krom* had already sold their own land to the investor. As a result, most of the villagers also agreed to sell up, albeit reluctantly. They were concerned that they would otherwise lose their land without compensation.

Thus, although many of the villagers were not convinced of the benefit of the investment project, they made their land available without any open resistance. Nevertheless, they continued to feel dissatisfied about the way in which their land was acquired.

A second reason why the villagers from Village C did not resist the project might lie in a certain political constellation, different from that in the neighboring villages. The investment project was strongly supported by CPP commune councilors and, because the majority of the people in Village C were affiliated with CPP, they were not willing to oppose this initiative, particularly as it was also supported by representatives of district and provincial authorities.

In neighboring *Village B*, the second investor was not able to replicate the approach he used successfully in Village C. The land from Village B was required to complete the second half of the project he had begun in Village C.

Villagers from Village B had observed construction work on the land belonging to Village C and they had also heard about the protest by the villagers from neighboring Village A. The people of Village B wondered whether the investment would come to their village too, but were not able to get information from the local authorities. They also asked the investor, who said that no construction in Village B was planned.

Several days later, the investor placed his construction equipment on land belonging to Village B in an attempt to extend the construction work he had successfully completed in Village C. The villagers reacted immediately. They first approached an educated elder in the village for help in preventing the loss of this land. The elder advised them to go to the construction site in order to talk to the investor. Upon arriving there, the villagers, armed with knives and axes, tried to stop the construction work by threatening to set fire to the equipment.

The villagers' representative, however, intervened and was able to negotiate with both sides so that the explosive situation did not turn into a violent clash. He then spoke to the investor and received copies of all documents authorizing the investor to construct a reservoir and a list with thumbprints of villagers who allegedly supported the investment. Villagers were surprised and enraged that the commune and village authorities had not informed them or consulted them prior to approving the project. In addition, people denied that they had given thumbprints in support of the investment project.

As a result, villagers and the investor agreed that the construction work would be suspended until the dispute was resolved in a reasonable way. On the same day, villagers took the opportunity of a holy ceremony in the village (late morning) as well as in the *wat* nearby (afternoon) to continue discussions on how to deal with the issue.

The next day, villagers went to the commune office in order to demand an explanation from the commune council. The commune chief tried to calm people down and to persuade them to agree to the investment. He denied having known about the collection of thumbprints and suggested that the village chief must have been responsible for that. He then referred the case to the provincial governor for resolution.

About two weeks later, the provincial governor instructed the district governor to invite representatives of the villagers from Village B (as well as A) for further negotiation and also to educate them about the Land Law.

At the meeting, the provincial representative explained that according to the Land Law, land which had been abandoned for longer than five years could be taken back by the authorities. Thus, it was the authorities' right to take the disputed land for development.

Villagers rejected the explanation, saying that they had abandoned the land only because of security issues and natural disasters. They argued that they nevertheless needed the land and that the local authorities had sold the land secretly, leaving them without support for their livelihoods in the future. The meeting failed to produce an agreement.

A few days later, the provincial governor himself invited villagers' representatives to the provincial hall for resolution. This meeting included representatives of the opposing group as well as a group of villagers who supported the investment plan. When the villagers again refused to consent to the construction of the reservoir, the provincial governor relented, giving the villagers the opportunity to take up cultivating the land again and setting the condition that if villagers did not begin to farm it again that year it would definitively go to the investor the following year.

The outcome

In two of the villages, the dispute was temporarily resolved by a decision of the provincial governor. In Villages A and B, people have retained their land on the condition that they cultivate rice; if not, the land will be given to the investor to complete construction of the water reservoir.

For the moment, the villagers from Villages A and B are satisfied, but they still feel some anxiety about the future of their land. The commune chief, however, does not believe the dispute is finished, and was still interested in realizing the investment plan. One investor (in Villages B and C) would still like to complete the second half of the water reservoir (in Village B); the other investor (in Village A) has decided to invest in another commune.

A.3 Two disputes in Sa'ang District, Kandal Province

Background to the disputes

The people of the commune studied in Sa'ang District experienced frequent forced relocations to nearby communes and provinces between 1970 and 1973 owing to intense fighting between Lon Nol and Khmer Rouge forces, as well as the subsequent occupation by the Khmer Rouge from 1973 to 1979. The commune is located just outside the capital, Phnom Penh.

The population in the commune, consisting of five villages, has increased significantly over recent years. Although there are no statistics from before the 1980s, the population grew from around 700 families in 1980 to more than 2,500 families (or 13,386 people) in 2005. In 1980, 80% of the population was made up of former residents. The number of newcomers increased sharply starting in 1997 owing to the establishment of garment factories in the area. Now, newcomers constitute around 40% of the population. The commune has a total land area of 3,365ha, of which, 352ha is for secondary crops, 700ha for dry season rice and 784ha for wet season rice. The land is very fertile because the commune is flooded in the wet season by four streams which connect to the Bassac arm of the Lower Mekong River.

Land distribution in this area began in 1980 when land was distributed to *krom samaki*. In 1988, the land was redistributed, this time to individual families. Initially, each family received shares of four types of land: land for residence, secondary crop land, dry season rice land and wet season rice land. There were then later adjustments to land distribution to reallocate land for those families that came to settle in the commune immediately after the distribution. As a result, families ultimately received smaller plots than they had in the 1988 redistribution. Some families could only choose between land for wet and dry season rice, meaning that they could not have both land types as there was insufficient unoccupied land.

Since 1988, there have been allegations that group leaders (*mé krom*) and village chiefs (*mé phum*) have taken wet season rice land from families and sold it to others in a corrupt manner. Also, some families have sold their land in order to relocate, to change their livelihood, or because of financial pressures such as bankruptcy, gambling and the need for medical care. With the influx of garment factories, large land sales began around 1997 and have continued up to the present day.

The commune's location makes it a potentially profitable place to live. The commune has abundant natural water, which allows residents to grow wet and dry season rice, to cultivate *châmkar*, and to fish. Also, because of its close proximity and good road connections to the city, many local residents are engaged in trade and wage labor. Garment factories have absorbed about 50% of the commune's labor force. Access to public services is also convenient; there are pagodas, schools, markets and health services (both private and public) in and nearby the commune. Finally, the commune has enjoyed good security since the 1980s.

Despite these favorable conditions, about 30% of the population in the commune is landless, 20% is poor and 10% extremely poor. The poor tend to be landless, as are those involved in gambling.

There are many NGOs operating in the commune. In 2004, a local NGO, the Community Legal Education Center (CLEC) started a pilot project to help train commune officials in alternative dispute resolution (ADR). With the assistance of CLEC, the commune established a commune committee and village sub-committees for dispute resolution. These committees have facilitated the resolution of a range of local disputes.

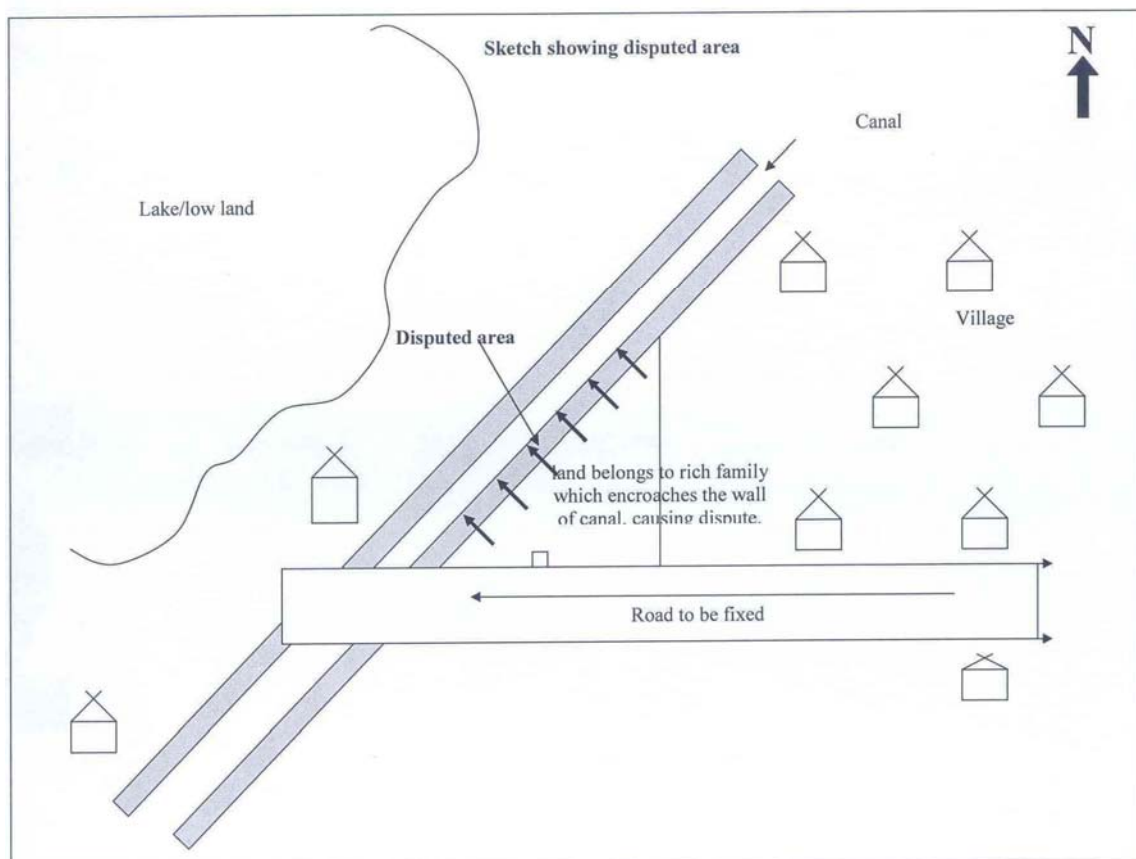
Villagers in this commune reported distrust in the local authorities because of perceived nepotism, corruption and collusion in relation to land dealings. Despite distrust, villagers continue to approach commune authorities for such services as civic registration, permission for traditional ceremonies, etc. The commune authority, on the other hand, complains about the lack of official power to make binding decisions.

The disputes

Detailed studies of two disputes were undertaken. One involved the widening of a road and the other involved the construction of fish ponds.

Road extension and enlargement: This dispute arose around land needed for the widening of a local road, carried out by the commune council. A relatively well off family (family A) occupied a plot of land at one end of the road. Over the years, this family had moved its plot boundaries outwards, encroaching on a public canal. The commune's plan was to use soil from the canal to widen the road. Family A's encroachment onto the canal obstructed access to the area where the soil was to be collected.

Figure 3: Map of Sa'ang road dispute area



Fish pond: The fish pond dispute arose when a family that was new to the area made an informal agreement with a long-time resident who owned a plot of land next to a public lake to dig a fish pond in between the plot and the lake. The informal agreement was made without the knowledge of

the local authorities. When the pond was completed, it sparked a protest led by two villagers. These two villagers collected thumbprints and put together a written complaint which they submitted to the commune.

Dealing with the disputes

In the *road extension case*, it was the village chief who initially negotiated with family A. When these negotiations failed, the village chief, who is also a chairperson of the village sub-committee for dispute resolution, held a meeting with village elders to discuss how to address the problem. At the meeting, they came up with the idea of filing a complaint with the commune chief and organized 72 villagers to thumbprint a protest letter.

