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Pel Sokha, Pierre-Yves Le Meur, Sam Vitou, Laing Lan,
Pel Setha, Hay Leakhena & Im Sothy

Land Transactions in Rural Cambodia

A Synthesis of Findings from Research on Appropriation and Derived Rights to Land

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This is a report on findings from research conducted on **Land Transaction in Rural Cambodia**. The research involved field study in four provinces, Siem Reap, Kampong Thom, Sihanoukville and Rotanak Kiri, conducted in 2005, and includes updated information from other studies made in 2006. It includes reports and syntheses of findings from each province, and a common synthesis of research on land transaction.

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Abbreviations and acronyms

AC : Administration Commission

ADHOC : Cambodian Human Rights and Development Association

ADRA : Adventist Development Relief and Agency

ALF/ALH : Agricultural landless farmer/ agricultural landless farm-household

APDO : Angkor Participatory Development Organization

APSARA : Authorié pour la Protection du Site et l'Aménagement de la Région d'Angkor (Authority for the Protection and Management of the Region of Angkor)

CBNRM : Community based natural resource management

CBRDP : Community based rural development program

CCD : Cambodian Community Development

CDRI : Cambodia Development Resource Institute

CEDAC : Centre d'Étude et de Développement Agricole Cambodgien

CFAC : Community Forest Alliance for Cambodia

CFDS : Cambodia Family Development Services

CLEC : Community Legal Education Center

CO : Community Organizer

CODEC : Cooperation Development for Cambodia

DANIDA : Danish International Development Assistance

DCC : District cadastral commission

DLMUPC : Provincial department of land management urban planning and construction

DPA (CIDSE) : Development and Partnership for Action (CIDSE-Cooperation Internationale pour le développement et la Solidarité)

DWR : Deep water rice

DW-FR : Deep water and floating rice

ELC : Economic land concession

ESIA : Environmental social impact assessment

FAO : Food and Agriculture Organization

GRET: Groupe de Recherche et d'Échanges Technologiques

GTZ : German Technical Cooperation (Gesellschaft für Technische Zusammenarbeit)

Ha : Hectare

IYDP : Indigenous Youth Development Project

KPT : Kampong Thom

LAC : Legal Aid of Cambodia (human rights organization)

LAND : Land Action Network for Development (a network of NGO Forums on Cambodia)

LHF : Land holding farmer

LICADHO : Cambodian League for the Promotion and Defense of Human Rights

LMAP : Land management and administration project

LUMC : Land use management committee

MAFF : Ministry of Agriculture, Forestry and Fisheries

MLMUPC : Ministry of Land Management, Urban Planning and Construction

MOWRAM : Ministry of Water Resources and Meteorology

NALDR : National Authority for Land Dispute Resolution

NCC : National cadastral commission

NTFP : Non timber forest product

OLMUPCC : District Office of Land Management, Urban Planning, Construction and Cadastre

PCC : Provincial Cadastral Commission

PDA : Provincial Department of Agriculture

PILAP : Public interest legal advocacy project

PLG : Partnership for Local Governance

PLUP : Participatory land use planning

RAN : Resettlement Action Network (a Network of Cambodian NGO Forums)

RDP : Rural Development Program

RGC : Royal Government of Cambodia

RR : Receding rice or recession rice (dry season rice)

RSR or WSR : Rainy season rice or wet season rice

RTNKR : Rotanak Kiri

SHV : Sihanoukville

SLC : Social land concession

SLR : Systematic land registration

SOS : Save Our Soul (Children's Village of Cambodia)

SR : Siem Reap

UNTAC : United Nations Transitional Authority in Cambodia

WCS : Wildlife Conservation Society

WSR or RFR : Wet season rice or rain-fed lowland rice

WUC : Water user community

Non-English words

Chamkar: Land used for growing crops other than rice in lowland areas. In upland areas, land is used for planting "chamkar rice", or mixed cropping, but it is non inundated land.

Krom Samaki: "Solidarity groups" formed during the 1980s as a form of collective farming.

Chamkar Chas: Old chamkar land lying fallow (uncultivated) for 1 year for forest regeneration, in order to improve soil fertility.

Bos Chas: Old chamkar land lying fallow (uncultivated) for between 2 and 3 years for forest regeneration.

Kar Oay Dei Theu Sen-Min Kamnot Pel: Open-ended loans.

Kar Tenh /Mao Palitphal Chamka: Plantation right.

Kar Chuol Dei: Access to land for a fixed fee of rental payment or leasing (renting).

Kar Theu Sre Chek Phal Khnea: Sharecropping, or the delegation of the right to use land to farmer tenants for a growing season or year, in exchange for part of harvested rice products, according to negotiation.

Kar Oay Dei Theu Sen: Loan, contracts with access to land against provision of labour.

Dei sampatein sethakech: Economic land concession (ELC).

Dei sampatein sangkumkek: Social land concession (SLC).

Kar Dak Dei or Kar Dak Dei Theanea: Mortgaging (hypothek).

Kar Banhcham Dei: Pawning (Antichère).

CHAPTER I.

Introduction to the study

Pel Sokha

Introduction

• Background

Land is the most important productive asset and source of livelihood for around 71% of Cambodian people, whose main income is derived from agricultural activities. The central plain lowland of the country is used for food production, while the upland areas are used for plantations. Population growth and infrastructure development cause the rural areas and peripheries to gradually change to downtown and urban areas. Many problems such as a shortage of agricultural land, insufficient food supply, agricultural landlessness, illegal land encroachment and land conflicts may be getting worse since the country adopted a free market economy in the early 1990s.

Problems of land transactions, land conflicts and agricultural landlessness might occur while the country is pushed towards increased privatization, large scale infrastructure and tourism development, new plantations and increased investment. At the same time, population pressure increases and law enforcement is limited. Population pressure has caused an increasing demand for agricultural land and food production. To solve the problem, farmers have adopted improved agricultural techniques to increase agricultural productivity and have encroached upon new forested land areas. Moreover, the shortage of agricultural land for effective work and landlessness has forced farmers to migrate to new farm areas. Some farmers have cleared new land for farming, occupied private land and state public or state private land without legal distribution.

The Royal Government of Cambodia (RGC) formulated the land policy and other policies related to land by issuing legal documents such as the 2001 land law and sub-decrees on social land concession (SLC), state land management and economic land concession (ELC), which aim to promote sustainable economic and social development to alleviate rural poverty and prevent people losing their land through land registration, resolving land disputes and providing land for the poor. However, these projects and plans have an impact on land tenure and land transaction dynamics (land selling, land renting, sharecropping, land expropriation, forest or land encroachment and relocation). Tourism development, increasing numbers of workers in this sector and plantation development also need increased access to land.

A study in land transactions cannot restrict itself to the study of land selling and buying mechanisms. It also needs to focus on other modalities of access to land.

Thus, it is important to study agrarian contracts (institutional arrangements) as social processes of negotiation between actors involving various political-legal authorities. It is of crucial importance to identify the places and processes of land transaction validations and to assess both their legality and legitimacy. This implies that we take into account local state functioning (at commune, district and maybe provincial levels) as well as forms of local leadership. Any policy intervention in the field of land transactions must be based on well-documented knowledge of local practices and processes. How land markets actually work is not well known. There have been a few studies[1],

1 See for instance various CDRI working papers on Land ownership, sales and concentration in Cambodia (n°16, 2000), Land tenure in Cambodia. A data update (n°19, 2001), Social assessment of land in Cambodia (n°20, 2001), Land transactions in Cambodia. An analysis of transfers and transaction records (n°22, 2002), CEDAC/JVC study on Landlessness, land dispute & project affected people (2004), as well as OXFAM's work on land issues and various studies (see for instance Fabienne Luco for UNESCO or Caroline Hughes for the Centre for Peace and Development/CDRI on conflict management at local level).

however, and in-depth research on land rights transactions as social processes could serve to nurture the policy making debate.

The study on land transactions focuses on agrarian contracts, and places and processes of land transaction validation. The study also assesses both the legality and legitimacy of land transactions, land disputes and agricultural landlessness through the work conducted by the research team from the Cambodian Centre for Study and Development in Agriculture (CEDAC) with methodological support from Groupe de Recherche et d'Échanges Technologiques (GRET).

This report presents the findings of research conducted in 13 districts, 16 communes and 50 villages (36 villages for qualitative method and 14 for qualitative and quantitative methods) in 4 provinces: Kampong Thom (KPT), Sihanoukville (SHV), Siem Reap (SR) and Rotanak Kiri (RTNKR) over a period of 9 months (January-September, 2005). The study was funded by the **French Embassy to Cambodia**.

• Research objectives

This land transaction study aims to investigate the changing process of land rights and the actors involved. The objectives of the study are also: 1) To encompass the whole range of land rights commoditised transfers: land purchases and sales (alienation rights or 'definitive transfers') and 'derived rights' such as provisional transfers of land rights (renting, sharecropping, pawning/mortgaging, etc.) and other non-commodity transfers; 2) To study the real content of agrarian contracts, including the duration, land tenure clauses (nature of the rent, rights, duties and interdictions, etc.), non- land clauses (labour and service exchanges embedded in cliental ties), local denomination of contracts and land tenure relations, actors involved, existence of written contracts; and 3) To understand the purchase/sale markets, transaction processes and actors involved (distressed sales, impact of urban actors in rural or peri-urban areas, intermediary actors and brokers). To meet the above objectives, key research questions/hypotheses were designed, such as: 1) What has been the evolution of agrarian contracts (institutional arrangement) and modalities of access to land, especially since 1979?; 2) What are the places and processes of land transaction validation, in terms of legality and legitimacy compared to the status of knowledge and experiences in land transfer practice?; and 3) Do distressed land sales and land transfers lead to land disputes?

Research methodology

- **Partnership and research areas**

CEDAC was in charge of the study (both field and desk research) and GRET provided methodological support. The study involved combined workshops with collective and individual fieldwork from January to December 2005. A pragmatic approach should resort to the existing knowledge that both institutes have acquired on regional land situations. This could mean selecting sites where they have already conducted research. CEDAC also carried out field research on land issues, in SHV and KPT provinces within the European INCO-Dev (Rurb-Asie Project). GRET is also involved in development projects comprising a land dimension, especially in Prey Nup and Stung Chinit where land titling and land adjustment are at stake. There is on the side of GRET an objective interest in exploring these issues from a more 'research-oriented' point of view.

In SHV, Prey Nup district might be a zone for agricultural production development to respond to urban needs, tourism needs and the market demand for agricultural commodities. The agricultural district of Prey Nup was selected for the study based on an assumption that land transactions would be very dynamic under the influence of urban development and the establishment of the special economic zone. However, in KPT, considered as an agricultural province, it would be the same as the dynamics of land tenure rights because of the development of receding rice and plantations. The north-eastern province of RTNKR, considered as a natural eco tourism area in which lowlanders' in-migration and land encroachment generate conflicts with so-called 'ethnic minorities', was also a relevant site for the study. SR province was also selected for the study due to the historical area for the tourist sector. Here, in-migration and land sales would be also considerable. Additionally, the peri-urban of SR, like the Prey Nup district of SHV, might be a zone for agricultural production to respond to urban needs, in which land transactions would be very dynamic and land speculation and plantation would be the critical issues leading to encroachment.

Before the site selection in each province, a meeting with key persons was held to gather information on the background of the areas (districts, communes and villages) where there are high incidences of land sales, land disputes and agricultural landlessness. A rapid field study was also conducted in four provinces to explore communes and villages for the in-depth study. Informal sampling was used to explore related issues. Then, stratified sampling was carried out in order to identify two groups of farmers: farmers who have land for farming and those farmers who do not have agricultural land. Ten land holding farmers (LHF) and five agricultural landless families (ALF) per village were randomly selected as the sample for *in-depth interviews* based on the designed questionnaire.