Upon receiving the complaint, the commune chief organized two meetings at the site. The first meeting finished without reaching a result. At the second meeting, however, the commune chief declared that the road must be widened and that the part of the canal that had been encroached upon by family A had to be freed up to give access to the earthmoving equipment. After this announcement, the resisting family stopped denying access. The road was built as planned and almost all villagers were satisfied with the decision.

In the *fish pond case*, the second deputy commune chief became aware of a conflict over the construction of a pond when he was told about it by a villager. He then visited the site and, when he saw the pond, he ordered the workers who were digging the pond to stop work and to tell the pond owner that construction should be halted until the matter had been discussed with the commune authorities. However, the pond owner did not go to meet the commune authorities as requested. Around that time, the commune authorities received a written complaint against the pond owner. This came in the form of a petition with 203 thumbprints. It was delivered by two villagers who claimed to represent the other villagers.

According to the pond owner's version of events, the dispute arose after the digging was completed when two men whom he did not know approached him and asked him to go to meet their boss. He ignored that request and it was then that the two men filed a complaint against him with the commune.

Notably, neither the village chief nor the sub-committee for dispute resolution was involved in the early stages of the dispute, although the chief and a number of members of the sub-committee did thumbprint the written complaint.

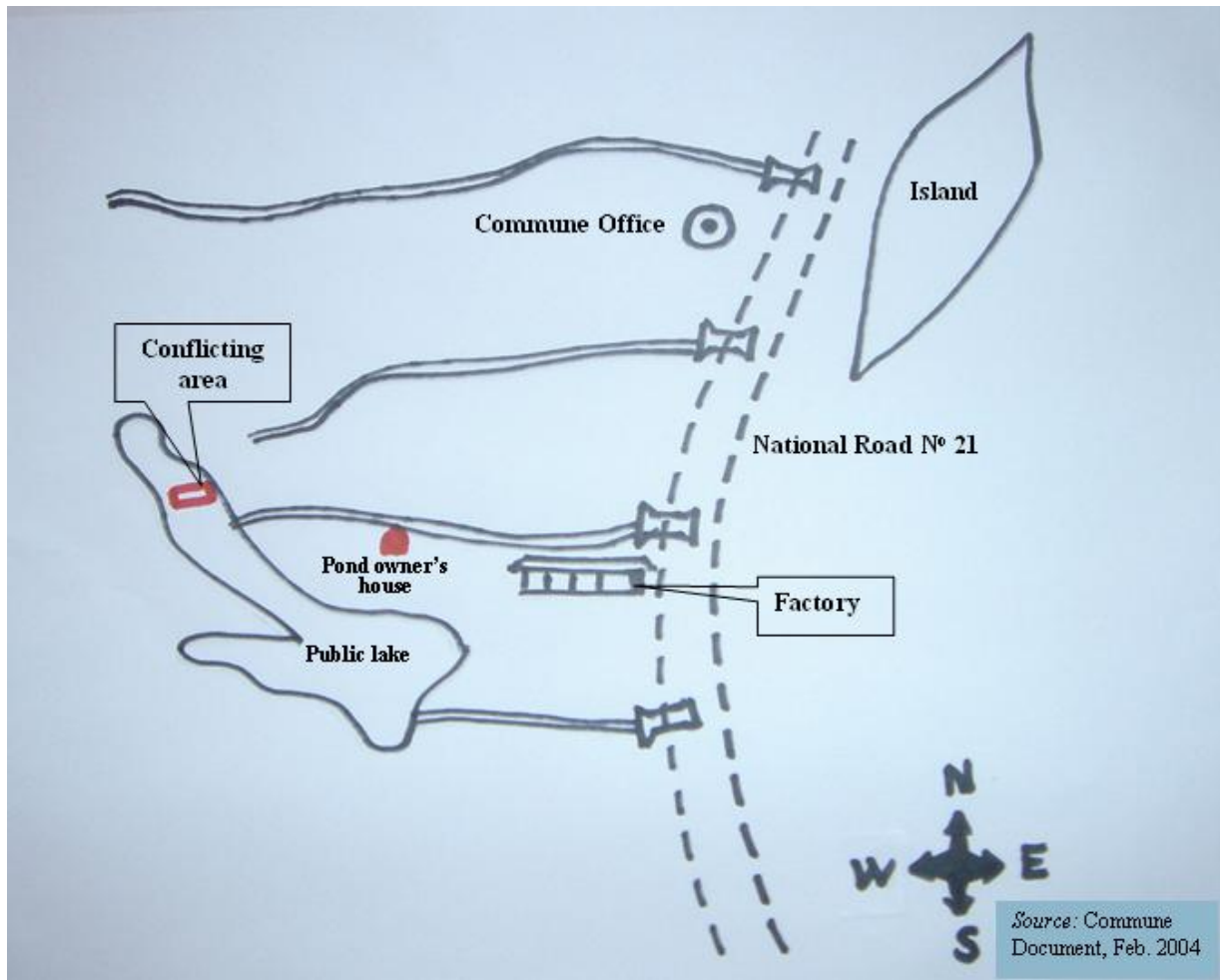
Upon receiving the complaint, the commune chief tried several times to resolve the problem. First, in separate meetings he asked the parties to explain their respective positions. Then the authorities invited the two parties to the commune office for a joint meeting, but they failed to reach a resolution at that time. Later on, this problem was raised at a regular meeting of the commune council. Both the pond owner and representatives of the villagers who made the complaint attended that meeting. The meeting ended with the commune chief announcing that the pond was to be returned to public use because it had been built on public land.

The pond owner was unsatisfied with the commune council's decision and submitted a complaint against the two villagers to the provincial committee for dispute resolution.¹ When this complaint had no result, the pond owner contacted a friend who was known to be a member of the Prime

¹ The interviewee described a dispute resolution committee attached to the provincial governor's office. Further information about this office was not available.

Minister's bodyguard. They went together to visit the commune chief. At that meeting, the commune chief altered his earlier decision and allowed the pond owner to continue to use the pond until further notice.

Figure 4: Map of Sa'ang fish pond dispute area



The outcomes

In the *road extension case*, the dispute has come to an end. The road construction was completed following a decision by the commune chief. Villagers who live along the roadside are satisfied with the outcome, though the family that was resisting continued to feel that the result was not fair.

The *fish pond case* had not come to an end during the period of data collection for this study. In the meeting at the commune council, the commune chief announced that the pond would be returned to public use. But following the intervention from a member of the Prime Minister's body guard on behalf of the pond owner, the commune chief altered his earlier decision and allowed the pond owner to use the pond for private purposes.

Annex B: Table of Interviewees

Location	N.	Position	Date
Kompong Thom Province			
Provincial level	1	Deputy provincial governor (FUNCINPEC)	16 Sep. 2005
	2	Chief of provincial environment department	16 Sep. 2005
District and commune level (Stoung case)	3	District governor (CPP)	14 Sep. 2005
	4	Chief of district agriculture office	25 Oct. 2005
	5	Chief of district cadastral office	26 Oct. 2005
	6	Commune chief (CPP)	# 11 Sep., # 25 Oct. 2005
	7	Commune council member (CPP)	08 Sep. 2005
	8	Commune council member (SRP)	14 Sep. 2005
	9	Deputy district governor	12 Sep. 2005
	10	Chief of district rural development office	# 09 Sep., # 27 Oct. 2005
District and commune level (Prasat Sambo case)	11	Chief of district agriculture office	28 Oct. 2005
	12	Commune chief (CPP)	# 10 Sep., # 28 Oct. 2005
	13	Commune vice-chief (SRP)	27 Oct. 2005
	14	Commune council member (CPP)	08 Sep. 2005
	15	Commune council member (from Kuy village)	12 Sep. 2005
	Village level (Stoung case)	16	Village chief (Village A)
17		Village chief (Village B)	25 Oct. 2005
18		Village chief (Village C)	13 Sep. 2005
19		Village vice-chief (Village A)	25 Oct. 2005
20		Informal leader #1 (Village A), female elder	# 15 Sep., # 26 Oct. 2005
21		Informal leader #2 (Village A), former soldier	11 Sep. 2005
22		Informal leader #3 (Village A), teacher	13 Sep. 2005
23		Informal leader #4 (Village A), elder	13 Sep. 2005
24		Informal leader #1 (Village B), FUNCINPEC activist	# 15 Sep., # 26 Oct. 2005
25		Villager (Village B), fisherman	13 Sep. 2005
26		Villager, SRP local activist (Village C)	#15 Sep., # 26 Oct. 2005
27		Villager (Village C), female elder	09 Sep. 2005
28		Villager, former <i>mé krom</i> (Village C)	14 Sep. 2005
29		Villager, former <i>mé krom</i> (Village C)	13 Sep. 2005
30		Villager, former <i>mé krom</i> (Village C)	15 Sep. 2005
31		Chief <i>achar</i> (Village C)	15 Sep. 2005
32		Chief of pagoda committee (Village C)	15 Sep. 2005
33		Villager (Village C), female elder	25 Oct. 2005
34		Informal leader #5 (Village A), elder	25 Oct. 2005
35		Informal leader #6 (Village A), deputy <i>achar</i>	26 Oct. 2005
36	Informal leader #7 (Village A), chief <i>achar</i>	27 Oct. 2005	
37	Villager, investment project supporter (Village A)	27 Oct. 2005	
38	Group of villagers (Village B)	26 Oct. 2005	
Village level (Prasat Sambo case)	39	Village chief #1	10 Sep. 2005
	40	Village chief #2	08 Sep. 2005
	41	Village chief #3	09 Sep. 2005
	42	Village vice-chief	27 Oct. 2005
	43	Chief of pagoda committee	# 10 Sep., # 27 Oct. 2005
	44	Villager #1, illiterate farmer	09 Sep. 2005
	45	Elder, Kuy ethnic minority	12 Sep. 2005
	46	Villager, SRP local activist #1	12 Sep. 2005
	47	Group of Kuy ethnic minority people	12 Sep. 2005
	48	Villager #2	08 Sep. 2005

	49	Group of villagers #1	28 Oct. 2005
	50	Village elder	28 Oct. 2005
	51	Deputy <i>achar</i>	28 Oct. 2005
	52	Villager #3, young former student	27 Oct. 2005
	53	Teacher of village primary school	28 Oct. 2005
	54	Villager, <i>mé krom</i>	28 Oct. 2005
	55	Group of moto-taxi drivers	28 Oct. 2005
	56	Villager #4, female elder	27 Oct. 2005
	57	Villager, former soldier and former <i>achar</i>	27 Oct. 2005
	58	Villager #5, Christian	28 Oct. 2005
	59	Villager #6, young former soldier	27 Oct. 2005
	60	Villager #7, SRP local activist	27 Oct. 2005
	61	Villager, Commune chief's daughter	28 Oct. 2005
	62	Group of villagers #2	28 Oct. 2005
	63	Group of villagers #3	28 Oct. 2005
	64	Informal leader, VDC member	10 Sep. 2005
	65	VDC member) from Kuy ethnic minority village	12 Sep. 2005
Kandal Province			
District and commune level (Sa'ang case)	66	Commune chief (CPP)	#01 Sep., #28 Dec. 2005
	67	Commune vice-chief (SRP)	#27 Dec., #28 Dec. 2005
	68	Commune council member (CPP)	#27 Dec., #28 Dec. 2005
	69	Commune clerk	#27 Dec., #28 Dec. 2005
Village level (Sa'ang case)	70	Village chief #1	01 Sep. 2005
	71	Village chief #2	28 Dec. 2005
	72	Former village chief	01 Sep. 2005
	73	Villager, a better-off family	27 Dec. 2005
	74	Villager, pond digger	27 Dec. 2005
	75	Villager, former <i>mé krom</i>	28 Dec. 2005
	76	Member of village dispute resolution sub-committee	27 Dec. 2005
	77	Chief of pagoda committee, <i>wat</i> #1	27 Dec. 2005
	78	Member of pagoda committee, <i>wat</i> #2	28 Oct. 2005
	79	Representative of villagers, former soldier and bodyguard	28 Dec. 2005
Others	80	Investor, Village A	15 Sep. 2005
	81	Investor, Village B and C	#15 Sep., #26 Oct. 2005
	82	High school deputy director, Prasat Sambo District	27 Oct. 2005
NGOs	83	Volunteer member of FACT Network, Stoung District	13 Sep. 2005
	84	Staff of local human rights NGO ADHOC Network, Stoung District	14 Sep. 2005
	85	Director of local district association WFD, Stoung District	14 Sep. 2005
	86	Provincial director of ADHOC, Kompong Thom	#16 Sep., #24 Oct. 2005
	87	Female volunteer working for World Vision, Prasat Sambo District	09 Sep. 2005
	88	Deputy director of World Vision, Prasat Sambo District	27 Oct. 2005
	89	CDP provincial director	16 Sep. 2005
	90	Three staff of local NGO M'lop Baitong, provincial branch	17 Sep. 2005
	91	Staff of M'lop Baitong, provincial branch	21 Sep. 2005

Annex C: Collective Disputes Encountered but Not Studied in Detail

Province	District	Case	Issue
Kompong Thom	Stoung	Conflict over a public lake	Summary: A wealthier family turned out to possess land title for a public lake usually accessed by villagers. The family fenced the lake to grow lotus, denying access to others. Villagers submitted a complaint to local authority.
		Road damage	Summary: Conflict between people in four communes and a private construction company causing damage to newly build rural road. Description: A rural road was built in 2002 using WFP's Food for Work program, connecting four communes in Stoung District. With the assistance of GTZ, the road was covered with laterite in 2004, and a cross-commune road maintenance committee was established. A private construction company was building a large water gate at one end of the road and transporting heavy construction materials using the road. This caused heavy damage to the road. Villagers and the road maintenance committee demanded that the road should be fixed by the company. Although the company promised to fix the road, villagers were concerned that no action would be taken.
	Steung Sen	Land conflict between villagers and an investor	Summary: A dispute occurred between villagers and an investor after commune authorities granted an investor approximately 80ha of land previously used by villagers in order to build a water reservoir for dry season rice farming. Description: Villagers from Trach and L'veng Reussey protested against the investor who had obtained permission to use 80ha of land under a 25-year contract. Villagers filed a complaint with provincial authorities through local human rights NGOs, claiming that the land originally belonged to the villagers, but that they had not cultivated it for some years for a variety of reasons. A resolution effort was facilitated by the director of the provincial department of environment and led to the land being returned to the villagers.
		Disputed fishing area	Summary: A public fishing area fell under the ownership of an outsider, which was a sudden surprise for local people who usually accessed the area for fishing. A dispute occurred. Description: A person from another district came to own a public fishing area without the knowledge of the local people. It was alleged that the outsider bribed the local authority to gain ownership of the area. Villagers filed a complaint with district authorities because the commune told them the case was too big for them to solve. In a counter-complaint, the new owner of the fishing area filed a complaint with the police accusing villagers of illegal fishing in his fishing lots and using illegal fishing instruments. He claimed that this was a crime.

		Use of public canal/ passage for private interests	<p>Summary: A dispute between two groups of villagers occurred in mid-2004, with one group accusing the other of using a former canal turned oxcart route for their own cultivation and thus blocking the access of others.</p> <p>Description: A former canal-turned-oxcart was cultivated by a small group of villagers for their own interests, thus blocking the access of others. A majority of villagers objected and submitted a complaint to the commune council through a village elder and the chief. The commune council investigated and then held negotiations with the participation of the elder after the Cadastral Commission checked the site. As a result, the passage was reopened for public use.</p>
Province	District	Case	Issue
Kompong Thom	Steung Sen	Land conflict between villagers and an investor	<p>Summary: Conflict between villagers in four villages over access to a public lake for water and fishing.</p> <p>Description: A dispute arose in 2004 and in 2005 100 families filed a complaint with the commune authority against 10 families who were accused of excluding the others from using the lake. The 100 families were represented by a village chief and the community fisheries leader. They were aggrieved because the 10 families pumped water from a shallow lake to water their dry season rice fields. The 100 families gave thumbprints to support the complaint which said that the water should be for public use, especially for cattle during the dry season. They also needed to water their own dry season rice. Following receipt of the complaint, the commune advised people that the complaint should be submitted to the district. The district authority issued a letter stating that the public lake be reserved for the public and prohibited the 10 families from pumping the water.</p>
		Conflict over low lying land	<p>Summary: Village and commune authorities sold villagers' land to business persons without villagers' knowledge.</p> <p>Description: Village and commune chiefs were alleged to have sold two pieces of land, about 300ha and 360ha, which were owned by villagers, to business persons, without informing or compensating the villagers. Villagers had not cultivated the land for some years for various reasons including its inclination to flooding and distance from their villages. Villagers knew about the sale in 2005 when business persons, thought to be the children of provincial-level officials, brought in equipment to build a water reservoir in the site. Villagers filed a complaint against the authorities to human rights NGOs.</p>
		Blocking public road	<p>Summary: An individual blocked a public road that villagers usually used. A group of villagers filed a complaint and submitted it to the commune authority via the village chief. The commune authority ordered that the road be opened.</p>
		Increased electricity fees	<p>Summary: Provincial electricity increased electricity fees from 2,000R to 2,500R/kw. This decision was opposed by a group of townspeople who filed a complaint with the local authorities. The complaint was sent to the province. Consequently, the decision to increase the prices was reversed.</p>
	Santouk	Diversion of water course	<p>Summary: A dispute occurred between a group of villagers and an individual who diverted a watercourse for his own benefit.</p> <p>Description: One villager dug a canal to control water flow at a dam, affecting a group of farmers in a nearby village. Villagers sought help from the commune council, which claimed the issue was under the competence of the provincial hydrology department. The council advised villagers to file a complaint and forwarded it to the district.</p>

Province	District	Case	Issue
		Building new road	<p>Summary: Dispute between a group of villagers and one family over the latter's failure to give permission to give up a part of their land for a road widening project.</p> <p>Description: The commune council built a village road with Seila funding. The road building was not possible because one family was not willing to remove a concrete fence to make space for the road widening, as others had agreed to do. The commune council negotiated with the family but without success. It was known to villagers that the family felt able to resist because they had contacts in the Ministry of Public Works and Transport and the provincial department for animal health in Siem Reap.</p>
Kompong Thom	Santouk	Building of a dock	<p>Summary: An individual bought a piece of public riverbank area to build a private dock. Villagers protested against the project, and finally the partially built dock was smashed. The parties sued each other in court.</p> <p>Description: An individual bought a piece of public riverbank area to build a small dock and planned to use it on a commercial basis (500R per boat). Traders who had previously used the area for free objected. The provincial governor authorized the building of the dock. People complained to the commune council but the commune did not take action because it felt the matter was beyond its competence. The commune helped pass the complaint on to the district. The complaint was then passed on to provincial authorities and the court. Both parties were known to have powerful connections.</p>
	Sandan	Rubber plantation	<p>Summary: Prime Minister Hun Sen reportedly announced that families were entitled to 3ha of land to grow rubber plants. Families protested because they alleged that the investment company was not distributing the land to the people.</p> <p>Description: The Prime Minister announced that villagers would be entitled to 3ha of land per family to grow rubber plants in partnership with an investment company. However, villagers alleged that the company did not actually distribute the land to the people. The total land in question was about 9,200ha. At one point, villagers alleged that the company offered to buy the land from them for 500,000R/ha. This was rejected by villagers, which led to a violent protest and demonstrations in front of the National Assembly. Consequently, some villagers were jailed.</p>
	Prasat Balang	Land for agro-industry	<p>Summary: Conflict between company and villagers over land the company needed for investment.</p> <p>Description: Villagers knew that the company planned to take 10,000ha for investment in agro-industry and animal raising. But they alleged that the company actually took 10,451ha, which sparked the dispute. Villagers alleged that the authorities forced villagers to sell land to the company at cheap prices. Resolution efforts were made and, as a result, the company was granted a contract with 9,863ha.</p>

Annex D: Legal Analysis of Case Studies

D.1 Introduction

The case studies set out in above indicate that, when disputes over land arise, the resolution of those can proceed along many different paths. In the case studies, dissatisfied villagers sought assistance from powerful government officials, organized collective acts of protest, and sometimes acquiesced to the undesirable outcome. In none of the cases did villagers seek advice from legal professionals or access administrative bodies for land dispute resolution (Cadastral Commission) recently established by the government.

This Annex identifies the provisions of law that apply in the case studies; considers if the disputes in question were resolved according law; and considers whether the law offers other viable means of dispute resolution.

This examination reveals that dispute resolution of land cases in practice differs sharply from what is required by the existing legal regime. The law has procedures for (i) determining ownership of land, (ii) resolving disputes as to ownership, and (iii) planning future uses of state land. In reality, however, the disputing parties did not rely on these provisions. Local government officials distributed land through informal systems and subsequent disputes were resolved through informal channels.

D.2 Procedures for determining ownership of land

In each of the case studies, the central issue was whether a parcel of land was owned by private individuals or by the state. If the land is owned by individuals, the government may appropriate it legally, but only for a public purpose provided the government pays compensation in advance. Land that belongs to the state can be distributed according to procedures described later in this Annex.

The passing of the Land Law (2001) marked the beginning of a major process of reform in Cambodia's land management system. According to the Land Law, land in Cambodia can either belong to individuals, groups or the state.¹ State land is divided into two categories: state public land and state private land.

In order to regularize land holdings, the 2001 Land Law provide that ownership is granted to persons who can establish that they in lawful possession of land for a continuous period of five years. The law establishes three criteria for lawful possession. First, the would-be owner must satisfy the five-part definition of possession. Secondly, he/she must have entered into possession of the land before the date of enactment of the Land Law. And thirdly, the land over which he/she claims possession must be state private land. State public lands cannot be acquired through possession even if all of the other criteria are met.

¹ The case studies do not present situations of collective ownership or undivided ownership.

Definition of possession

There are five key elements of 'possession' according to the statute (Land Law Article 38). Lawful possession must be 'unambiguous, non-violent, notorious to the public, continuous, and in good faith'. If villagers are unable to demonstrate that they have properly possessed the land in question, then they cannot acquire ownership of that land and it would be state land by default.

This definition has implications for the cases studied. For instance, the crucial issue in the Stoung cases was whether the villagers possessed the low lying lands in question 'continuously'. All parties agree that the land was given to the people for rice cultivation in the 1980s. The people farmed those lands for varying periods of time and then either abandoned them, farmed them intermittently or used them for cattle grazing owing to low yields from rice farming and lack of security.

This fact pattern raises two questions. The first question being how much regular use is required to constitute 'continuous' use? The law notes that occupation that is interrupted 'for short periods of time or [where] the land is left uncultivated to recover fertility does not constitute an obstacle to ownership'. An adjudicator would need to determine whether the periods of time between cycles of planting were 'short'.

Secondly we must clarify what is meant by continuous and regular use of land. The word 'continuously' is defined by the Land Law as a requirement that the possessor act in the 'normal expected regular way during the required time'. Given that the land had originally been granted to the villagers for floating rice cultivation, it is questionable whether intermittent use for activities such as cattle grazing could be considered to constitute use in the 'normal expected regular way'.