- **Research organization**

The study was carried out by six Cambodian researchers. The terms of reference for the research program were jointly drawn up and agreed upon and the approach and methods were supported by GRET. The terms of reference provided the basis for the proposal and the research design. The initial research proposal was submitted for comments in mid-2004 after the preliminary mission of GRET. Revised versions of these proposals were discussed at the first preliminary workshop held at the CEDAC office in Phnom Penh in January 2005. This meeting allowed all researchers to meet and present the findings of the preliminary inquiry.

The study was carried out in three phases**; in the first phase**, a rapid study was conducted with three administrative levels: 1) National, provincial and district: The rapid study aimed to identify the areas where there were high incidences of land transaction, land conflict and agricultural landlessness, activities to resolve these problems and NGOs working on land issues in the areas. The rapid interviews were conducted with key persons working on land issues such as governmental officials at the provincial and district levels and also NGO officials; 2) Commune level: Interviews were conducted with commune councilors aimed at identifying the villages that have a high incidence of all three issues: land sales/purchases, land disputes and agricultural landlessness, trends, processes and factors determining those issues and stakeholders involved in the process of land sales and disputes. However, the agricultural statistics and development projects and activities in the commune were also collected; 3) Village or community levels: Interviews were conducted with village chiefs, farmers as key persons, and village elders in order to gather basic information on population, migration, village history, land use, households without agricultural land, economic activities of villagers, land sales, land disputes and agricultural landlessness, and stakeholders, e.g. land owners and land buyers who were involved with land disputes and agricultural landless farmers (ALF). However, the investment and development projects or activities of outsiders (institutions or NGOs) were also identified; and 4) Individual interviews with persons to explore processes of land right transfers and derived rights selected according to the recommendations of the local authorities and other key persons.

In the second phase, in-depth interviews were conducted with all stakeholders, local authorities (village chiefs and commune councilors), key farmer-informants, village elders, land holding farmers (LHF or FH), agricultural landless farmers (ALH) and people involved with land sales and land disputes. Stakeholder interviews were conducted with people who were involved in land disputes and local authorities. Information that was lacking or unclear during the rapid survey was subsequently completed. Projects or activities that were carried out to prevent people losing their land were identified and studied in depth. Individual interviews were conducted with those persons involved in land right transfers for the process of land right transfers. The interviews with LHF aimed to gather information on family history, land access, land possession, land sales or purchases and the reason for them, disputes over land and points of view. The interviews with ALF aimed to understand their family history and their current livelihood systems in addition to their points of view.

Also, participation in workshops, public forums and meetings was necessary. The study team had many opportunities to participate in different workshops and round table discussions arranged by organizations such as Oxfam GB, STAR Kampuchea and CDRI, in particular, the monthly meeting organized by Land Action Network for Development (LAND) and Resettlement Action Network (RAN) of the NGO Forum on Cambodia to share information and experiences related to land issues, and in public forums between people and parliamentarians to discuss land rights and the many cases of land disputes organized by Comfrel.

In October 2005, two seminars were organized with regard to **the third phase**, with stakeholders from both NGOs and government institutions presenting the first findings. The research team then conducted additional case studies in November and December 2005. However, new information was updated through further studies in 2006, a regional workshop in December 2006 and monthly meetings/workshops on land disputes with LAND members in 2006.

Overall, a rapid field (explorative) survey was conducted by the team between January and February, 2005, in order to select areas (districts, communes and villages) and to design an effective in-depth survey, household-survey and case studies. The **household survey** reports on the issues related to land sizes, land access modalities (appropriation and agrarian contracts) and reasons for agricultural landlessness. In addition, **case studies** were conducted to understand the process of modalities of access to land with purposive samples according to the characteristics of: agrarian contract, appropriation, land disputes and landlessness. This field research was undertaken between March and July 2005. Two field researchers were accommodated for over one month in each of the selected areas of the province. Except in RTNKR, field researchers worked with

interpreters in cases where the informants belonged to ethnic minorities. Each field researcher drafted the findings with the assistance of senior researchers. The senior researcher conducted the field studies through interviews with several key persons working on land issues in the four selected provinces. Three internal **workshops** were organized in order to share information and increase understanding among the research team. In October, 2005, two seminar-workshops were organized to present the findings to the key technical personnel of both the government and NGOs working on land issues, as well as the key personnel of the Land Security Working Group and donors at the Ministry of Agriculture, Forestry and Fisheries (MAFF). The findings were improved by conducting additional case studies in November and December 2005 and by updating the information in 2006. The synthesis of findings in the four different provinces was sent to GRET for its comments. In addition, one regional workshop was organized in KPT province in December 2006 to consult and wrap up the findings.

- **Data collection methods**

The study employed a qualitative research methodology rather than a quantitative method. The study team also conducted individual household interviews with LHF and ALF, key persons involved with land sales/purchases, brokers, institutional arrangements, land disputes, key persons involved in dispute resolution and key informant interviews. The methods that were employed for data collection were: 1) Reviews of the secondary data from existing documents; 2) Discussions with the key persons working on land issues at national, provincial and district levels and NGO officials; 3) Rapid surveys with the chief of commune and village or community-level key persons to gather basic information on population, land use, land appropriation, agrarian contracts, the number of ALFs, land loss from infrastructure projects, cases of land disputes and mechanisms of land dispute resolution; 4) In-depth interviews with 10 LHFs; 5 ALFs per village on reasons for landlessness, how the ALFs generate income, how to secure their livelihoods and what they will do to secure their livelihoods in next few years; 5) Individual interviews with people involved in land rights transfers, land sales and/or land disputes; 6) Participation in workshops, public forums and meetings on land issues, particularly the monthly meeting with both Land Action Network for Development (LAND) and Resettlement Action Network (RAN), two networking groups of the NGO-Forum on Cambodia; 7) In-depth interviews with village chiefs to gather additional information on process of land sales/purchases, processes of agrarian contract, cases of land disputes and mechanisms for resolving land disputes, survival measure of ALFs, compensation for land loss from infrastructure projects; 8) Organizing seminars in October 2005 and conducting additional case studies; and 9) Organizing the consultation workshop at the regional level in KPT town with the provincial and district officials, local authorities, reservoir owners and concessionaires, community members and village elders to review the findings and recommendations, in December 2006.

Structure of the report

This report consists of eight chapters. Following this introductory section, Chapter 2 addresses the approach and methodology of the study. Chapters 3 to 6 consider the synthesis of findings in SR, KPT, SHV and RTNKR, a chapter for each province. Chapter 7 discusses the general synthesis of findings in the four selected provinces and Chapter 8 discusses land policy issues. Each chapter can also be summarized as follows:

Chapter I provides the background and further explains that the study of land transactions cannot restrict itself to the study of land selling and buying mechanisms. It also focusses on other modalities of land appropriation and agrarian contracts. The objectives and research questions or hypotheses are presented and focus on what the evolution of institutional arrangements might be. This chapter also describes the characteristics for the selection of the study location, individual and key persons to be interviewed, research organization and methods of data collection.

Chapter 2 defines the ethnography of land rights as exploring a neglected issue related to land transactions, land markets and land rights transfers, analyses the four levels of 'bundle of rights' over a plot, including justifying principles, norms, rights and practices, and explains the different types of rights and transferring land rights. This Chapter describes in-depth the related methodological framework: the organization of workshops, the criteria of the selected sites, the qualitative method, descriptive indicators for land transaction study and how the *indicator checklist* for land transactions was designed (including descriptions of the people involved in the transactions, the transactions, the informants involved in agrarian contracts, and institutional arrangements.

Chapters 3-6 include a synthesis of findings for each province: Chapter 3 relates to SR, Chapter 4 to KPT, Chapter 5 to SHV, and Chapter 6 to RTNKR. The important relationship between the regional and local context and land transfer modalities in the area under this study are discussed, as are the land appropriation and agrarian contract (institutional arrangements) and the types and reasons for land disputes and stakeholders involved in it. For example, we have observed a strong link between land sales, land clearing and mobility, and also a link between land sales and agrarian contracts (derived rights such as loans, sharecropping and leasing). Each chapter also observes access being gained to land through capital investment in water reservoirs and the buying of large areas of land by rich and urban people with the active participation of local authorities acting as brokers. Each chapter provides cases of land disputes related to land transactions, for example the dispute over unclear land rights before definitive transfer. The land market has expanded. This has led to many cases of land disputes for various reasons, for example, unclear land rights before land transfers or sales such as loans, occupation for over 5 years before the issuance of the 2001 land law, and rice land abandoned for 3 consecutive 3 years. In addition, each chapter describes the actions of stakeholders' groups in land issues: brokers involved in land transactions and the intervention of other stakeholders in land transactions and resolving land disputes. Regarding agricultural landlessness, the importance of immigration as a factor of landlessness shows at once that mobility is a key factor in land tenure by occupying the abandoned (or unused) land for cultivation.

Chapter 7 makes a general synthesis of findings from the four selected provinces regarding the trend of land transfer modalities, the links between different land transfer modalities such as strong connections between land sales and land clearing or between land clearing and loans, and the relationship between land sales or capital investments and derived rights. This chapter also compares the land appropriation and agrarian contracts between the four selected provinces. For

example cases of abandoned DW-FR land in KPT could be differentiated from SHV. In KPT, local farmers abandoned DW-FR land while in SHV, rich/urban people abandoned rice land but they have legal possession rights. Officials say that the 3-year abandonment rule does not apply to land where a person has a legal document/certificate. The chapter also presents the differentiation between resolving land disputes over sales of borrowed ethnic minorities' community land, and sales of borrowed land in the lowland areas, over the occupation of ethnic minorities' ancestral land and the ownership of land received through distribution in the lowland areas.

Chapter 8 discusses land policy issues, the roles of formal and informal politico-legal institutions in securing land ownership, land right transfers resolving land disputes and identifying legal gaps and/or contradictions and the need for regulation. The chapter also analyzes from a historical standpoint the gap between policy and legal frameworks on land and rural people's practice.

CHAPTER II.

Approach and Method

Pierre-Yves Le Meur

Defining the issues

• Context: exploring a neglected issue

Any policy should be based upon well-documented knowledge of local practices and processes related to the field of intervention. This commonsensical idea is all too often forgotten (and the link between knowledge and policy might be less straightforward as one might think; cf. Mosse 2005). This is obviously true with regard to land transactions.

How land markets (i.e. the purchase and sale of land rights) actually work in rural Cambodia is not well known, to say the least. There have been a few studies[2] but **in-depth research on land right transactions as a social process and interaction involving an array of social actors is currently lacking**.

Moreover, many texts, both in the field of research and policy tend to reduce land transactions to land sales and purchase mechanisms.

At a policy level, the new 2001 land law that replaced the 1992 law proposes new policy tools (social and economic concessions, short- and long-term leases, and legal recognition of collective land rights for ethnic minorities). However, it bears the hallmark of a strong 'proprietarist' orientation symbolised by the national-scale land survey and titling project (LMAP) funded by the World Bank. Land rights other than ownership rights (namely the bundle of administration and use rights) as well as agrarian contracts (rental markets and derived rights) are significantly neglected.

At research level, there is a lack of empirical studies describing and analysing land transaction modalities in rural areas. *Land transactions* are generally equated to land sales and purchases (see for instance, Chan Sophal and Sarthi Acharya, 2002). The domain of land rights transfers (agrarian contracts and derived rights) is almost *terra incognita* (and this is also true outside of Cambodia; see for instance, Lavigne Delville and al., 2002, for West Africa).