Although there are no clear answers to these questions, the now displaced 1992 Land Law provides additional guidance. Art. 76 of that law states that '[a]ny land that the possessor abandons for the period of the three years shall be considered as the state land'. If this three-year abandonment rule were applied, many of the Stoung residents would not be considered lawful possessors. In these cases, the land should legally be considered to have reverted to the state.

The argument made by the provincial authorities, that land abandoned for more than five years can be reclaimed by the authorities, has no specific basis in law.

In terms of how the question of possession was eventually resolved, it is interesting to note that a much more practical approach was adopted, namely, allowing the people to keep the land if they farmed it in the coming year (2005-6). If a rule can be divined from this resolution, then it is that some sort of right to the land exists based on the combination of the earlier distribution and subsequent intermittent use; there may also be some sort of utilitarian principle at work, namely, that the right to own land comes from the ability to put it to productive use. Neither of these tests is based on the Land Law; rather, they appear to reflect a politically expedient compromise solution to the problem of the strong sense of entitlement that the people of the Stoung villages felt towards the land distributed to them in the mid-1980s.

Date of acquisition of possessory interest

In order to acquire land lawfully by possession, the would-be owner must have initiated possession of the land prior to the date of the promulgation of the Land Law (30 August 2001). (Land Law Art. 31). This provision weakens the position of some of the Stoung villagers who were in intermittent possession of the disputed lands. For example, a villager who abandoned land in 1995 and then reoccupied it in 2004 would not be a lawful possessor under the Land Law, and could not

become a lawful owner of that land. As such, the compromise solution to the Stoung cases, allowing the people to keep the land if they started to farm it, may not in fact generate legal possession, despite the fact that it is sanctioned by the provincial authorities. The underlying principle here is that decisions of high-ranking administrative authorities are often stronger sources of authority than the written law.

State public lands cannot be acquired by possession

State lands are divided into two categories: state public lands and state private lands. State public lands cannot be acquired by possession and cannot be owned by individuals. Some examples of state public property include roads, public schools, and archeological patrimonies. Important for these case studies is the provision that state public property is 'any property that has a natural origin, such as forests ... natural lakes, banks of navigable and floatable rivers ...' (Art. 15). The law classifies forests, including those that are not natural reserves protected by law, as state public lands. State private property is all that which is neither state public land, nor legally privately or collectively owned or possessed under the Land Law of 2001 (Art. 5 No. 118HNK/ BK).

If the land in question is properly classified as state public land, then the occupants have no rights to acquire it by possession. This is likely the case in both Sa'ang cases. In the road extension case, assuming the hold-out family was occupying lands that encroached onto a public right of way or canal, the disputed land was state public land (Declaration on the Measure of Eliminating Anarchical Land Encroachment, No.606BRK Art. 8, 27 September 1999]. In the fish pond case, as long as the fish pond was part of a preexisting natural lake, the commune authorities were correct in their initial decision that the pond belonged to the state for public use. Because the land in question was state public land, private individuals had no right to claim exclusive use over that area.

The Prasat Sambo case presents a common issue regarding the classification of state public land. In these cases, people cleared forest and converted it into agricultural land. On a strict reading of the Land Law it would be immaterial whether this occupation occurred before or after August 2001.² The fact that the land was once forest would be enough to have it classified as state public land and thus bar villagers from acquiring it by possession.

In practice, however, the Forest Administration has indicated that they will determine forest cover with reference to a 2002 map based on satellite imagery. This seems practical in terms of the date chosen (which corresponds roughly with the date of the Land Law in 2001), and is a sensible alternative to including large areas of land in the forest estate that have long been converted for agricultural use. If this rule is applied, then land cleared prior to 2002 will be eligible for possession. The majority of the Prasat Sambo villagers claim to have been continuous possessors since before 2001. Applying the law in this way, they would be considered to be lawful possessors.

Rights attained once ownership is established

Lawful possessors can turn their possession into ownership once their land becomes registered, and the Cadastral Administration issues an ownership title. The Cadastral Administration was established under the 2001 Land Law with the competence to: identify properties, establish cadastral index

² This approach seems to be contemplated by the Forest Law (2002), which states in Art. 106 that: 'Where the Forestry Administration has evidence that occupation of any land has been obtained through illegal clearing of State forests, before the enactment of this law, the Forestry Administration has the right, on behalf of the Royal Government, as the owner of the State land to issue a written notice by evicting and reclaiming ownership of the State forestland without any condition.'

maps, issue ownership titles, register lands and inform all persons as to the status of a parcel of land (Land Law Art. 226).

Once ownership is established, the owner may not be deprived of that ownership by the government unless 'it is in the public interest' and the owner is provided 'fair and just compensation in advance' in accordance with procedures set out by law (Land Law Art. 5, Constitution of Cambodia Art. 44). The law also protects those who have established possession but have not yet converted that possession into full ownership (Land Law Arts. 31 & 39).

D.3 Procedures for resolving disputes involving land

In general, disputes over registered land, meaning land that has been titled by the Cadastral Administration, are subject to resolution by the courts. Disputes over unregistered land, meaning land without a title issued by the Cadastral Administration, are subject to resolution by the Cadastral Commission first, with the potential for subsequent judicial review. None of the land in the cases studied in this report was registered. As such, there is an argument that all of these disputes should have been dealt with by the Cadastral Commissions.

There is also, however, an argument based on the Land Law that the Cadastral Commissions only have the power to hear disputes between possessors, i.e. between private parties. The following section provides an analysis of these two arguments, reaching the conclusion that the Cadastral Commissions can hear disputes between individuals and the state so long as (i) the individual has a claim to possession of the land in question and (ii) the land in question is unregistered.

Competence of the Cadastral Commission

The argument that the Cadastral Commission lacks the authority to resolve disputes between individuals and the state is based on Art. 47 of the Land Law which provides that '[d]isputes over an immovable property *between possessors* shall be submitted for investigation and resolution" to the Cadastral Commission' (emphasis added). The use of the word possessors suggests that the Commission only has the competence to review cases between private possessors, as only real persons have the right to enter into possession of land under Art. 29ff of the Land Law. Likewise, the Prâkas establishing procedures for the operation of the Cadastral Commission states that 'any *person*, who claims ownership or possession ... of unregistered land that is also claimed, by one or more other *persons* may file a complaint' with the district-level cadastral authorities (emphasis added).³ This provision, like the Land Law, seems to suggest that the Cadastral Commission can only decide cases between natural persons. However, other regulations regarding the Commission suggest the contrary.

For instance, the Sub-Decree on Organization and Functioning of the Cadastral Commission, which 'applies to disputes over unregistered immovable property', states broadly that '[t]he Cadastral Commission has a preliminary right to decide the recognition of the lawful possessor' (Art. 2). It goes on to require that district-level cadastral authorities submit disputes to higher authorities if they involve state public land. Likewise, the recent Sub-Decree on State Land Management provides for the registration of state land according to the same procedures used for private lands (SD State Land Management, Ch. 3, Art. 8). This means that the Cadastral Commission will be responsible for resolving disputes in case 'investigation reveals a dispute over the parcel to be registered' (SD Sporadic Land Registration, Art. 8). The use of these registration procedures with regard to state

³ The Ministry of Land Management, Urban Planning and Construction, No. 112 DNS/BrK, 21 August 2002, Prâkas on the Guidelines and Procedures of the Cadastral Commission, Ch. 2, Art. 3.

land appears to extend the jurisdiction of the Cadastral Commissions to disputes between individuals and the state over state land (e.g., where an individual claims to be a possessor of what the state wishes to register as state land).

Ultimately, the state of the law on this point is unresolved. The highest authority on this point is the Land Law, and based on the Land Law there is an argument that the Cadastral Commission only has the jurisdiction to deal with disputes between one potential possessor and another. However, the dominant interpretation of the law appears to be that expressed in the joint Prâkas on the competence of the courts and Cadastral Commissions (MOJ MLMUPC, No: 02 PRK.03/26 November 26 2003), which states that all non-contractual and non-inheritance claims with regard to unregistered land shall be heard by the Commissions. Thus, for the time being, it should be assumed that the Cadastral Commission's authority has been extended (by regulation) beyond that which was initially contemplated in the Land Law. On this interpretation, the land disputes described in this report would all have been within the jurisdiction of the Cadastral Commissions. The fact that none of the disputes was submitted to the Cadastral Commission indicates a preference for more coercive forms of dispute resolution than that offered by the Commissions, particularly with regard to the resolution of more complex disputes.

D.4 Procedures for lawfully allocating state land

Even if the disputed land in the case studies lawfully belonged to the state, it is still not clear that local government officials are empowered by law to allocate rights to state land in the way they did. In each of the case studies, local government officials were involved in transferring land rights, either to a particular public entity, like the school in Prasat Sambo, or to private parties, as in Stoung. The evolving nature of the legal regime in relation to state land management makes it difficult to evaluate whether local government officials were in fact empowered to authorize the sorts of transactions that were proposed/undertaken.

The following discussion is based on the state of the law in mid-2005, when the case studies were conducted. It is followed by an analysis of the impact of legal developments that have occurred since that time in relation to state land management.

The cases show decisions in relation to land administration being made by three levels of government: provincial, district and commune. In the Stoung cases, the provincial authorities gave permission to the commune authorities to authorize a 25-year lease to outside investors for the construction of a water reservoir. In the 2005 Prasat Sambor case, the district office was instructed by the provincial governor's office to identify free land to allocate to a school. In the Sa'ang fish pond case, the commune council made the decision to spend commune funds on road construction. In order to build the road, they needed right of way access to through a parcel of land occupied by a family which refused to grant permission. The commune council made the decision to go ahead with road construction. Likewise, in the pond case, the commune council initially decided that a fish pond that had been built by private interests was on public land and, as such, could be used by the public.

An analysis of the legal framework for state land management must begin with the Land Law.

Chapter 2 of the Land Law governs public ownership. Crucial principles established here include:

1. State *public* property may not be sold or exchanged, however, temporary rights may be granted to use state public land (Art. 16).
2. State *private* property may be sold, leased, concessioned and transferred in accordance with the law (Art. 17).

Additional details on the processes for the grant of concessions are set out in Chapter 5,⁴ but in general, details regarding the 'conditions and procedures related to the sale and the management of the private property of the State and public legal entities' are left to be determined by sub-decree. Art. 17 of the law includes the restriction that 'no sale [of state land] shall be made in the absence of the said sub-decree'. However, no similar restriction exists for other types of land transactions, e.g. leases and concessions. As such, the Land Law provides little guidance as to which organs of the state can make which sort of decisions about land.

However, a number of other laws and regulations may be called upon to limit the discretion of state actors in dealing with land. To the extent that such regulations were made prior to the Land Law, they should be considered to be still in force unless they are 'contrary to' provisions of the Land Law (Art. 267). Thus, it could be argued that the Law on Financial Regime and Property of Municipalities and Provinces (Preah Reach Kram/CH-RKM-0298/03/25 February 1998) applies. This law provides that 'the Governor shall not lease or transfer the use of [state] property without the consent in advance of the Minister of Economy and Finance and agreement of the Ministry of Interior'. Similarly, Order 30 BB/25 December 1997 on The Management of State Property requires state authorities at all levels to go through specified procedures and request approvals prior to re-assigning rights in state property, whether by sale, lease or transfer.

An alternative argument for the limitation of state discretion in dealing with state land might rest on the Sub-Decree on Social Concessions, which establishes a Provincial Land Use and Allocation Committee responsible for (inter alia) approving 'decisions about the allocation of state land at the provincial level' (No. 19 ANK/BK/19 March 2003; Art. 23). If any of these regulations apply in the manner suggested, then a transfer of state land, taking place without the necessary authorities, would be unlawful. No evidence of compliance with these sorts of formalities was seen in allocations of what the authorities saw as state land in the Stoung or Prasat Sambo cases.

At the commune level, the issue is somewhat different. Here, the council is given a broad mandate to manage local affairs, including the power to 'uphold and support good governance by using all available resources to address the basic needs of its Commune/Sangkat to serve the common interests of citizens ...' (Commune/Sangkat Law 2001, Art. 41). In the absence of regulations or decisions of higher authorities to the contrary, decisions on how to use available state land might be seen to be auxiliary to this authority.

In the Sa'ang road case, for instance, it is practical to contemplate that commune councils have the power to make decisions about the uses of state public land to the extent that it is necessary to execute its local development mandate, such as building a road.⁵ Similarly, in the fish pond case, it could be argued that the commune council, by initially declaring the newly constructed pond as a common pool resource, was acting within its mandate of protecting and preserving the environment and natural resources (Commune/Sangkat Law 2001, Art. 43), in accordance with Art.18 of the Land Law prohibiting encroachment on state public lands.

⁴ Chapter 5 establishes an outline of a procedure for issuing economic land concessions. These were not complied with in the cases under study and no claim was made that any of the land allocations were formal concessions.

⁵ Commune councils are also charged with 'promoting social and economic development and upgrade the living standard of the citizens' (2001 Commune/Sangkat Law).

D.5 New rules enacted after case studies were completed

Since the case studies were completed, two important new pieces of regulation came into being: the Sub-Decree on State Land Management and the Sub-Decree on Economic Land Concessions. After the issuance of these new rules, local government officials face clearer legal limitations on their power to distribute land in that (i) state lands can only be allocated for concessions after they are registered, and in accordance with the established concession procedures;⁶ and (ii) the question of who has the authority to deal in state land is clarified.

Concession process

Taken together, the Land Law, the Sub-Decree on State Land Management, and the Sub-Decrees on Economic and Social Land Concessions provide the outline of a comprehensive framework for evaluating and granting new concessions (SD State Land Mgmt, No. 118 HNK/BK, Ch. 8, Arts 18(f) & 21).⁷ The basic principles established under the new framework are these:

1. State lands cannot be granted as a concession unless they are first registered (SD State Land Mgmt, No. 118 HNK/BK, Art. 3(d)).⁸
2. Land concessions can only be granted on the private property of the state.⁹
3. Land concessions can be offered for either economic or social purposes. Social land concessions 'allow beneficiaries to build residential constructions and/or to cultivate lands belonging to the State for their subsistence' (Land Law Art. 49 (2)), whereas economic land concessions 'allow the beneficiaries to clear the land for industrial agricultural exploitation of land ...' (Land Law Art. 49 (3)).

The exception that may swallow the rule

The absence of procedures governing the lease of state lands, however, may make it possible to subvert the concession process. This has the potential to create a loophole in the Land Law, allowing state private lands to be leased without adequate control or reference to other interest holders.

In a 1997 regulation, lease and concession were treated as the same event (Order on Management of State Property, ORDNo.30/BB, Art. 5.3, 25 December 1997). However, the way the 2001 statute is drafted suggests that leases and concessions can be treated differently (Land Law, Art. 17). The new law addresses leases and concessions in two separate paragraphs, separated by provisions regarding sale. It reads: 'The property belonging to the private property of the State and of public legal entities may be the subject of sale, exchange, distribution or transfer of rights as it is determined by law. Such property may be leased out and it may be the subject of any contract made properly according to the law.'

⁶ However, see the potential exception explored in the next section.

⁷ Art. 18 of SD State Land Mgmt, No. 118 HNK/BK provides for public entities with trustee mandates to deal in state lands. However, this possibility is excluded in the absence of a further sub-decree which had not been issued as at the date of writing.

⁸ However, state land can be considered registered even if land mapping procedures are not complete, if 'there is conclusive information about the present status and use of the land, and relevant ministries, institutions and territorial authorities agree on the status of the land as state public or state private land' (Art. 9). This potentially means that if all ranks of government agree that land is state land then it is registered as such. Yet, it is also possible to argue that registration cannot be considered complete if disputes regarding the land have not been resolved (Art. 8(b) (3)).

⁹ But see Sub Decree on State Land Management, Art. 3(d), declaring that 'State land can be granted [for concessions] if the land has been registered in the Land Register as *state public* or state private land and in accordance with legal procedure' (emphasis added).

Unlike concessions, which are subject to the new procedural requirements, the limitations on which authorities of the state can grant leases on state private land or for what purpose have not been advanced. There are also no legal provisions providing guidance on when concessions must be used and when leases over state land may be acceptable. In order to clarify the state of the law, a sub-decree regarding the proper terms of the lease of state private lands would be useful.¹⁰

Government bodies authorized to make decisions about the allocation of state land

The Sub-Decree on State Land Management now provides that state private land can be allocated for use at provincial, district or commune levels in accordance with a Joint-Prâkas of the Ministry of the Interior and Ministry of Economy and Finance (SD State Land Mgmt, No. 118 HNK/BK, Ch. 8, Art. 20). This has not yet been issued; when it is written, it will hopefully clarify the extent local administrations will be authorized to use state land for their own administrative purposes, or allocate it for other uses. Giving the sub-national authorities the power to allocate land is broadly consistent with the existing practice identified in the case studies.

Hypothetical impact of the new rules on the cases studied

If these cases arose today in the context of concessions, then all of the lands would need to be mapped and registered before any concessions could be granted. The registration process would have provided an opportunity for villagers to claim the land and offered a venue to settle disputes between the authorities and the villagers in the event of a disagreement (e.g. SD on Sporadic Land Registration, No48ANK.BK/21 May 2002). However, as noted above, it may be possible to circumvent these procedures by considering the transactions as leases rather than concessions.

D.6 Conclusion

The analysis outlined above is indicative of a legal system in a state of flux. Clearly, in such circumstances it will be desirable to clarify and strengthen the legal framework. A number of points where this should be done have been outlined. Nevertheless, the key point emerging from this discussion does not relate to technical faults or gaps in the law, but rather to the gap between the law on the books and the law in action. At least in theory, the law offered a resolution to all of the disputes studied. The problem, from a legal point of view, was that the law was not applied. This reflects the distance between the law and local practice (both administrative and agricultural) and a lack of knowledge of the law and the comparative weakness of the institutions established for its application.

The courts are excluded from these disputes (at least until they have been through the Cadastral Commission) and the Commission, which was established to conciliate and, where necessary, decide such cases, has not yet begun to exercise its adjudicative function. As such, we see these disputes being played out in a jurisdictional vacuum. In the absence of an alternative forum for resolution, it is hardly surprising that parties turn to relatively accessible and traditionally powerful representatives of the administration to resolve their disputes.

¹⁰ The Ministry of Economics and Finance is in the process of drafting a sub-decree regulating dealings in state land (including leases).

The RGC's establishment of the National Authority for the Resolution of Land Disputes (NARLD) in February 2006 (Royal Decree NorSar/RoKorTor/0206/097) can be read as an attempt to respond to this jurisdictional vacuum.¹¹ Whether this new institution will provide a viable alternative jurisdiction for land dispute resolution will be a valuable subject of study.

¹¹ See Annex E for an overview of the structure of the NARLD.

Annex E: Briefing Note on the National Authority for the Resolution of Land Disputes (NARLD)

World Bank, Justice for the Poor Program
Phnom Penh, 28 April 2006

This note provides a basic overview of the documentation available on the newly created NARLD, including:

- Royal Decree NorSar/RoKorTor/0206/097 (Establishing the NARLD);
- Sub-Decree (Ref No.168 or NorKrorTorTor) on the Composition of the National Authority for Land Dispute Resolution;
- Letter from Senior Minister for LMUPC (23 March 2006);
- Briefing meeting with H.E. Svay Sitha (7 April 2006);
- Media reports on the 1st meeting of the NARLD (10 April 2006);
- Press Release from NARLD (20 April 2006);
- Speech of the Senior Minister for LMUPC (27 April 2006).

Q: What will the NARLD do?

Established by Royal Decree in February, the NARLD has the responsibility to:

- Prevent land disputes with education;
- Take disciplinary measures against encroachers;
- Receive complaints involving land disputes that are beyond the competence of the CCs;
- Research, investigate and resolve land disputes; and
- Monitor the resolution of land disputes by other authorities (including the CCs).

Q: What is the structure of the NARLD?

The NARLD is a council of 25 high ranking officials, the majority of whom are from the government. It also includes representatives from the parliament and government lawyers. NGOs were invited to nominate a representative, but declined to do so. Instead, they have requested to develop a framework for cooperation with the Authority.

The Authority is chaired by Deputy PM Sok An; vice chairs include the Minister for Land Management (H.E Im Chhun Lim), the Minister for National Assembly and Senate Relations and Inspectorate Affairs (H.E. Men Sam On), and a member of the opposition (H.E. Eng Chay Eang).

The Royal Decree creating the NARLD also creates a general secretariat to the Authority headed by H.E. Svay Sitha (Under-Secretary of State at the Council of Ministers). The general secretariat is effectively the implementing agency of the NARLD. In short, it is tasked with:

- Receiving and investigating complaints on behalf of the NARLD;
- Forwarding relevant complaints to the NARLD for decisions;
- Organizing meetings of the NARLD;
- Monitoring the work of other agencies involved in land dispute resolution;
- Preparing reports for the NARLD to consider and adopt; and
- Disseminating the results of the work of the NARLD.

The general secretary described the role of the general secretariat as being the 'executive agency' of the NARLD, and operating in accordance with advice and policy decisions made by the NARLD.

It is important to note, however, that the general secretariat is not tasked with deciding land disputes. This task is reserved for the Authority itself. This point was also made by the secretary general, who envisages the NARLD conducting televised hearings to decide major land disputes.

Q: How does the NARLD fit into the existing institutional structure for land dispute resolution?

The NARLD is a new institution which was not envisaged when the Land Law was drafted. As such, it does not have a clear place within the existing institutional framework for land management.

In terms of land dispute resolution, its most contentious function, its jurisdiction is described as hearing cases which are 'beyond the competence of the National Cadastral Commission' but also receiving 'complaints from everywhere involving land disputes'.

The Land Law (2001) sees land dispute resolution being undertaken by the courts or Cadastral Commissions. As such, the extent of the Authority's jurisdiction vis-à-vis the courts and the Cadastral Commission will need to be clarified.

However, the jurisdiction of the Cadastral Commission has never been completely clear either. While the Land Law in Art. 47 only provides for the Commission to decide 'disputes over an immovable property between possessors' (i.e. between private parties), later sub-decrees seem to indicate that the Commission also has the power to resolve disputes over whether a particular piece of land is lawfully possessed (i.e. disputes between individuals and the state).¹ The currently accepted view seems to be that the Commissions have the initial mandate to resolve all disputes over ownership of untitled land except those that relate to (i) contractual dealings or (ii) inheritance; these fall within the initial jurisdiction of the courts (see Joint Prâkas on Determination of Competence of the Court and Cadastral Commission Regarding Land Disputes (2PKR03/2003)).