More generally, policy and research documents are strongly influenced by an evolutionary frame of reference. Within evolutionism, historical events (and tragedies, in the case of Cambodia) are not studied and analysed *per se* but implicitly conceived as factors generating a blockade or a delay in the ineluctable, quasi 'necessary' evolution from subsistence agriculture and customary law to commercial agriculture and land ownership. Our viewpoint is based upon a rejection of this non-historical frame of reference, the origin of which combines 19th century evolutionism, modernisation theory as far as development is concerned and the evolutionary theory of property rights (Kitching, 1982; Platteau, 1996; Colin and al., 2006). Rather, we try to demonstrate how actors and institutions interact at different levels, generating land tenure dynamics that follow various and largely unpredictable paths. We endorse a standpoint, at once theoretical and methodological, seeing land transactions as social processes defining arenas that are pervaded by matters of "wealth, power and meaning" (Shipton and Goheen, 1992).

2 *See for instance Van Akker (1999); Kato (1999); Boreak (2000); Hughes 2001; Sovannarith and al. (2001); Sophal and al., (2001-2002); Luco (2002); Sokha and al. (2004).*

- **Land transactions, land markets, land rights transfers**

A study in land transactions cannot restrict itself to a study of land selling and buying mechanisms. It must encompass the whole range of land rights commoditised transfers:

- ▷ Land purchases and sales (alienation rights or 'definitive transfers').
- ▷ Derived rights (provisional transfers of land rights: renting, sharecropping, mortgaging, etc.) or agrarian contracts.

In other words, we need to clarify what we mean regarding land transfers, transactions, transfers and market.

Firstly, a land transfer is only a shortcut for talking of the transfer of land rights. The word 'rights' is conceived here in social terms – an action over a resource that is seen as socially legitimate – rather than in legal terms.

Secondly, studying land rights transfers implies then, to explore the nature and the contents of the rights (prerogatives and duties) that are transferred. We must also identify the giver (the owner of the land rights) and the taker, who can be a tenant or a land buyer, depending on the rights he receives from the transfer. As we will see, though the transfer, it implies at very least a 'giver' and a 'taker'. There is often a 'third party' acting as an intermediary or 'broker' in the transaction.

Beyond this triangle, and especially in cases of conflict, other actors are involved, namely politico-legal authorities endowed with the power to arbitrate disputes and enforce decisions.

Thus, the notion of 'market' does not only refer to the virtual place where land would be sold and bought, it regards the whole range of land rights transactions and thus encompasses various types of sharecropping and rental markets. It is also an arena, a set of actors linked by interactions revolving around land right transactions (transfer of money, goods, information and expression of power).

Our empirical stance allows us to avoid the pitfall of normative categorisations and dualisms (such as the one between a land owner and a tenant). Categories of property are used in policy and research without being questioned. For instance, most of the studies categorise the various forms of land acquisition or appropriation according to the following terminology: land purchases, land grabbing, encroachment and land title (see for instance So Sovannarith et al. 2001: 16-19). Empirical studies show that these categories are problematic and their boundaries not as clear-cut as one might think. For instance, land purchases do not always look like a commercial transaction between partners standing, at least formally (from the legal point of view) on an equal footing (corresponding thus, to the model of bargained transaction; see the policy chapter). Land purchases are often comprised of elements of threat, violence, force and corruption - let alone the question of controlling information - and thus, often resemble land encroachment. The title can also function as a device for regularising land grabbing or encroachment, thanks to corruption or social relations. Additionally, the boundary between land grabbing and land encroachment can be a matter of diverging interpretations between actors involved in such transactions. All this means that we need to carefully describe transactions (1) as they happen on the ground, and (2) as they are enacted and understood (and sometimes contested) by the actors involved, before letting them enter into any category ('sale', 'grant', 'encroachment', etc.). The conceptual work of categorising transactions must take root in fine-grained empirical fieldwork.

Theoretical approach

• Ethnography of land rights

In the previous section, we outlined the issue and the scope of the research. We will now enter more specifically into the theoretical background underlying our approach. I will label it *ethnography of land rights*, which might appear as a paradox as this label sounds methodological rather than theoretical. Actually, both levels are intimately intertwined.

Ethnography is naturally associated with anthropological discipline as its core methodological dimension. It conveys the importance of its empirical orientation and refers to the qualitative aspects of cultural impregnation, long-term fieldwork and participant observation. Beyond disciplinary boundaries, ethnography is a set of methods rigorously used for organising fieldwork and paying attention to the actors' point of view – their categories, opinions, discourses, moral principles, representations, justifications and actions. There is also a reflexive dimension inherent in the process of ethnographic fieldwork. The observer is necessarily part of the scene and other actors tend to attribute him (or her) with a specific, though changing role.

Thus, when speaking of the ethnography of land rights, we stress the empirical orientation underlying our approach of land tenure. It is about contextualising data about land rights, how rights are defined, enacted, contested, negotiated, transformed.

Furthermore, we use the (old, tracing back to Maine's *Ancient Society*, 1861) notion of 'bundle of rights' to take account of, and describe the plurality of rights and right-holders involved in the appropriation and use of an area or a plot of land. Understanding how the bundle of rights over a plot or the bundle of rights held by an individual or group is put into practice requires analysing the norms and principles backing the rights. We can analytically distinguish these four levels (Colin 2004):

Justifying principles, legitimising rights and referring to value systems and moral principles. They are general, non-prescriptive principles, as the principle of belonging to a common mankind, giving to everybody the right to subsistence, or the principle of intergenerational justice.

Norms, the prescriptions resulting from principles: for instance the duty to welcome migrants stems from the principle according to which any man has a right to subsistence.

Rights, conceived as socially legitimate and regulated actions over/about landed resources, backed by principles and norms.

Practices, corresponding to the effective access to land resources. The distinction between rights and access shows that gaps exist between norms, rights and actual actors' practices, gaps related to legal pluralism (several normative sources or 'orders'), or that access without right does exist (by force, corruption, social ties, economic capital, etc.), as symmetrically does rights without access (cf. Ribot and Peluso 2003 on the "theory of access").

Rights and practices define together the field of interventions for politico-legal institutions involved in conflict-solving processes.

One can distinguish different types of rights in the same area (which comprises different resources and/or possible uses of these resources):

- ...of use (before use right, one should first consider the right of passage),
- ...of getting an income from use,
- ...to bring about changes and improvements of the land resource (land development, irrigation scheme, plantation, fertilisation, etc.),
- ...to delegate land use with compensation (leasing, sharecropping, pledging) or without (loan, concession),
- ...of alienation through commercial transfer (sale) or non commercial (gift, inheritance),
- ...to inherit,
- ...of administration, namely the right to define others' rights.

The main distinction to be made is that between operational rights and administrative rights. Furthermore, there is an array of possible restrictions on these different rights:

- ...temporal,
- ...regarding use (for instance annual crops allowed but not perennial crops),
- ...need to ask for agreement (this is matter of distribution of administration rights among several right holders),
- ...regarding the form of delegation,
- ...regarding the beneficiary of delegation (the two last restrictions are often linked, the nature of the delegated right being related to the type of beneficiary).

As mentioned previously, a precise description of the 'bundle of rights' is not sufficient per se. Ethnography of rights must take a broader picture into account, expressing the social and political embeddedness of rights and defining the field of variables which we need to describe and analyse:

Origin of the rights, basically refers to transfer mechanisms, including all the forms of appropriation and delegation, from clearing to sales, via inheritance, leasing, etc. One hypothesis here is that the origin of a right might influence its contents. The description of this variable requires exploring the history of settlement and also the degree of commoditization of land transfers.

Content of the rights, corresponding to the description of the bundles of rights and of their restrictions. This description allows empirically tested hypothesis about privatisation (the possibility of a 'real alienation' for instance) and observes the impact on resource use.

Right holders, who can be individuals or groups. This variable is thus about the hypothesis of the individualisation of land tenure. However, one must pay attention to the internal heterogeneity and hierarchies within 'collective right holders' such as 'household' or 'lineage'. The distribution of rights (land fragmentation or concentration) can be assessed from this standpoint.

Regulatory framework, made of all politico-legal authorities – formal or informal, state or non-state, modern or traditional, local or supra-local – involved in conflict-solving and arbitration. The hypothesis to be tested through this variable is about land tenure security and rules enforcement (through an empirical evaluation of the changing legitimacy of authorities).

These four sets of variables constitute the 'backbone', the structure of land tenure as a social field. They give a picture, a static view which is insufficient. How is this structure enacted? This is the question of land tenure dynamics conceived as a social field, to be empirically explored by paying attention to social processes, principles used by the actors, conflicts, negotiations, alliances, etc.

Central here is the notion of pluralism:

- ▷ The plurality of politico-legal institutions,
- ▷ The plurality of legal and normative orders.

- **Transferring land rights**

As said in the introduction, land transfer is the shorthand for land rights transfer and land market for land rights market, the latter implying that these markets do not only deal with land sales and purchases but also with various forms of commoditized delegations of rights.

The following definition, from a study on derived rights in West Africa, is also relevant in the Cambodian context:

"We use the expression 'systems for delegating use rights' (or 'derived rights' for short) to describe procedures whereby someone who controls rights of access over a plot of farmland, in his own name or that of his close family group, grants such rights of use to a third party, on a non-permanent basis and in accordance with specific rules. The word 'rights' is used here to describe a set of locally recognised prerogatives and duties, rather than in a legal sense.

Consequently, 'delegation of use rights' covers a whole series of different procedures giving access to farmland for third parties, outside the family group, ranging from open-ended loans to systems more akin to rental or sharecropping. The term stresses the contractual relationship between the two parties and the continuum along which the various systems lie. It also avoids the connotations of ownership which underlie the term 'indirect entitlements', which presupposes privately owned land – something that is far removed from reality in most rural areas" (Lavigne Delville and al., 2002: 2).

An empirically-grounded analysis of land rights transfers requires going beyond reductionisms and oversimplifications – for instance, when one boils down the diversity of the institutional arrangement regulating access to land in the mere dichotomy between ownership and tenancy. The objective is to identify the diversity of land transfer modalities. For this, we resort to simple double-entry categorization:

- ▷ The commoditized or non-commoditized nature of the transfer,
- ▷ The scope of the transfer: regarding appropriation rights or restricted to use rights.

This approach, summarized in the following table, allows leaving open, as an empirical issue, the question of the limits between boxes. It is often a matter of (diverging or conflicting) interpretations between parties involved in the transaction, or of temporal perspective or time span (for instance as regards pledging, also in the case of open-ended loans that happen to be 'seen' as a gift in the course of time; the jump from one generation to the next one often adds layers of indeterminacy and contestation).

The table also leaves open the possibility of integrating local forms and categories, thus avoiding the imposition of (generally western) categories defined a priori. Empirical research should as much as possible, adhere to local categories and avoid 'forced translations'.

Transfer type	Non commoditized	Commoditized
Restricted to use rights (delegation)	Intra-household delegation	Leasing
	Common-pool resource management	Sharecropping
	Fixed-term loan	Exchange land for labor
	Open-ended loan	
	Grant, concession	*Pledging*
Including transfer rights (appropriation)	Inheritance, gifts, donations	Purchase
	Land distribution (administrative transaction)	Investment in capital
	Land clearing	

In brief, It is as important to study agrarian contracts as social processes of negotiation between actors and involving (for instance in case of conflicts) political-legal authorities to be identified. It is of crucial importance to identify the 'places' and processes of land transaction validation and to assess both their legality and legitimacy. This implies taking into account local state functioning (at commune, district and maybe province level) as well as the forms of local leadership (formal and informal)[3].