The law provides for decisions of the National Cadastral Commission to be appealed to the courts. However, the National Cadastral Commission has not yet decided any cases. Rather, major land disputes are either held up in the Cadastral Commission system, or finding their own (more or less satisfactory) negotiated outcomes outside the formal legal system.

In practical terms, it is envisaged that the NARLD will attract major disputes which cannot be resolved by the Commissions or the provincial authorities dealing with them. The NARLD is not likely to hear a great number of disputes. Its structure as a Phnom Penh-based institution with high-ranking membership will probably prevent this. As such, the Commissions and local authorities are likely to continue to play a significant role in the adjudication and/or mediation of land disputes.

Q: Aren't there issues around the legality of the NARLD?

There are a number of issues surrounding the legal status of the NARLD. First, there is an issue around the separation of powers. Art. 130 of the Constitution states that the judicial power shall not be given to the legislative or executive branches. There is an argument that the NARLD is an example of an executive agency exercising a judicial power. The alternative opinion, however, would

¹ E.g. #48/2002 on Sporadic Land Registration and #47/2002 on the Organization and Functioning of the Cadastral Commission.

be that the NARLD is only making administrative decisions and that this is valid, as such decisions can be reviewed by the courts.

Secondly, NARLD is created by a Royal Decree. This use of Royal Decrees is not foreseen by the Constitution and it is not clear that it is an appropriate instrument for the creation of such an Authority. This issue could, however, be resolved through the amendment of the Land Law.

Finally, although both the Senior Minister and the secretary general have stressed that the NARLD and the Cadastral Commissions are complementary organizations, there is a risk that the NARLD will encroach on the jurisdiction of the Commissions, which has a defined legal mandate under the Land Law.

As such, there are legitimate concerns about the legal status of decisions of the NARLD. In practice, however, courts and other agencies of the executive would be expected to respect the decisions of such a highly positioned institution. According to the secretary general of the NARLD, there is an expectation that the Land Law and associated regulations will be reviewed with a view to integrating the work of the NARLD into the legal framework.

Q: What will the NARLD's operational priorities be?

The NARLD was appointed by sub-decree on 15 March 06. Since that date it has established an office in the Council of Ministers.

The general secretariat has been established with five departments:

1. Public Relations;
2. Dispute Handling (investigation and resolution);
3. Education and Prevention;
4. Research, Law Enforcement and Inspection;
5. Administration/Personnel.

Initial work has focused on the release of persons detained for involvement in land disputes.

According to preliminary discussions with the secretary general, other areas of focus will be:

- Establishing a case database to track land disputes;
- Receiving complaints and resolving major disputes that cannot be handled elsewhere;
- Increasing coordination among ministries in relation to land issues;
- Establishing systems to ensure officials involved in unlawful dealings with land are punished.

The first meeting of the NARLD was held on 10 April 2006. At the time of writing, no minutes of that meeting had been circulated.

Annex F: Social Relations and Local Level Power Structures in Cambodia: A Review of the Literature

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F.1 Introduction

1.1 Purpose and scope

This paper has been prepared as part of the World Bank Cambodia's Justice for the Poor (J4P) program. The J4P program has produced an initial framework analysis that will provide the basis for future World Bank research projects and possibly programmatic interventions centering on justice reform and community empowerment. In a severely abbreviated form, J4P starts from an analysis of Cambodian society and development in which *Cambodia is characterized by strong vertical structures of authority and influence, coupled with weak horizontal linkages across and within groups, the combination of which have led to elite capture of assets and power and unsustainably high levels of inequality*. This paper is intended as a review of the literature and aims to answer the following question: to what extent are the central assumptions of the Justice for the Poor team's initial analysis of Cambodian society supported by the anthropological, sociological, and mixed-methods literature on Cambodian society, governance structures, and dispute resolution systems?

This paper also attempts to support the design of the World Bank's Social Development work in Cambodia more generally, by describing Cambodian social relations, village decision making structures, and relationships with local governance, primarily through the lens of sociology and anthropology. Within this positivist analysis of Cambodian society, the paper will also attempt to embed a useful description of the binding constraints that limit the development of more equitable power relations in Cambodia.

1.2 Methods

Diverse disciplines address the J4P team's underlying assumptions. As such, this paper will draw on multiple bodies of literature.² Anthropological texts, particularly field-based ethnographic research, have been used to achieve a level of depth and an understanding of village dynamics over time. Sociological research has been used to examine disparities across geography and within various Cambodian regions. Political analyses, which themselves draw heavily from journalistic sources and key informant interviews, have been used to gauge the distribution of power over time and to better understand the post-Khmer Rouge era patronage system. Economic analyses, including the Bank's own policy reports, have been used to contextualize findings; evaluative reports by various development actors, including the Bank's own monitoring and evaluation work, have been used to

¹ The authors would like to thank Michael Woolcock, Caroline Sage, Heang Path, Ximena del Carpio, and Eric Haythorne who contributed to the paper's conceptual framework through their participation in a workshop in May 2005.

² The bulk of this literature is found in the World Bank's own body of social development literature; many of the papers can also be found at the Cambodia Development Resource Institute (CDRI) library in Phnom Penh.

determine the effect of development assistance on social dynamics within the country. Finally, historical sources have been used to illuminate changes in Cambodian society over time, with particular reference to power structures.

Because this paper takes as its starting point the J4P team's initial analysis, it is restricted to an examination of primarily social phenomena; macroeconomic issues and geopolitics, although they have undoubtedly played a role in Cambodia's development processes, are outside the scope of the study.

F.2 The analysis analyzed: stating and interrogating the Justice for the Poor program's underlying assumptions

This section of the paper introduces the J4P framework analysis in greater depth. It then introduces relevant literature as appropriate, highlighting areas of scholarly confusion, scarce information, and academic dispute.

The section is organized in four parts. The first part states more formally the J4P analysis and reflects on similar analyses made by other scholars and researchers. The second part focuses on one of the two major premises of the J4P analysis, namely that Cambodian society is characterized by strong vertical cohesion; this part focuses on modes of patronage, fluidity of patron-client relations, and the intersection of social patronage and the formal political sphere. The third part of the section focuses on the second major premise of the J4P analysis: the existence of weak horizontal linkages across and within groups. The final part of the section examines whether the J4P analysis' responses to the patronage system are accurate.

2.1 The Justice for the Poor framework analysis

The Justice for the Poor framework analysis (see Figure 5) combines a conceptualization of power in Cambodia (the left-hand portion of the diagram) with a descriptive sketch of the country's current reform agenda (the right-hand portion of the diagram).³ Specifically, the 'country conditions' portion of the diagram details the pathology of patronage, the psychosocial implications of a hierarchical vertical ordering of society. As twin major premises, the Justice for the Poor analysis argues that Cambodian society is characterized by (i) strong vertical cohesion and (ii) weak horizontal linkages. The analysis then identifies three responses by Cambodia's citizenry to country conditions, listed in decreasing order of prevalence:

1. Hopelessness, or more specifically, the feeling that 'hope is exhausted';⁴
2. Non-organized, episodic responses, including mob violence, nationalist violence and youth violence; and
3. Collective action (as a form of local-level resistance).

The J4P team identifies four main instances of collectivization within Cambodian society. First, groups form to manage common property; to invest in and maintain public goods;⁵ and to create and police 'clubs', which are a form of excludable common property. This phenomenon is most

³ This literature review is focused on the prescriptive analysis of country conditions, that is, the left-hand side of the diagram; the right-hand side of the diagram – the rationale for the World Bank's social development agenda – is explicated more fully in the World Bank's 'Cambodia: Social Development Concept Note' (forthcoming).

⁴ The Khmer word, according to Path Heang of the World Bank, is *ahsangkhim*.

⁵ Kim Sedara's fieldwork near Siem Reap contains many examples of such instrumentalist collectivization, which he describes as a function of generalized reciprocity. Sedara details (2001: 6) 'building a bridge, fixing ploughing tools, [and] repairing a house and a dam' within this frame.

clearly visible in the realm of natural resource management (NRM), where villagers collectivize to manage forests, fisheries, and non-timber forest products (NTFPs). Secondly, groups come together to create and maintain symbolic public goods, goods that have no immediate instrumental benefit but that create status, power, and, arguably, social cohesion.⁶ Thirdly, groups form around existing or growing conflicts: collective action takes place when groups police their own members and when groups form around common interests (and in opposition to other groups). Common property management, specifically the monitoring of the commons to prevent over-extraction, is an example of the former conflict management collectivization approach; inter-village dispute resolution, which often takes the form of entire villages opposing one another, or of a village opposing an external actor, is an example of the latter.⁷ Fourthly and finally, groups form to respond to structural conflict; labor unions fall within this category of collectivization.

In many ways, this analysis is neither novel nor unique. Perhaps the most succinct exposition of a similar diagnosis of Cambodian society comes from the historian Chandler, who argues (1991: 4) that '[i]n the years 1945-79, some four-fifths of the population were farmers and their families, people who took their low status for granted and thought social change unlikely or impossible. Toward superiors they were deferential. They constructed arrangements with those they perceived as being above them, resented exploitation, and hoped for the best.' While Chandler writes that villagers remained optimistic in the pre-UNTAC era that their circumstances could change, the J4P analysis argues that since that period, increasing economic and social inequality has to a significant degree cancelled out the benefits of political stability, poverty reduction and economic growth.

2.2 The J4P analysis and existing literature on patronage

This subsection examines whether or not the J4P framework analysis' depiction of Cambodia's strong vertical cohesion is accurate, as compared to existing literature on Cambodian social relations, history, and politics. It argues that the existing literature supports the J4P's analysis and describes Cambodian society as hierarchical, non-mobile, and structured by a set of norms that govern both economic and symbolic status transactions. It also argues that the patronage system, which closely mirrors the structures of the state, continues to provide the dominant power structure in the lives of most Cambodians.

Patronage links are the vertical links that define the relationships between individuals of different classes and genders. Luco (2002) describes the patronage system as based primarily on age hierarchies.⁸ In Luco's conceptualization of the patronage system, patronage serves as an extended fictive kinship network: patrons serve as familial elders, clients as children, and the entire tenor of the relationship is based on the exchange of respect and loyalty for security, personal and economic. Patrons are required to have 'exceptionally good character, sound judgment, and strong personalities' and are expected to look out for their clients in hard times by providing protection and economic assistance (Ebihara (1971: 360-1). Clients, on the other hand, are expected to stay loyal and accept the existing social order; in particular, clients should accept the patron's legitimacy as a conflict mediator and as a symbolic or ceremonial leader (Hughes, 2001: 12).

⁶ The concept of symbolic public goods is drawn from Rao (2006).

⁷ See, e.g., Mak Sithirith (2000: 20-1), describing how a village joining ranks to argue with one voice is the first response in village-fishing lot conflicts. Another timelier example of this phenomenon is of villagers opposing large land concessions: see, e.g., The Cambodian Daily, 5-6 February 2005.

⁸ But see Hughes (2001: 19), describing patronage systems as a 'significant form of social organization, along with age categories and kinship structures', the implication being that patronage is not based on age hierarchies or familial links). Hughes uses the phrase *khsae* ('connections') to identify patronage links.

Luco (2002: 15-20) describes patronage relationships using the Khmer phrase *mean knong*, 'to have back' or *mean khsae* 'to have connections,' and emphasizes the long tradition of patronage in Cambodia, noting that social relations appear to have been ordered through such extended fictive kinship relations well before Cambodia's colonial history. As evidence, Luco cites an ancient moral treatise (*cpap*) that describes patronage using the metaphor of the symbiotic relationship of the tree and the liana:

Take a large tree covered with creepers. The creepers have asked the tree for its hospitality, to grow alongside it. They reach high towards the sky, thanks to the generosity of the tree; they wrap around the tree, hold on to it and produce flowers and fruits in abundance ... The tree is the powerful man, the creepers that rely on him are of course the little people; one must never forget the kindness of the former.