As far as derived rights are concerned, the study will focus on the 'real content' of agrarian contracts. Relevant features to be documented include duration, land tenure clauses (level and nature of the rent, rights, duties and interdictions, etc.) and non-land clauses (labour and service exchanges embedded in clientelistic ties), local denomination of contracts and land tenure relations, actors involved, existence of (informal) written contracts.

As far as land purchase/sale markets are concerned, we also need more information on transaction processes, actors involved (distress sales, impact of urban actors in rural or periurban areas), intermediary actors and brokers, price formation, access to information.

[3] *See on this topic the works of Ebihara (1993), Ly Sareoun & Vijghen (1996), Ledgerwood & Vighen (2002), Luco (2002).*

Methodological framework

• Workshop organization

Objectives

As mentioned above, the study consists of a twofold combination of workshops and fieldwork and collective and individual phases. The first workshop had the following objectives:

▷ Concerning methodology: especially on the qualitative approach of land issues (see the section on descriptive indicators below) *(day 1 & 2)*.

▷ Concerning research topics and sites: short presentation of each research site by researchers who will be in charge of individual fieldwork and a discussion to define more precisely the points to be explored. It was assumed at this point that each had already carried out a short field trip in order to identify roughly a few relevant local issues in order to nurture the discussion. It was more than that in the case of the two INCO RURBASIA research sites of Kompong Thom and Sihanoukville, where fieldwork had already been carried out on land issues *(day 3)*.

▷ Concerning the organization of the whole study: especially on how to combine collective and individual fieldwork in order to harmonise field research methods and 'terms of reference' on the different sites. We also had to adjust the time schedule *(day 4)*.

Sources

Regarding methodological issues in land tenure study, a power point presentation was based on two main sources:

Colin, J.-P. 2004. *Droits fonciers et dimension intra-familiale de la gestion foncière. Note méthodologique pour une ethnographie économique de l'accès à la terre en Afrique*. Document de travail de l'UR REFO 8, Montpellier: IRD.

Le Meur, P.-Y. 2002. *Approche qualitative de la question foncière. Note méthodologique*. Document de travail n°4 de l'UR REFO, Montpellier : IRD.

Workshop participants

Pel Sokha and Meak Pramol (CEDAC senior researchers), Pierre-Yves Le Meur (GRET), Ms. Im Sothy, Ms. Leaknena, Mr. Pel Setha & Mr. Laing Lan (CEDAC junior researchers), Sam Vitou (CEDAC, resource person), Amaury Peeters (University of Louvain, resource person).

• Research site selection: rationale

This study focuses on rural areas. We have excluded urban situations from our investigation. This choice did not imply any dualism or any overestimation of the difference between both areas. The Cambodian countryside is subject to the influence of urban factors, as we will see in the regional case studies. Land buyers are very often urban people and the cities are also a target for rural migrants (not the only one: intra-rural migrations should not be underestimated).

Beyond this general orientation, the rationale for selecting research areas was a matter of balance between scientific and pragmatic factors. As the study was a short-term assignment with limited funding, we have chosen to exploit the knowledge already accumulated through other research programmes, especially the INCO programme RURBASIA, on the impact of urban processes on surrounding rural areas. One of the INCO research components is about land tenure and the present study could provide complementary insights.

Furthermore, GRET was leading two development projects (funded by AFD and ADB) in both of the areas of Prey Nup (Sihanoukville) and Stung Chinit (Kampong Thom), in the latter case co-operation with CEDAC. Project agents had to deal with land issues in a practical way within the project (land transaction registration, land survey, land re-allocation). They were interested in getting more information about land tenure. For instance, the Prey Nup project leader mentioned the following topics (interview with Jean-Marie Brun):

- The project has only observed one-year rental contracts so far, despite the issuing of property titles that should have made landowners feel more secure for longer periods of leasing. There is a shared interest in gaining insights around the rationale of these institutional arrangements from the stakeholders' point of view.
- Land transactions formalising procedures do exist now. To what extent are they known and used by people for securing transfers? To what administrative level do people go (village, commune, district or province) to have transactions secured?
- The maintenance procedures for registering land transactions seem to be a new concern for LMAP. How do they work? Are they well-known to people?

The same questions needed to be discussed by CEDAC field research team with Stung Chinit project staff.

Regarding the selection of further sites, CEDAC researchers have chosen the provinces of Siem Reap and Rotanak Kiri.

In the following table, we have very briefly summarised the criteria pre-identified by the research team relying on previous knowledge of the areas. These criteria are broad and rather synthetic, combining different elements and expressing dynamics or trends deemed to be relevant for the study. They were of course, debated and refined in the course of the research.

Kampong Thom	Sihanoukville
♦ Cashew nuts plantation, land purchase by urban people (and sharecropping) (north-east of the national road) ♦ Land speculation along the national road ♦ Tourism development zone (provincial level) on cashew nut plantation zones ♦ Deep water rice zones (south-west of NR 6), fishery, land transaction (e.g. Roca village) ♦ Sales for changing of activities (north-east, KPT direction) ♦ Large landowner renting out (leasing, sharecropping) ♦ Landless people selling land: lack of credit and draft animal (rural), illness and lack of food ♦ Dry season migration (Thailand) ♦ Forest exploitation (firewood for selling and sugar palm processing) ♦ Systematic land registration and titling	♦ Urban dwellers (sometimes high-ranking) buying land for speculation (renting 'back' to villagers), later for plantation (recent) ♦ Brokers buying land under their name for someone else and renting it out to get their remuneration ♦ Encroachment in the foothills (state forest area), fruit trees and crops (cassava) ♦ Krom Samakki distributed to families by 1985-86 (official recognition 1989), collective decision to sell (early 1990s) ♦ Public policies: deforestation banning, industrial zones (300 ha to a Chinese company) or special economic zone (SEZ), eco-tourism ♦ Systematic land registration and titling conducted by LMAP
Siem Reap	**Rotanak Kiri**
♦ Demobilised soldiers and Red Khmer settlements (news villages) (north of Angkor, toward Kulen national park) ♦ Future urban development south of SR, future agricultural development west/south-west of SR ♦ Urban dwellers speculation (highway, airport) ♦ APSARA zones, Kulen National Park ♦ Conflict over land between APSARA authority and villagers and between local authorities and villagers. ♦ Spatial dynamics: selling land for buying cheaper (or clearing) far away. ♦ Land selling: accumulation or 'dis-accumulation' (distress sales, social frailty, lack of resources). ♦ Sporadic form of land registration and SLR.	♦ Strong state intervention (triangle development zone /agreement, road & airport: ADB loan) ♦ Speculation (land purchase along the national road), brokers ('canvassers') ♦ Development of plantations (purchase of land, 2 Chinese and 1 Vietnamese companies negotiating for cashew nuts, rubber and coffee plantations) ♦ Encroachment of Khmer lowlanders. ♦ Ethnic minorities (2 chiefs: administrative and 'traditional') shifting from shifting cultivation to permanent farming, effect of the new land law (collective ownership without the right of selling, individual use rights) ♦ 2 MLMUPC pilot projects of systematic land registration (SLR) for communal land of ethnic minority communities.

Within each research area, we relied first on two main factors for selecting villages, once again combining scientific and pragmatic criteria:

▷ Coping with the constraints of the study: how many staff, how much time, how much money?

▷ Taking account of the scope and objectives of the study, in terms of a scientific approach and expected results: in-depth description and qualitative analysis of land rights transfers, rather than a quantitative survey. The objective is consistent with the exploratory dimension of the study.

We could thus reason the localisation of the inquiry in relation to:

▷ Existing knowledge (for instance inquiries within INCO).

▷ Interest of the locality (for instance, regarding the diversity of land arrangements, land market activity, emerging trends, conflictive situations or the impact of important state intervention in land issues).

All of this converged towards a synthetic criterion of feasibility for the study. In other words, we have chosen two villages (with a maximum of three villages) per site in order to reach the expected results.

- **Qualitative method**

Relying on the identification of the main variables (origin and content of the rights, right holders and politico-legal authorities) as a guideline, a fieldwork strategy is needed. The starting-point is made of the threefold identification of:

▷ Issues at stake, symbolic or material, political, economic, social, involving identity and belonging, etc.

▷ Social actors, collective or individual, claiming access or rights to resource, or the control of the rights over resources (administrative rights, inclusion/exclusion).

▷ Politico-legal institutions (formal or informal), claiming a legitimacy to, for example, the law, particularly through the legitimacy to arbitrate disputes.

This approach draws on the hypothesis of a mutual interaction – a symbiosis (Lund 2002) – between competing claimants for access to resources and competing authorities for politico-legal legitimacy:

"*The process of recognition of property rights by a politico-legal institution simultaneously constitutes a process of recognition of the legitimacy of this institution" (Lund 2002: 14)*

The ethnographic description of these processes resorts to three methodological principles:

▷ It starts from the actors' point of view: their categories, representations, knowledge, moral principles, discourses, strategies, logic…

▷ It goes through the observation of social processes: a matter of following actors, conflicts, negotiations, plots, discourses, in different social contexts and arenas.

▷ It uses conflicts as an entry-gate for identifying and understanding social cleavage, strategic groups as a research hypothesis (correspondence between converging interests and strategies) and arenas as an abstract social field of confrontation, negotiation, alliance, etc.

The main empirical sources are:

▷ Interviews: the main source of information, requiring a capacity to listen, to adjust questions, in order to let new and unexpected issues emerge from this specific form of social interaction.

▷ Participant observation, rather a research attitude implying a long-term presence and allowing access to people and data than a method.

▷ Systematic procedures of data collection, to be devised according to the need (the topic), for instance census, genealogies, transects, participatory or mental maps, kinship diagrams, resource use calendars, etc.

- ▷ Written sources: scientific literature, 'grey literature' (project reports, consultancies, etc.), legal texts and archives, formal and informal contracts (also aerial photographs, maps, cadastral plans, etc.).

The methods are not employed according to a predefined receipt but combined along a form of strategic eclecticism. Field researchers must be able to adapt their fieldwork strategy to fieldwork constraints and unexpected ideas and tracks arising from the inquiry, they must be innovative in selecting, adapting and combining methods.

Case studies are a central device to follow in time and space actors and interactions between them, the social processes that contribute to structuring and transforming land tenure as a social field.

One must develop a strategy of triangulation of sources: crosscutting of information coming from different interviews and of data produced through different methods.

Lastly, field researchers have deal with tension inherent in the qualitative inquiry, between flexibility, adaptability, and cultural impregnation on the one hand, and distance and control over fieldwork as a social situation.

- **Descriptive indicators**

Function

We have presented so far the theoretical background and the methodological orientation of the study, as well as fieldwork organization. In order to delineate 'terms of reference' that could be useful for the researchers during individual fieldwork and that could help to provide a comparative dimension to the whole study, we have outlined a list of 'descriptive indicators' for helping to organize data production and analysis.

These indicators are listed above. They fulfill the following functions:

- ▷ They constitute a chapter of 'things' to observe, a sort of guideline or reminder for the inquiry.
- ▷ This means that they have to be adapted to the needs of the enquiry (as they partake in a qualitative framework with the advantage of flexibility).
- ▷ They are also used through different methodological tools (this is what makes them different from a guideline for interview).
- ▷ They function as provisional research hypotheses within a comparative framework (and this at two levels: we have four big areas of research and several spots – villages – within each area).
- ▷ They are conceptually located between 'raw data' and 'final interpretations', helping to organize the former and prepare the latter.

The first phase of collective fieldwork was used to build provisional indicators on the following areas of research:

- Stakeholders
- Politico-legal authorities
- History of the village
- History of land tenure and land policy
- Main production systems and economic activities
- Main public interventions related to land issues
- Conflicts about land (what is at stake? resources? arguments? actors involved?)
- Types of institutional arrangements regarding land tenure

List

We then established a more detailed list of descriptive indicators to be used during the intensive phase of individual fieldwork. An important point was managing the tension between the requirements of a comparison (namely, a certain level of standardisation of the indicators) and the need to adjust indicators to the specificity of each area under study.