Other anthropologists link the phenomenon of patronage to the historical development of class hierarchies and describe patronage as a function of the 'Hinduization' of Cambodia.⁹

The patron-client relationship does not function on a purely moral or religious plane, of course. Patrons are distinguished by their high levels of 'cultural capital': they cultivate ties outside of the village, ties that either have direct economic effects or that increase access to information, making bureaucracy navigable (Hughes, 2001: 10-12). In the Cambodian case, the patronage system is integrated into the structure of the state, with local leaders being tied to the ruling CPP party (and its allies), either as direct political appointments or through informal relationships (Davenport et al, 1995). Hughes (2003 and 2001: 19) links modern modes of patronage to militarization, international intervention and aid assistance, and privatization of the economy:

[When it came to power during the 1980s] the CPP designed a solution which drew economic reform into the service of political strategy. The emergence of a free market in land and goods *before* the initiation of a peace process was initially popular with ordinary farmers; it also quickly permitted the establishment of networks of protection and patronage permitting wealth accumulation by members of the state and military. By these means, the fragile ideological basis of state cohesion of the 1980s could be replaced by a more solid structure of material self-interest. Economic reform was not merely designed to facilitate Western aid and investment, but to ensure that both existing domestic and new incoming assets were concentrated in the hands of loyalists.

As Hughes notes, both patrons and clients reaped tremendous benefits from the privatization of state land during the economic reforms of the 1980s: the complex web of regulations surrounding land privatization was in fact intended to privilege insiders, or those who were properly situated in the patron-client network.¹⁰ As a result, landholdings were quickly consolidated: in 1992, 79% of villagers owned less than one hectare (Ledgerwood, 1998).

This orthodox conceptualization of patronage is almost entirely functionalist: the relationship is seen primarily as an economic one, and the trade of loyalty for security is viewed as freely made but binding. This characterization of patronage closely matches the notion of 'the inequality trap', a core theme of the Bank's World Development Report 2006 (World Bank, 2005). The WDR uses 'inequality

⁹ See, e.g., Coedès (1948), who argues that before the inflow of Indian cultural and political systems, Cambodia was more egalitarian; after that inflow, and by the time of the great Angkor kings, Cambodia was marked by increasingly well defined social classes, hierarchical rankings, occupational differentiation, and a distinction between urbanite and rural villager. Coedès also memorably describes the Cambodian as a 'Hinduized Phnong'.

¹⁰ See also Biddulph (2004: 8), noting the widespread perception in Cambodia that "'big people" have taken all the spare land'; and Chan Sophal et al (2001: ii), noting the 'considerable confusion among the populace with regard to the legality of ownership of land' and the conflict between historical notions of land ownership and acquisition and the new land regulations and concession policy.

trap' to indicate the resilience of poverty and inequitable social situations: in the case of Cambodia, the clients at the bottom of the patronage system – the very poor – experience little upward mobility.¹¹ Instead, these very poor cultivate norms of acceptance and norms of gratitude for the patron relationships that they do have; these norms counteract the frustration the poor might feel because they lack opportunities. Thus, in an inequality trap the political overlay and the informal, but no less real, social structures of the patronage system create an inequitable social equilibrium. The poor cannot generate surplus, cannot invest that surplus, and inevitably become risk averse because they are unable to smooth income and consumption over time.

Other anthropologists dispute this notion of a binding, solid-state patronage system and highlight the flexibility inherent in the patronage system. Many anthropologists point to the radical shifts in social relations that occurred during the Khmer Rouge era, when the entire patronage system broke down under conditions of enforced equality and many KR soldiers often switched sides, fighting against their recent comrades (see Luco, 2002: 19). The Khmer Rouge further upset the traditional patron-client system by elevating the status of children: 'Youth were rewarded with authority and position in the belief that they were more politically reliable and trustworthy' (in Miles, 2005).

Similarly, Heder's recent analyses of Cambodian politics and PM Hun Sen's consolidation of political power stress the shifting nature of political alliances: the author details (2005: 114) how the CPP both threatened and cajoled a number of FUNCINPEC members into joining the leading coalition. Heder portrays this as a fundamental shift away from loyalist politics toward a purely materialist race for rents: 'At a deeper level, FUNCINPEC realized that just as CPP had chucked the failed ideology of sociology, FUNCINPEC must also become party [sic] for which immediate business links were more important than "royalism"' (p.117). Heder's research shows that, while the patronage system dominates, at the national level clients may patron shop, choosing patrons based on political influence, economic strength, and future prospects. Thus the simple patron-client relationship is undermined by the very networking that constitutes a political party: as new members meet more 'connected' people through the party, or in other competing political parties, they enjoy increasing opportunities to diversify their patron base.

It should be noted, however, that it is unlikely that the patron-shopping phenomenon occurs with the same frequency at the local level, where the pool of potential patrons is limited. At the village level, particularly among isolated villages, the one patron per client patronage system probably remains strong.

2.3 The J4P analysis and literature on social cohesion

The dominant description of Cambodian society characterizes horizontal linkages – links between and within villages – as weak. Metaphors for this type of social arrangement abound: with regard to inter-village linkages, one anthropologist calls Cambodia a 'galaxy society', one where formal political power is perceived as remote but unstoppably coercive (Luco, 2002: 15). Relations within the village are typically described as atomized; one well known study posits that 'every household is an island', emphasizing the lack of trust and bonds between kinship groups (Oveson et al, 1996). This subsection will address sequentially these analyses of inter- and intra-village cohesion.

¹¹ This finding is strongly supported by World Bank (2006), which includes country-specific data collected for the Bank's global Moving Out of Poverty study.

2.3.1 *Inter-village cohesion*

With regard to inter-village linkages, Cambodia has been described (as we have seen) as a 'galaxy society', one where disorganized hamlets revolve around a far-away power (Luco, 2002: 15). The social identity of the typical Khmer village and the village's perception of its own boundaries and character reinforce this notion. Collins describes the village as a civilized domain, opposed to and in conflict with the external, uncivilized world of the forest, a description that once again emphasizes the separate and distinct nature of each individual village (in Hughes, 2001: 6). This sense of villages as culturally and socially autonomous spaces finds support in May Ebihara's argument that the multitude of informal administrative and political functions performed by village chiefs means that 'the formal political structure does little to stimulate extra-village contacts' (1971: 360-1).

While the galaxy metaphor holds considerable explanatory power, more nuanced descriptions of Cambodian society point out a variety of horizontal links that extend across village lines.¹² In the 1960s, Ebihara conducted the first and only pre-Khmer Rouge, English-language anthropology study of *Svay*, a Khmer village, and noted that '[v]illagers are generally deeply suspicious of strangers and unknown regions, but the immediately neighboring villages are linked to *Svay* by a network of kinship and friendship bonds resulting from generations of intermarriage among these communities' (1968: 104). In Ebihara's anthropological account, exogamous marriage patterns account for almost all inter-village mobility; villagers prefer not to leave the village, even for labor opportunities.¹³ Festivals and wedding rituals thus provide an opportunity for villagers to meet prospective spouses, while solidifying village identities and bonds of friendship across villages.

While much of the above discussion on inter-village cohesion is dated, a recent report commissioned by GTZ supports the finding that the scope of inter-village social action is limited. Addressing this issue in terms of what they refer to as binding, bridging and linking social capital, Pellini and Ayers (2005: 9) find that bridging social capital, the capacity for collective action incorporating multiple groups, is weak:

Bridging social capital is weak in Cambodia [...] [F]amilies have often represented the safety nets to survive during periods of conflict. The mistrust generated by the Khmer Rouge regime in its attack on traditional institutions and values such as family, religion and association served to negatively affect the relationship between different families. The effects of this fracture of traditional institutions and values continue to be manifested today in the difficulties different groups and associations have at the local level in linking with each other.

2.3.2 *Intra-village cohesion*

More is known about intra-village cohesion than inter-village cohesion, in part because classical anthropologists use the individual village as their unit of analysis. But a multitude of sources on intra-village cohesion does not mean that conclusions are easily drawn about village life in Cambodia; rather, the debate over intra-village cohesion is heated, with two main opposing arguments drawing the most attention. The first argument reflects the dominant view of Cambodian society, held by both academics and development professionals. This perspective argues that Cambodian villages are atomized, that associationality is low, and that moments of solidarity among Cambodians are at best episodic. The contrary view argues that pre-Khmer Rouge Cambodian

¹² It should be noted that even classical accounts of Cambodian history argue that the advent of a centralized state, while the product of Indian cultural transmissions, required the 'execution of certain activities (i.e. irrigation works) [that] required collective effort and central authority beyond the local villages' (Coedès, 1948).

¹³ Ebihara also notes that multiple marriages, if they result in the newly married couples staying in the village, lead to parcelization of family land and ultimately food insecurity.

society was marked by subtle but important horizontal linkages, and that post-Khmer Rouge Cambodia is returning, or has already returned, to that level of social cohesion. These competing views will be addressed in more detail below.

2.3.3 *The dominant perspective: atomized communities, weak social cohesion*

The dominant atomization perspective is supported by a wealth of literature and particularly by the classical anthropological and historical account. Jacques Népote writes (1992) that acts of solidarity in Cambodian villages are 'temporary, voluntary and contractual'. Social cohesion in the village, to the extent that it exists at all, occurs only during good times; social bonds are easily broken during crises and periods of stress. David Chandler supports this account (1991: 4) by noting a generalized antipathy toward social action:

Radical social action, like ideas of a just society, was less prestigious and widespread in Cambodia than in Vietnam or China because aside from the importance given such celebrations as Buddhist festivals and harvests little value was placed on communal activity and because political affairs were seen not as the people's business but as royal business (*reachkar*) that occupied the time of those in charge.¹⁴

The cultural basis and physical structure of the typical Khmer village appear to support this view of generalized disassociation. Proverbs (*cpap*) advised that villages be kept small, and 19th century law seems to have discouraged building houses in close proximity to one another (in Ebihara, 1968: 90). Villages were often diffused over a wide swath of terrain and are internally subdivided into geographically distinct sub-entities, or what Ebihara calls 'intra-village divisions'. The classical account also notes the centrality of the family as a form of socioeconomic support: parents rely on their children for economic support later in life, with no alternative social support networks, and child-rearing and discipline can only be meted out by parents (see Rodier, 2000).

The dominant perspective argues that Cambodia's weak horizontal linkages are the result of long and complex historical processes. As might be expected, Vickery (1984: 13) ties the lack of horizontal linkages to the very existence of a strong, vertical patronage system: in the colonial era, freemen farmers were forced to maintain relationships with patrons and had little incentive to form cooperatives or create extensive networks of mutual obligation.¹⁵ The dominant perspective also emphasizes the pernicious effects of the war on social action, arguing that the Khmer Rouge's emphasis on collectivization in the form of *krom samaki* (agricultural collectives) has destroyed Cambodian's faith in collective action as a useful development approach. Others go so far as to say that Cambodians had little faith in collective action to begin with (Oveson et al, 1996: 66-7):

The common picture is that the traditional social cohesion and self-help mechanisms in the villages that were destroyed under Pol Pot are now slowly returning to normal. There is an element of wishful thinking in this, for it is questionable whether such a 'normal', traditional social cohesion on the village level ever existed in the first place. It is less questionable, however, that the deterioration of social solidarity appears to be continuing and that it is reinforced by the liberalization of the economy and the consequent monetarization of most relations beyond the nuclear family.