History of settlement and/or foundation of the village (waves of settlement/migration, returnees, settlement of demobilised soldiers and ex-Red Khmers) *(key informants? More than one informant? Village chief, village elders, etc.).*

Agro-ecological constraints, opportunities, risks *(GRET-CEDAC projects, INCO project, Cambodian Australian Agriculture Development Project, etc.).*

Agro-eco-system typology and zoning (and main changes in farming systems), qualitative assessment *(key informants, written sources, maps, INCO project, mental maps).*

List of the holders of **power positions**, formal (politico-administrative positions) and informal *(key informants and in the course of the inquiry, through interviews).*

Main changes in the **local history of land tenure and land policy** (Krom Samakki, land distribution, 1989 reform, 1992 and 2001 land laws, 1997 deforestation banning, 2002 forestry law, land titling, local aspects regarding state intervention, etc., and before 1979 and 1975 when it is relevant) *(key informants and in the course of the inquiry, through interviews).*

Identifying the **stakeholders' groups in land issues** (different classes of farmers, urban dwellers, landless people, brokers or intermediary actors, NGOs, development projects, state agencies – like APSARA – etc.) *(to be refined and specified during the inquiry).*

Identifying the **formal and informal politico-legal institutions involved in land issues** and conflict solving (at the different administrative levels, village, commune, district, state services, NGOs, so-called traditional authorities, local 'big men', etc.) *(to be refined and specified during the inquiry).*

Identifying and following **cases of land conflict** (stakeholders, stakes, authorities involved, alliances and oppositions, negotiations, arguments and discourses, mode of conflict resolution, enforcement, etc.) *(following people through institutions, cases, discourses, etc.).*

Identifying the **modalities of access to land** (clearing, inheritance, purchase, social/economic land concessions, forms of derived rights), assessing their relative importance *(written sources, key informants).*

Localising territorial dynamics (clearing directions, dynamics of selling for buying cheaper or clearing elsewhere, delimitation of state intervention structuring factors such as road building, social and economic land concessions, localising conflicts) *(official sources, topographic & administrative digital maps, key informants, and through the inquiry).*

Identifying the main **public interventions affecting land tenure** (infrastructure, natural resource and bio-diversity conservation, road building, etc.) *(official and written sources, key informants at the district, commune levels).*

Following a few **cases of public policy intervention** (for instance regarding social concessions: actors involved, target groups and effective beneficiaries, negotiations and institutional arrangements) *(interviews with persons involved directly or indirectly, official documents).*

Biographies of a few 'big men' (especially as regards land tenure strategy) *(interviews).*

Identifying **landless people/groups**, their land tenure trajectory, their strategies as regards access to land (agrarian contracts).

Identifying **external stakeholders involved in land rights transactions** (politicians, urban dwellers, 'big men' and entrepreneurs, state agencies, etc.).

Identification of **brokers involved in land rights transactions**, both rental and purchase and sale (exact function, social features, official position, local or outsiders, relations to the actors involved in the transaction, strategies, remuneration, etc.).

Making a **glossary of the main local terms** and categories used to characterise land contract, land rights, institutional arrangements, etc.

Identifying and describing **land institutional arrangements including all the forms of rights delegations** (see slides about the description of rights): actors involved, negotiation process, exchange logic (labour, services, products, credit, 'chain of rights and duties'), contents of the rights, temporal dimension, local categories, names, interpretations, etc. *(interviews and questionnaires).*

Land sales and purchases processes: actors involved, reasons for selling, buyers' strategies (production, speculation, renting out – and 'back' – to the sellers, formalisation procedures, brokers, etc.) *(interviews and questionnaires).*

- **Indicator checklist for land transactions**

We have established a specific list of indicators as regards the transactions themselves. This list (especially as regards derived rights) was elaborated on the basis of the methodological note by Chauveau & Colin in Lavigne Delville et al. (2002).

Land sales and purchases

- Description of the people involved in transactions
  - Social characteristics (sex, age, status, origin)
  - Farmer's life history
  - Characteristics of his/her farm: list of plots or 'land patrimony' (owned and used by the farmer, owned and not used by the farmer, not owned but used by the farmer)
  - Household, evolution and life cycle
  - Non-farm economic activities and other positions (social, religious, political, association, etc.)
  - Resource availability and constraint (labour, land, credit, draft animals, technical knowledge)

- Description of the transaction

  Actors involved:
  - Characteristics of the buyer: local or outsider, professional;
  - Characteristics of the seller;
  - How did they engage in the transaction? Existing relations between buyer and seller (before the transaction)? Direct contact, or through a third person?
  - Intervention of a third person (broker): exact function, social features, official position, locals or outsiders, relations to the actors involved in the transaction, strategies, remuneration, etc.

  Reasons for selling:
  - Distress (illness, lack of credit or means of production) or 'accumulation'?
  - Leaving agriculture (running another business), buying land cheaper elsewhere (or clearing land)?

Negotiation of the price, mode of payment:
- Formalisation procedures;
- At what level (village, commune and district);
- Payment of the tax, informal paper, witnesses, etc.

Buyers' objectives and actual practice (what does he do with land?):
- Production (type: plantation, annual crops, etc.);
- Speculation (anticipation of a new infrastructure, etc.);
- Renting out (and 'back' to the sellers).

Conflict due to the transaction:
- Concerns about the price, delay of payment, the limit of the field (with a neighbour);
- Other people do not agree with the sale (for instance a member of the buyer's family), multiple selling;
- Concerns about the formalising procedure (problem of recognition), 'misunderstanding' about the meaning of the 'sale', etc.

Agrarian contracts

- Description of the informant
  - Social characteristics (sex, age, status, origin);
  - Farmer's life history;
  - Characteristics of his/her farm: list of plots or 'land patrimony' (owned and used by the farmer, owned and not used by the farmer, not owned but used by the farmer);
  - Household, evolution and life cycle;
  - Non-farm economic activities and other positions (social, religious, political, association, etc.);
  - Resource availability and constraint.

- Description of institutional arrangements

Description by field plot:
- Nature of the field (agro-ecological characteristics, existing investment like a plantation);
- Management of production factors (division of labour between the landowner and the tenant);
- Management of output (mode of product sharing: rate, timing, negotiability; fixed rent, decision-making regarding the sale of the product, etc.);
- Management of the contract: partners involved, how broad the rights are (and restrictions), length of the contract, dimensions of the contracts not related to land (exchange of labour, services, etc.), how the contract was established (witness, paper, etc.) and negotiated.

Economic aspects of the contract on management of the plot:
- Payment, inputs, outputs.

Choice of contract:
- Rationale underlying the 'choice' (from both partners' point of view): economic benefit, risk-avoidance strategy, relation of force, etc.
- How has the contract been carried out in practice?
- Combining contracts
- Evaluation of contract
- Evaluation by the persons involved: advantages, difficulties, conflicts and re-negotiation.

Critical comment on the fieldwork process

My role in this investigation was methodological support. I was involved in delineating the research orientations and organising a preliminary workshop in order to discuss and adjust qualitative methods to the goal and scope of the inquiry. We organised a mid-term supervision field trip, which gave us an opportunity to take stock of the first results and the main difficulties faced by the junior researchers (see annex 2 for Rotanak Kiri research site).

Obviously, the study has generated significant results. Rich empirical material was gathered about a theme that was unkown, or at least, not well-known. This is a true achievement (please see the other chapters). Obviously, in addition, field researchers did not completely 'enter' into the logics of qualitative fieldwork, let alone ethnography. This has manifested in different aspects of the final product:

Field researchers did not stay in the villages. Thus, they missed the specific dimensions of local dynamics; an understanding which is crucial to contextualise and therefore, make more reliable the interpretations.

By doing so, they also had difficulties in grasping logic that was more foreign to them, namely the social relations among non-Khmer groups; significantly undifferentiated (as 'ethnic minorities' or even, 'ethnic people') in the reports.

The specificity of the village level was largely ignored whereas the history of settlement and displacements is a crucial factor for a sound understanding of land tenure dynamics at the local level in rural Cambodia.

The significance of cases, conflicts, specific events, was thus downplayed, as well as the holistic nature of the ethnographic approach.

Ethnography is not only about producing data, it is also a form of writing and reporting, it is a literary genre. In this respect, the first draft of the site reports I happened to read bore the hallmark of a "culture of a consultancy" (Stirrat 2000). Topics were listed without highlighting the links between them (e.g. between land sales and loans or land clearing), thus missing the overall dynamics of land tenure generated (at least in part) by land transactions, which was the very topic of this study. At this intermediary stage, this was a result of the options made during the fieldwork (as said above) as well as a more or less conscious way of following the aesthetics of reporting that predominates within the development world.

CHAPTER III.

Siem Reap

Pel Sokha, Laing Lan, Hay Leakhean and Im Sothy

Context

• Regional context

Siem Reap province has a population of 734,488 inhabitants with a density of 61 persons per km². It is situated in the north-west of Cambodia about 360 km from Phnom Penh. Siem Reap is located on the north bank of the Great Tonle Sap Lake and was the place of the former capital city of the Khmer Empire of Angkor. Siem Reap is rich in its many archaeological sites and is the first tourist destination and attraction in Cambodia. It is a rapidly developing town since the introduction of the open sky policy[4] at the end of 1998. Siem Reap has seen a rapid surge in new luxury buildings that offer a wide range of international standard, three to five-star hotels (within a capacity of accommodation largely exceeding the current volumes of tourists), fine restaurants and several shopping centres.

In order to attract tourists, the government has planned to improve the Tonle Sap Lake environment by implementing the environmental improvement project that is expected to start in 2008 with a US$30 million ADB loan. It will strengthen the APSARA management capacity of the Angkor Park areas, especially in terms of regulation enforcement, and also fund the (re-) construction of main roads linked to the provincial capital and the renovation and expansion of the international airport. The close peri-urban area of Siem Reap is delineated in four main different zones: agricultural development zone, urban development zone, archaeological sites or Angkor preservation zones (managed by APSARA) and the hotel development zone. This zoning has a strong impact on the development of land sales/purchases and the increasing land prices in the urban development zone.

• Local context

Don Tro is one of the 12 villages of Lvea commune. Pouk district is located about 20 km from Siem Reap Town or about 2 km from Pouk market along the NR 6. In 2004, Don Tro accommodated 146 families with 719 persons. From 1998 to 2004, the number of households increased 1.35% and the population increased 0.52%. The village covers 470 ha of which 3.5 ha (0.74%) are homestead areas and 176 ha (37.44%) are rice land. Population density is 153 persons per km². Don Tro village was created a long time ago. In the Pol Pot regime, the villagers had been forced to leave the plains area and move closer to the NR 6 for the sake of easier control over peoples' movements. In 1979, after the Pol Pot regime, people continued to stay in the new resettlement village and returned this village to its previous name, Don Tro. The former (pre-Khmer Rouge) settlement area was cleared again and used for rice cultivation. Almost all land is wet season rice (WSR) land. Some people also own dry season rice (DSR) land close to the river as well as in the flooded area. Almost all families grow WSR. Besides, they sell labour for construction work and for fishing. For dry season rice cropping, there about 50 families who are practicing DSR. After the harvesting of DSR, farmers plough the field before the floods come in order to replenish the soil fertility from flood sediment for RR growing in the following year. In the dry season, farmers grow hot pepper, water convolvulus, and other aromatic plants or herbs in their home gardens. They cannot grow on the WSR field since there is no water source for irrigation. The difficulties of growing WSR are the affects of drought due to a shortage of water and the lack of an irrigation scheme. Due to the development of a golf

[4] *Policy related to direct flight from abroad to Siem Reap airport.*

course owned by the Kheng Someth Company, the majority of people sold land to the company and land speculators. After selling the land, they depended on waged labour in the town, thus outside. Some other farmers have also sold land for renovating their houses.

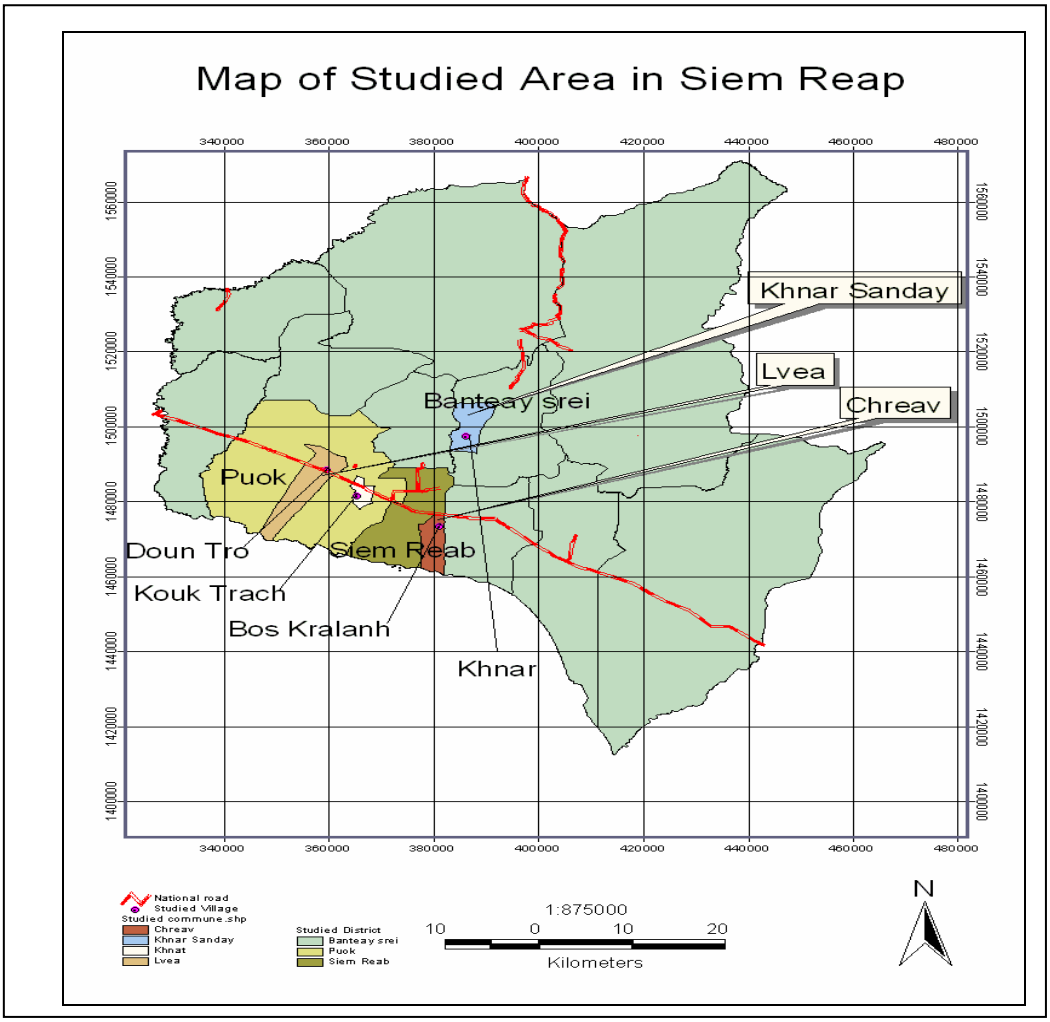
Kok Trach village of Khat commune, Pourk district is situated about 16 km south-west of Siem Reap. This village is located in the zone managed by the APSARA Authority and had 156 families in 2004. Between 1998 and 2004, the annual family growth rate was 0.43% with a population growth rate of 2.71%. On the whole, this village covers 160 ha of land with 41% of residential land and 59% of rice land. This village is situated in the lowland rice field area or zone, but farmers used to own land in the lower field DWR zone. The village could be classified into three agro-ecological zones: 1) Residential land and RSR land; 2) RSR zone, in which people face many constraints such as natural disasters (drought, irregular rainfall) even though canals exist; and 3) DSR area situated in the lower field DWR zone about 15 km from the village. Kork Trach was established a long time ago. Local people reported that when they first came here they saw one large tree growing on the farm. So they named this village Kok Trach from that day on. There were 11 Khmer families and three ethnic Kuoy families (minority group). In 1941, Thai military forces and Thai teachers' families came to control this village and subsequently forced the villagers to provide them with food. They built a Thai school and forced people such as illiterate adults to attend school. They collected taxes (on crops, animals and carts) from villagers. At that time, the villagers mainly relied on auto-subsistence; they did not buy or sell anything. For example, there were no clothes to buy and people made cotton cloth and grew crops for their own consumption in the absence of a market. After taking control for about 6-7 years, the Thai armed forces withdrew. Then, French armed forces took control of this village again and forced people to pay identification tax. The villagers fled to the forest when they didn't have any money to pay for it. During the war, in 1974, villagers moved away, some to the cities controlled by the Khmer Republic and some to the forest controlled by the Khmer Rouge. In 1975, they came back to practice collective farming. In 1979, there were 100 families, including those from displaced households from Kampong Thom and Kampong Cham provinces. From 2000 to 2004, land sales and purchases rapidly increased in this village. However, at the end of 2004, as people became increasingly aware of the classification of this land, in the zone II controlled by the APSARA authority, land sales/purchases rapidly decreased.

Khna village of Khna Sanday commune, Banteay Srei district is situated about 32 km north of Siem Reap, along road number 67, outside the zone I and II of the APSARA Authority and in the upland zone. There are newly cleared forest lands for chamkar or fruit tree plantations. In 2004, Khna village had 173 households. The annual growth rate of population and households was 1.91% and 2.85% between 1998 and 2004. The village covers 15.1 km² of which 71 ha (4.6%) are residential land, 19.3% rice fields and 6.9% chamkar land. It was established in the 1950s. At that time, the commune was mostly covered by forest. In the 1960s, the provincial authority suggested that villagers move to settle along road number 67. People cultivated chamkar rice more than RSR. Under the Pol Pot regime, people practiced collective farming. They did not flee to other villages, whereas, the people from other villages fled to this village. After the Pol Pot regime, solidarity groups were mobilized to carry out collective farming. However, in 1982 collective farming was dismantled. As a result, some farmers re-occupied their ex-residential land. Among the villagers who came during the Pol Pot time, some of them returned back to their homeland while others remained in this village. The development of tree plantations, tourism and the construction plan of the paved road 67 resulted in a growing volume of land sales/purchases. Increasing land prices encouraged people to sell their rice lands and chamkar lands. Some farmers who sold land were expecting to find new land by encroaching degraded forests. However, the result fell short of their expectations because the remaining forest lands were prohibited from being cleared by the forest administration (FA). Moreover, the FA officials implemented restrictions and banning measures on *chamkar chas* (fallow land) too. Fallow land used for shifting cultivation was sold through land brokers and they lost agricultural land. Land sales occurred under the strong pressure of brokers and urban buyers and many farmers anticipated the loss of land by selling early due to the fear of being cheated or being

forced to give up their land. These anticipating strategies strikingly reflect a felt insecurity as far as land appropriation is concerned.

Bos Kralanh is one of the seven villages of Chreav commune and is located in the urban development zone, southeast of Siem Reap. In 2004, there were 182 households. The annual growth rate of household and population of the village was 2.57% and 2.06% between 1998 and 2004. The village covers 380 ha of which 30 ha (7.89%) is residential land and 71.05% is rice fields. Around 4 ha of the land of a small ancient temple and pond in this village belonged to the APSARA area. Bos Kralanh village was created in 1954. During the Khmer Rouge era, villagers were not displaced. Nor did anyone try to escape. However, there were only 100 families remaining in 1979. In 2002, seven families came from Battambang province to settle in the village. The village is located in the lowland rice field and lower fields DWR zones. All households conduct wet season transplanting rice, or RSR. Some of them practice irrigated, dry season rice and recession rice. Around 70 to 80 households grow subsistence crops and vegetables in hilly homesteads areas between July and December. Despite the fact that there is a canal system connecting Siem Reap River to the village, it is becoming shallower and does not continue to function for irrigation. The RSR production provides low yields due to droughts. Urban people from Siem Reap and Phnom Penh have bought dry season rice land in places where many farmers have not cultivated for a long time due to very low yields. There are other existing constraints for farmers against expanding the DSR production area toward the Tonle Sap Lake, such as limited land for cultivation of DSR and a ban on rice cultivation from fishery officials. Due to the low yields, farmers stopped cultivating the DSR and sold land (with the formal recognition of the village chief). Where people can irrigate rice using water from the reservoir of the seasonal flood of the Tonle Sap, farmers continue to practice DSR or RR, even though it is banned to protect flooded forest. Sixty households (33%) in this village grow DSR in the lower field DWR zones.

Figure 1: Map of area studied in Siem Reap



- **Land transfer modalities in the area under study**

In Siem Reap, **non commoditised forms of transactions on land rights have been playing a major role in regional land tenure dynamics**: administrative transactions such as land distribution, grants to military, resettlement of returnees, but also land clearing and land grabbing. **Land redistribution was not limited to the post-Khmer Rouge/PRK era in the 1980s, it continued into the 1990s**. In the uplands, degraded forest land has been distributed to landless farmers and land poor farmers with the formal recognition of local authorities.

Nevertheless, we observed a **clear trend toward the commoditisation of land rights transfers**. This is partly due to the development of tourism that has favoured speculative behaviour in regard to land. This creates a sort of distorted urbanisation with infrastructure and hotels, the displacement of administrative buildings and rather limited growth in residential areas.

The **peak of land sales/purchases occurred in 1998/2004**, that is, somewhat later than in Sihanoukville. In this respect, the **APSARA authority** has been playing a key role since 2004, when its regulatory power was strengthened by the government in freezing large tracks of land as protected areas. Thus, they were removed from speculation.

As in Sihanoukville, or perhaps more than in Sihanoukville, there are **two sets of mutual links resulting from the development of land sales**:

We have observed a **strong link between land sales, land clearing and mobility**. Smallholders living in the agricultural areas surrounding the city of Siem Reap sell their land under pressure (which is, very often, under the threat) of land brokers and buyers, or when anticipating the risk of complete land loss, and move to peripheral areas to buy land at a lower price or, more often, to clear land, at the risk of being evicted by forest agents or concessionaires (military). In the uplands, there is also a tendency toward the commoditisation of land and the individualisation of property rights in former areas of shifting cultivation.

There is also a **link between land sales and derived rights**, which is of a similar nature to what we have observed in Sihanoukville. Land sellers, generally smallholders and poor farmers, take in loan the plot they sold. Very often, the loan is changed into a rental contract without any negotiation, due to a **highly uneven** power imbalance. Or, if the plot is used for planting cashew nut trees, the loan duration is limited to 4 to 5 years according to the growth of the trees. We also observed a trend toward the commoditisation of derived rights with the development of rental contracts and to a lesser extent; sharecropping at the expense of loans.

Another trend that is specific to the Tonle Sap area is the **access to land through capital investment in water reservoirs with the active participation of local authorities who act as brokers**.