Thus, regardless of the conflicting views of the initial state of social cohesion in Cambodia, the majority view remains that social cohesion is currently low.

¹⁴ Chandler further notes that hundreds of thousands of Khmers did not participate in the anti-colonial resistance, preferring to focus on their individual households and livelihoods.

¹⁵ See also Ebihara's description of freemen, corvée labor, and patronage during the colonial era (1968: 45).

2.3.4 *The counterview: associations for mutual benefit*

The contrary perspective takes as its starting point the notion that variability across villages was high before independence, but is probably even higher today (Ledgerwood, 1998: 2). The counterview goes on to catalogue the extent of collective action at the local level. Pellini and Ayers (2005) identify a range of associational activities in Cambodian villagers. These are found to be centered on extended family networks, local pagodas and various forms of civil society organizations. Other authors point to group formation around NRM issues, and the existence of a range of mutual benefit associations as evidence of growing social cohesion within Cambodian villages.

Pagoda committees have long been identified as central to village life. While Ebihara (1968: 34) cites the historical movement toward Theravada Buddhism as evidence of a retreat from an unsustainable, ossified, hierarchical Hinduism toward a religion of individual moral action, Buddhism remains central to Cambodian social life. Pagodas functioned as centers for mutual self-help activities before the Khmer Rouge era (see Pellini 2004: 5-6; Khlok Seima et al, 2003: 8-9). Pagoda associations vary in size from 50-200 members and provide small loans to the poor, but Pellini argues that their real importance is symbolic: pagoda associations with dynamic *achars* serve as templates for civil action, rallying the community to address issues of political and economic importance.

NRM groups come together to manage resources and conflicts related to forestry, fisheries, and land. This phenomenon is so widespread it becomes difficult to categorize meaningfully. NRM groups may form in opposition to a particular forest concession, as a way of managing a local resource such as a community forest or fishing resource; or they may form around land titling disputes (see Schweithelm et al, 2004: 22, 32-3).¹⁶ Alternatively, fisheries disputes may take place over extended periods of time between entrenched stakeholders (Biddulph, 2000). In short, whilst it is clear that groups form around resource-related conflicts, it remains unclear how often this strategy is pursued, or how successful this strategy may be.

Ebihara (in her more recent fieldwork), Ledgerwood, and Sedara also describe a range of traditional self-help associations active at the village level. Ledgerwood (1998: 6) argues strongly against the atomized view of Cambodian society by referring to kinship links and the web of mutual reciprocity that binds kin. Stressing the importance of anthropological study across generations she argues that:

The only way to understand the connections that bind the residents of a village is to trace their bilateral kinship linkages (through both the husband and wife's sides of the family) by birth and by marriage over several generations ... Most of the households in the village [that Ebihara studied] are connected not only by kinship but also by long-term friendships, with the complex reciprocal obligations that such relationships bring.

Ledgerwood goes on to write that:

People still help one another in a variety of ways, including sharing food, donating or lending cash, exchanging labor, providing emergency financial and other assistance, and giving psychological support... While limited material resources may reduce the number of people or the size of the circle

¹⁶ See also Biddulph (2000: 12), detailing how in villages faced with patronage-based concessions, 'community forestry was being used not only as a resource management strategy, but also as a strategy by which the community could organize to protect its rights from powerful outsiders'. For a detailed description of a collective action land dispute, see Kato (1999).

of *bong p'ouon* [family] that people might be able to help, our research indicates that Khmer 'traditional' systems of mutual assistance and monitoring behavior are still active in this community.¹⁷

While Ledgerwood and Ebihara's research appears to support the notion that friendships and other bonds were not severed by the war, Kim Sedara goes further in documenting modes of reciprocity at the village level. Sedara notes (2001: 6), in accordance with Ledgerwood, that intra-kinship reciprocity exists across all socioeconomic strata. But Sedara goes further than Ledgerwood in cataloging intra-village reciprocal activities: households help each other with farming (exchanging labor in complicated patterns during rice cultivation), building houses, babysitting, and helping to prepare and pay for social rituals like weddings and funerals.¹⁸ Households also exchange animals: the owner asks another family to raise his livestock in exchange for future livestock.¹⁹

The work of the counterview social relations experts raises an important question: how do Cambodians define *bong p'ouon*, their kinship circle? To the extent that the kinship circle can be extended to include non-kin, mutual benefit associations may serve as entry points for development. But if the cultural conception of mutual help is based entirely on kinship – with the associations perhaps extending to more remote kin in times of relative prosperity – then the associations are hardly civic associations; instead, they are family networks.

Ultimately, the question is not whether mutual benefit associations, or other social associations, exist outside of kinship networks; surely they do (see Kim Ninh and Henke, 2005: 58).²⁰ Rather, the question is whether these fictive kinship networks have substantially separated from or integrated into existing patronage networks. To the extent that they are vertical, they will easily be embraced by the traditional patronage system; indeed, emergency lending is tied closely to the traditional moral duty of the patron. But if these associations are more reciprocal and non-coercive, they may represent a potentially fundamental source of horizontal social capital which is separated from the state and its associated patronage networks. This is an important question for further study, and one that may affect future attempts to scale up collective action from 'traditional' forms of association.

2.4 Responses to patronage

As noted above in Section 2.1, the J4P framework analysis describes three major reactions to Cambodia's social reality: first and most prevalent is a sense of overwhelming hopelessness; second is random and episodic violence; and third is collective action. Episodic, violent responses to the pathology of patronage are common and well known: the most typical examples include mob violence,²¹ nationalist violence,²² and domestic violence.²³ Thus, this section briefly addresses psychological responses to the pathology of patronage.

¹⁷ But see Vijgen, cited in Ledgerwood's text as asserting 'that needy kin are often just given food so that they will not starve, but they are not given equipment, land to farm, or investment capital'.

¹⁸ Sedara also notes that while the market for hired labor has increased, hiring workers still requires that one must form 'an alliance with a certain number of people, mostly people from the same village'. In short, hiring laborers is a collective action problem embedded within the complications of social status and balanced reciprocity. See also Collins (1998), describing exchange groups for farming, house building, and animal husbandry; Luco (2002), discussing *amakhum khmoch* ('associations for the dead', organized to handle funeral ceremonies) and *samakhum khmoch* ('plate associations', designed to lend equipment for parties/social rituals). Also see Hughes (2001: 11), noting that a fair number of households 'live hand-to-mouth with few possessions' with no able bodied laborer who can engage in mutual help.

¹⁹ Sedara notes that while most of these exchanges are kinship exchanges, some occur between friends and across villages.

²⁰ Survey respondents in their national study affirmed 'greater local associational life now than a few years ago'.

²¹ See, e.g., Forest (1992), describing outbursts of 'insane violence that sometimes accompany individual or mass reactions – comparable to the Malaysian amok – [that] seem to me an expression of the helplessness felt by

Hopelessness, or more accurately the feeling that hope has been lost, appears to be a common reaction to Cambodia's predicament. This is in part a function of Cambodia's history, or more specifically, the narrative of Cambodian history that has been told and retold to Cambodians: the colonial description of Cambodian history – that Cambodia was once a great country, but that it had lost its vigor – detailed an inevitable and inexorable decline. Chandler (1998) refers to this as 'the burden of Cambodia's past', a burden that actively affects Cambodia's present by prodding Cambodian leaders to live 'outside their means', striving for regional superiority. It is this perpetual sense of historic inferiority that leads to inevitable failures and a sense that history is repeating as 'tragicomic farce' (ibid). Feelings of frustration and helplessness pervade Cambodian daily life, where it is clear that agitating for change only brings about disproportionately bad fortune.²⁴

2.5 Consequences of the patronage system: the extent of elite capture

'Personally, I don't think things like governance are problems; they're problems if they get in the way of doing something else.'²⁵ Starting from this understanding – that it is the material impact of prevailing power structures, rather than the power structures themselves, that concern an organization like the World Bank – it is pertinent to ask what effect these structures have on the relationship between citizens and the state and particularly the responsiveness of the state to the needs of the poor. Two recent studies on the performance of commune-level government throw light on this question. First, Biddulph, in a study of empowerment in relation to local governance (2003), finds evidence that investments are being directed towards majority interests and 'not being captured by a local elite'. These findings are supported by Kim Ninh and Henke (2005) who, on the basis of a nationally representative public opinion survey, come to the conclusion that the choice of projects at the commune level is not perceived as subject to elite capture. Such findings could be used to argue that, whatever the state of power relations or associational life in Cambodian villages, it is not standing in the way of the performance of local government and, as such, that it is a marginal issue. We have not reached this conclusion.

The studies cited above focus on the service delivery and micro-infrastructure development activities of commune councils. While project selection may not be the subject of elite capture, asymmetric power relations are having an impact on rural development. Thus, for example, it is found that a significant share of the funds earmarked for the provision of services or for construction of infrastructure is diverted through corruption, with the result that service delivery and construction are often substandard.²⁶ The ability of government officials and associated business interests to manipulate flows of public finances for personal benefit is highly suggestive of elite capture. More importantly, perhaps, ongoing patterns of consolidation of land and natural resources demonstrate the weakness of existing institutional and social arrangements in ensuring that the state is responsive to the needs of the poor.²⁷ In the absence of equitable rule-based systems that support equity and accountability in the management of public assets, more overtly political mechanisms are

individuals to whom this cellular order based exclusively on interpersonal relationships offers only two options: absolute obedience or social rejection' (quoted in Luco, 2002: 15). See also, for a more modern example of this phenomenon, UN (2002) and Kim Ninh and Henke (2005).

²² The most obvious example of this phenomenon are the anti-Thai riots of 2003, described in US State Department (2003).

²³ Domestic violence is the primary source of conflicts reported in the UNDP's recent Access to Justice report (2005a).

²⁴ See, e.g., Heder (2005), discussing recent assassinations of politicians and social activists.

²⁵ Internal World Bank correspondence: Email dated 7 August 2005 from Scott Guggenheim (EASES) to Gillian Brown (EASSD).

²⁶ World Bank Press Release on the findings of its audit of the Rural Investment and Local Governance Project; see also Biddulph (2003).

²⁷ See, e.g., Global Witness on exploitation of forest resources by government officials <http://www.globalwitness.org/campaigns/forests/cambodia/>; Biddulph (2004) with regard to land.

likely to be needed to overcome the power imbalances that lie at the core of Cambodia's trend toward greater inequality.²⁸

F.3 Conclusions

This literature review validates the majority of the J4P framework analysis of social relations in Cambodia. Ample literature supports the description of vertical patronage structures in Cambodia, although the framework analysis should take into account the increasing flexibility of the patronage system, particularly in urban, heavily politicized areas.

This literature review found sources on both sides of the 'atomization' debate, but concludes that associationality or, as Pellini and Ayers call it, binding social capital does exist and is probably increasing. It is, however, unclear whether these increases in social capital are giving rise to the alternative sources of power, be they social or institutional, which might foster the emergence of more equitable and thus sustainable patterns of development in the long term. This question should be a starting point for further J4P research in Cambodia.

²⁸ On the trend toward increasing inequality in Cambodia see World Bank (2006). On the negative impacts that high levels of inequality have on economic growth and poverty reduction, see World Bank (2005).

Figure 5: J4P analytical