Right transfer modalities	Non-commoditised	Commoditised
Institutional arrangement (use rights)	Loan (Exchange land/labour) Loan (loan against a gift in paddy)	Leasing Sharecropping Pawning (& Mortgaging)
Transfer rights (appropriation)	Land distribution by the local authorities and krom samaki Spontaneous 're-occupation' of former land property (sometimes negotiated with local authorities, monetary compensation) Inheritance Clearing (encroachment, grabbing) Military development zone Land distribution by the local authorities to returnees and for resettlement	Purchase Capital investment

Land appropriation

In Siem Reap, land appropriation has been carried out in various ways, such as land distribution by local authorities and solidarity groups, re-occupation of former land and houses, free access by land clearing, occupation of state or public land, inheritance and sales/purchases. The recent evolution of the modes of land appropriation is summarised in the following table.

Date/Year	Mode of appropriation
1979-80	Land distribution by the local authorities to the solidarity group, krom samaki,
	Re-occupation of former residential land
1982-86	Redistribution (several times) by krom samaki to groups' members
	Forest clearing (upland area & flooded forests)
1990-1992	Sporadic land registration (in three districts of Siem Reap, Pourk, Prasat Bakong)
1992	Distribution to returnees ('negotiated expropriation')
1992-1993	Beginning of land purchases (close to roads/urban areas)
1995	APSARA authority established by royal decree
1996-1997	AGRISUD development project: land distribution to landless farmers
1998-2004	Strong development of land sale market
	In 1998, the government declared the 'Open Sky Policy' (direct flights from abroad to Siem Reap)
2002	Distribution by local authority to landless farmers (Khar Sanday Commune)
2003-2004	Forest clearing (for selling) increased heavily
2004	June (09), issuance of botbanhchea (regulation) No 01 on The Prevention, Suppression and Elimination of Clearance Burning and Encroachment and Fence to Occupy the Forest Land.
2004	February, distribution of 1,600 ha of (4 km * 4 km) in Khun Ream commune, Banteay Srei district, to the military.
	- Strengthening of APSARA enforcement capacity - Relocation out of Angkor zone 1 to the development zone of 1,012.5 ha Run Ta Ek established by the sub-decree issued in Oct. 2004 - Demarcation of the APSARA zone
2005	In December, the forestry administration filed a complaint to the provincial court to repossess the state land from the military
	- Beginning of systematic land registration in Siem Reap commune of Siem Reap district - Starting the capital investment of the private sector for access to the former DWR lands in the flooded areas towards the Tonle Sap lake.

2006	Protest of over 100 people with the participation of four commune chiefs (Khna Sanday, Thbeng, Romchek and Khunream) and district governor of Banteay Srei against the expropriation of 3,440 ha of land being ruled by the provincial court in favor of the forestry administration at the end of March.
	The Provincial Committee on Forest Clearance and Encroachment secured the return or expropriated 47,701 ha of land Siem Reap province, around 7,000 ha of them in Banteay Srei, with 54 deikas (provincial decision); refer to a Botbanhchea (Regulation) No 01, in May, 2006, and at the request of the National Authority for Land Dispute Resolution (NALDR). Degraded forest land with fencing without use and new farm land in the upland area is considered as state land but it was illegally occupied and mostly sold to urban people.
	On the 16th May, however, the prime minister ordered to return 3,300 ha in O Manas area of Khna Sanday commune, as SLC to the villagers/farmers and military families in Banteay Srei district. 1,190 ha or 37% of the land was allocated for military Battalion 4, where 245 soldiers and their families have been living since 2000.
	At the end of May, 677 ha of forest land in Khna Sanday commune has been newly cleared and fenced for ownership. The large land occupants hired labour/people to clear land at 5,000 riel per day.

- **Land distribution**

The cultivated land was distributed by local authorities to the solidarity group (krom samaki) in 1979. Later, it was redistributed several times between 1982 and 1986 to the members of *krom samaki* due to the conflict around land allocation in which they were accused of not being equal in terms of land quality. In some villages, there was a need to allocate land to newcomers. The area of land being distributed per household varied according to the number of household members and the availability of land. For example, in Don Tro village (Pouk district), each member could access 1,000 m^2 for rainy season rice and many households could get between 0.25 and 0.50 ha per household for dry season rice. For residential land, in some villages local authorities distributed land to the households equally, while in other village's people re-occupied land that was their property prior to 1975.

In the new villages created during the Pol Pot regime, villagers continued to settle and occupy the residential plots that were allocated during the Pol Pot time. Land distribution continued in the 1990s and 2000s to returnees in 1992 and to landless farmers in 1996-97 and in 2002.

- **Land clearing**

After the redistribution of agricultural land, farmers in the lowland zone toward the Tonle Sap Lake also encroached in the flooded forest for cultivation of dry season rice due to the lack of rice land, while those farmers in the upland zone encroached into the forest to expand their *chamkar land* (16% of interviewed farm-households) or for selling. **Many of them sold their newly cleared land to address their urgent needs (distress sale) or under pressure – the usual mix of threats and persuasion – from brokers, buyers and/or local authorities. Some of them also anticipated a complete loss of land by selling land earlier: this is not a matter of distress sale; one could say that this is a 'felt distress' which is linked to the perception of a strong institutional insecurity and of powerlessness**.

Furthermore, the rich and powerful people bought newly cleared land, *chamkar chas* (fallow land) or *chamkar land* for tree plantations. Often, the Forest Administration accused the rich and powerful people of having snatched up state land.

- **Inheritance**

In Siem Reap, 75% of the interviewed FHs inherited land from their parents (let us be reminded here of the Khmer tendency towards bilateral kinship rules), and 37% of the total plots were transferred by inheritance. New couples inherited land from their parents. This land had been distributed to them during the early 1980s. The inheritance process can be different from place to place, depending on a parent's decision and negotiations among the family's members and **always without written contracts** or **informing the local authorities**: **inheritance is strictly an intra-family (domestic/private) affair**. For those households without parents, the inheritance process is strongly decided by the elder brother (there can be contradictions and conflicts between collateral and agnatic kin). Different inheritance processes has been found, such as:

Parents distribute all their limited land that they received through distribution from the solidarity group to the first child without giving any of this land to their other children. This is because the elder child received land commonly from parents during the land distribution process in 1980s;

Parents distribute only residential land if they have small rice land;

The elder brother acts as the manager of the family patrimony and distributes land to his young brothers. Normally, those brothers who are poor receive more land than the other brothers. For example,

Mr. Eang Yi has five children and lives in Kork Trach village, Khnat commune, Puok district. During the land distribution by the solidarity group, two of his children also received land as their share. The family received in total 0.20 ha of land. Moreover, he bought around 2 ha of land. After marriage, the first child inherited around 0.80 ha of land while the second child inherited around 0.60 ha. The parents are the decision-makers for this inheritance and made it without any written contract.

Mr. Kang Nhor, a farmer in Kork Trach village, Khnat commune, Puok district. He has nine children and lives near the house of the village chief. During the land distribution by the solidarity group, he and his wife received 0.15 ha of land. After the land distribution process he bought 0.50 ha of rice land. He said that when his daughter gets married he will distribute part of their residential land to her but they do not want to give rice land to her now because he and his wife own only a very small rice land.

Mr. B, has 5 children and lives in Krasaing village, Chreav village, Siem Reap district. He has 0.70 ha of rice land. 0.40 ha among all land that was given by the village authority in 1989 for his family of three members including one daughter when he left the army. Moreover, he bought 0.30 ha of rice land. In 2003, he allocated around 0.30 ha of rice land to his daughter as anticipated inheritance when she got married (what he would not do for his next children).

Mr. An Pork, has two children and three siblings. During the land distribution process in the early 1980s, he and his two elder brothers received 1.5 ha of land from the solidarity group. In 1990, he got married and his two elder brothers gave him 0.25 ha of land. Normally, he could take 0.50 ha of land but he thought that his wife already had a lot of land because she was the daughter of people from better-off households. His first brother kept 0.60 ha, and gave the rest of 0.65 ha to his second brother.

- **Land access through capital investment**

In Siem Reap, **local private investors seek to invest in reservoirs on the former and abandoned deep water rice (DWR) lands in exchange for parts of that land. This way of accessing land must be differentiated from a purchase. A common point between these two modalities of land appropriation is however, the role of brokers (often commune authorities) in the process; at the interface between local communities and external investors.**

In 2005, a project of reservoir construction was funded by a private investor in three villages of Prey Chrouk commune, Pourk district. The project aimed to convert the former and abandoned DWR areas into receding rice fields of about 450 ha. The project was implemented under the mediation of the commune authorities who work for creating a favourable 'climate' for external investors and institutions, while at the same time representing the local authority of the government. They typically fulfil the function of brokerage. The water reservoir project needs support and participation from farmers in sharing the cost of reservoir and former DWR land. Before starting the dam construction, the commune chief mobilized farmers in a Dry Season Rice Farmer Community of 58 members which increased to 250 in the mid dam construction due to the farmers' growing interest for the process of capital investment in RR production - in particular, on how to share the cost of the reservoir, and how to consolidate land or share land. From this investment, the investor will access the abandoned DWR land that was shared by all members of the community. Farmers have to contribute to investment costs of the reservoir by making payment over a period of 3 to 4 production years at an amount depending on land size. However, the capital investment appears as a modality for redistributing, economically, former DWR land among investor and farmers. The potential farmers can receive more land than other farmers. The local leaders name this process deysampatein *(concession). By law, it is an Economic Land Concession (ELC) that organises the temporary transfer of state private land to the private sector. The MAFF has the right to grant over 1,000 ha of state land to the private investor for a period in order to stimulate economic development. Up to 10,000 ha of ELC could be leased, for a period of up to 99 years* ***(article 59 of the 2001 land law).*** *Additionally, the provincial authority is delegated to lease state land of fewer than 1,000 ha, or the capital investment less than 10,000,000,000 riel (ten thousand million riel, equivalent to about US$2.5 million)* ***(article 29 of sub-decree on ELC in Dec. 2005****).*

The farmers who did not agree with the project accused the local authorities of land grabbing. For example, two farmers in Prasat village (Mr. Pak Leap and Mr. Pak Sam) who have 2 and 4 ha of DWR land in that area, but abandoned it since 2000 due to a number of natural disasters, were not informed about of the project and did not know what happened to their land. However, the local authorities replied by referring to ***article 76 of the 1992 land law, which stated that "any land that a possessor has abandoned for three consecutive years shall become the private domain of the state".***

In other (rare) cases, local farmers resisted the external intrusion by grouping themselves to mobilise resources and invest in the reservoir.

To the contrary, a group of 125 farmers in Chambak village (Roluos commune, Prasat Bakong district) mobilized themselves into a farmer community as a strategy that aimed to secure and prevent their land rights from expropriation by investing the reservoir in the former DWR area for receding rice production. A dam management committee was elected for managing the dam in a sustainable way.

Institutional arrangements (derived rights)

Poor land farmers or agricultural landless farmers (ALFs) have access to land through other modalities such as loans of land, renting and sharecropping. Moreover, pawning/mortgaging has been practiced by farmers who are in need of money for immediate purposes. However, **many urban land buyers prefer loaning the land they have bought to the local farmers (very often the seller himself) for temporary cultivation** in order to keep land and protect it from shrub or forest re-growing.

- **Loans of land**

Rights usually cover annual cropping, but not tree planting or the delegation of rights to a third party. Loans (*kar oay dei theu sen*) are temporary transfers of land rights without payment, or in some cases against a gift in-kind (paddy). The land owner can reclaim the land whenever he/she wishes in cases of open-ended loans. Also, a loan could be a measure to ensure release from state obligation. By law/policy, the owner of unused land is liable for a tax of 2% of the market price of the land value, which is determined each year by the committee for valuation of unused land (CLP, 2002).

In selected areas of Siem Reap, there are different land owner groups that loaned land to farmers: land poor farmers, relatives, commune councillors, government officials, urban land buyers, companies, military and land buyers living abroad. They loan plots of land, in many cases in exchange for labour, to keep and clear (this case is situated at the edge of a loan and a land-for-labour exchange). **One can distinguish different strategies of loans practiced by the different categories of actors (land owners)**:

1. Urban land buyers, companies or buyers living abroad bought land for speculation, and as they generally do not need the land immediately, they loan it to farmers: here i**s the link between land sales and loans**. In such cases, **brokers often act as land keepers/managers for the owners and collect the rental fee.**
2. Farmers who lack land or draft animals have loaned land to their neighbours or relatives and they have left their villages to seek new *chamkar* land elsewhere for cultivation. This is a sort of reverse tenancy (the landowner is the poorest in the relationship) with a **link between loan, mobility and land clearing**.

For example, two poor farmers in Khna village of Banteay Srei district have loaned land to their relatives and left the village to seek new *chamkar* land in Omanas settlement for growing rice. Some farmers acted as land brokers for their relatives from the cities, Phnom Penh or abroad. They could borrow land for temporary cultivation in the form of a loan. In some cases if the land owners are poor land farmers and the tenant farmers' relatives, the tenant farmer can give them an amount of paddy as a gift at harvest time (another case of **reverse tenancy**). In cases of an alliance between the land owner and keeper, after having bought land, the owner also gives rice to his land keeper. For example,

Mr. Poeung Heng, an urban resident of Siem Reap. He is an army officer in the General Secretariat of region II. He bought 0.5 ha of residential land in 2000 and 6 ha of rice land in 2003-04 in Kok Track village. After buying this land, he loaned it to a soldier for rice cultivation in exchange

for labour (keeping or taking care of land). Due to his alliance to this soldier, he also gave some rice to the soldier.

Loans can follow two procedures: (1) **with written contracts; and (2) without written contracts depending on trust/accountability relations between local actors and the development of land markets**. For example, in Khna village of Banteay Srei district, one buyer of 30 ha of fallow chamkar land, Mrs. San, a Khmer-American, has loaned land to the farmers without any written contract. The loan was processed without writing any written document as the buyer thought that she had enough formal (legal) land right documents from the chiefs of village and commune. However, in 2005, learning from past experience of land disputes, the military requested written contracts recognized by the village chief as a witness before loaning land to 19 farm-households in Khna village, Khna Sanday commune.

There are 19 families in Khna village, Khna Sanday commune (Mrs. Nga Proeurng is 49 years old, Pan Bech 38 years old, Mrs. Nga Lot 41 years old, etc.) have asked for loans of land from the soldiers under the military brigade No 4 based in O Poung. Loans have been processed according to written contracts, which have been made by the village chief. Farmers then had to sign them using a thumbprint as signature. For example, Mrs. Nga Proeurng cleared degraded forest land for rice farming 2 years ago before the army moved into the area (in 2004) for land occupation. Also, since then, she has had to borrow her former land from the army by making a written contract of loan, with thumbprint signature and recognizing the village chief as witness.

Similarly, for rice land, in or close to the urban development zone and the newly cleared land in the upland areas that have good market opportunities, loans without contracts have been increasingly replaced by loans that rely upon written contracts.

In 2003, a rich and powerful man came from Phnom Penh. He contacted the village chief of Bos Kralanh seeking land sale opportunities in the DSR fields. In 2003-04, he bought 400 ha of RR/DSR land and flooded forest land in five villages of Chreav commune, 120 ha of them located in Bos Kralanh village about 10 km from the village. The village chief claimed that land in that area is ***concession land*** *because farmers abandoned it a long time ago. Rice land abandoned for more than 3 years is given back to the state* ***(refer to the article 76 of the 1992 land law even though it was un-validated by the issuance of 2001 land law)****. For this reason, the village chief and his fellows persuaded their villagers to sell the land. They told the villagers that land was located far from the village and also that the rice yields have always declined. They told villagers that "if we do not sell that land we might lose it". Therefore, all villagers decided to sell the land. The village chief was responsible for making the sale contract. However, the villagers did not know any details suggesting when and how much money the village chief received from the land buyer. The people said the village chief told them that he used the money from the sale of the land to construct a public rest house (sala chha tean). The remainder was shared among the villagers, US$70 per each household.*

To date, the land buyer has loaned the buying land to villagers for RR/DSR cultivation without any written contract through a land broker. Farmers who want to borrow land need to ask the land broker who is in fact the village chief. In the growing season 2005, the owner requested the chief of Bos Kralanh village to make the loan with a written contract. However, the village chief promised to do this in the next growing year, 2006.

In some cases, loans have been processed when the large land owner lacked enough rice seedlings or had insufficient agricultural equipment. According to farmer's habits, if they have no more rice seedlings to transplant, they prefer to loan other un-used land to their neighbours. In such cases, **the loan is a form of land adjustment to the farmer's production means**. For example,

Mr. Mouv Sameth is a ALF in Khna village. He borrowed 0.5 ha of rice land from other villagers in 2004 without any written contract. Five farm-households in Sanday village loaned land to their neighbours because they have not enough agricultural equipment. Then they left the village to live on a new settlement and to clear degraded forest land occupied by, or belonging to the military

for farming. The military has loaned the land to the people for temporary cropping in exchange for labour to clear the land. Farmers will return land to the military and seek to clear another new plot of land. This shows the ***link between military concessions and the reproduction of shifting cultivation through short-term loans****.*

Otherwise, the shifting cultivation farmer borrowed land from other villagers, their relatives, or from the military when they lost all their land by expropriation or banning from the government authorities. In the following year, the loan is changed to sharecropping even though they still use the term 'borrowing' (*som dei thveu sre sen).*

Mr. Ngor Lot, aged 42 years, has eight children. He is a farmer in Khna village, Khna Sanday commune. He used to be a shifting cultivation farmer on land far from the village but access to this land was difficult since the army moved in to occupy their chamkar *land, and the forestry administration enforced its control in this area. Otherwise, he did not inherit land from their ancestors and parents. Thus, he became a landless farmer, and to secure the family's livelihood he asked for a loan of 30 m x 350 m rice land (around 1ha) from his elder sister for rice cultivation. His elder sister loaned him the rice land in the growing year 2003-04 because she lacked family labour. The loan modality has changed to sharecropping in 2004-05 even though they still use the term 'borrowing', but the amount of paddy is not fixed in advance. In this year, he harvested about 1,000 kg of paddy (12 bags), and shared 120 kg with his elder sister. This loan was made without any written contract.*

However, some loans practiced between villagers or between relatives without written contracts have changed to become rental. Landowners receive a sort of rent in-kind (paddy). Interestingly, **this rent is not considered as such. Rather, as symbolising a kind of mutual help or gratitude**. For example,

Mrs. Long Meng, a widow who has four members in her family was born in Khna village. She has loaned 0.5 ha of land to her cousin since 2000 because he didn't have draft animals, and his family practices shifting cultivation. The loan agreement is not written down. At the harvest of 2004, his cousin shared with/allocated to her family 5 taings of paddy (125 kg) because of their family relationship. However, sharing is not an obligation. It seems to be a form of mutual help among relatives at time when the tenant has a good harvest.

Both interviewed farmer groups, landholding farmers (FHs) and agricultural landless farmers (ALFs) have borrowed land, mostly from urban land buyers for annual cultivation. Over 4% of FHs and 35% of ALFs could access land through loans and some ALFs also asked for loans of land from the land buyers who bought land from them. Thus the loan is **an important means of access to land for both ALFs and land poor farmers**.

- **Renting**

Renting (*Kar Chuol Dei*) is a modality of land tenure rights transfer (derived rights) for provisory cultivation. The agricultural landless farmers or land poor farmers often *rent in* land for growing annual crops. Leasing has increasingly replaced loans or sharecropping as a result of the growth in the land market and easier management. In some cases, the owner has lost his trust in the sharecropper. Other reasons for *renting out* land are the lack of labour, large cultivated land and labour competition between farming and non-farming activities. Lack of labour in some cases could be linked to households headed by elderly people. If children live separately from them, the elders have to rent land or practice sharecropping for making their living. In some cases, the practice of renting rice land for cultivation has led to distress land sales as the tenant was not able to pay the rental due to experiencing a bad harvest and the impact of declining rice prices.

Ms. Pec York, living in Chreav village, sold 1950 m² of her residential land in 2001 with 13 damleung of gold (US$5,200) because of indebtedness. In 2000, she rented in 10 ha of rice land for dry season rice production. The production cost of DSR was high, as it included the renting of a tractor for land preparation and the hire of labour. The harvest was poor due to the effects of heavy

rainfall. After the harvest, the price of paddy declined so that she was not able to pay the rent. She asked the land owner to extend the date of payment until next year but the owner did not agree. The owner proposed to convert the rental agreement into a loan of money at the market interest rate of 4% per month. As a consequence, she was forced to sell land to pay the rent. Moreover, in 2003, she sold another plot of residential land (1,125 m²) for US$675 for paying the credit instead of the credit borrower because she was cheated. In this case, she agreed to give her thumbprint as witness for one villager who borrowed 2 damleung of gold (US$800) from the private lender with a monthly interest rate of 5%. The villager borrower fled from the village and left the witness to reimburse the money lender instead. However, she did not file a complaint against the neighbour to local authorities.

Mrs. Peng Sot, or Yeay (female elder) Peng Sot who lives in Sanday village has 2 ha of rice land and has rented her land out to her niece for the last 4 years because she lacks family labor. Her two sons are soldiers. Renting has been always processed without written contracts because they were her relatives. She received a rent in-kind of 150 kg of paddy per ha.

Some farmers have more land than they can cultivate, while other farmers are too busy in running other non-farming economic activities. The local landowners can be classified in two groups: small land farmers who lack the means and family labour, and large land owners. Sometimes, both groups rented land out because they were busy with off-farm or non-farming activities. **In this case, the adjustment through rental works at another level: between farm and non-farming activities.**

In 2004, Mr. Ven Kann, a villager in Don Tro village, Lvea commune, Puok district, rented 1.3 ha of land from Mrs. Chhun Chhy, a villager in Puok Thmei village, Puok commune, with the rental of 12 taing of paddy (about 290 kg) or 225 kg per ha and per season. The reason for renting land out was that Mrs. Chhun Chhy is too busy with other non-farming economic activities and lacks labour for cultivation. The process of renting is carried out without written documents and is only a verbal agreement as both parties depend on trust and their relationship with each other. Renting is made for a one year period. In cases where the tenant wants to continue cultivation he will re-negotiate again.

In some cases, poor farmers rent land for increasing rice production to meet the consumption needs of their families. Even though the agreement is not written down, both the owner and the tenant make a verbal agreement in which both parties agree that the rental should vary depending on the harvest. The tenants stopped renting land as the soil fertility declined after 5-6 years of cultivation. Even in processes between farmers of different villages, agreements are not written down.

Mr. Tor Lai, a farmer living in Khna village has rented in 0.18 ha of rice land for the last three years ago from Mr. Sorm Say, a relative living in the same village, because he does not have enough rice land for cultivation. The leasing is not written down, and the rental fee is 87 kg of paddy. Last year the tenant harvested 210 kg of paddy.

There are 15 farm households in Tromeng village, Khnat commune, that have rented in 15 ha of rice land from villagers in Kok Snuol village. Between 1998 and 2004, the rental fee was 250 kg per ha. In 2005, the farmers in Tromeng village stopped renting this land due to the declining rice yield compared to the rental or because it was found not to be profitable. Renting was re-negotiated every year through a verbal contract.

In some cases, farmers sold their rice land, but they rented other land for rice cultivation. The process of land renting occurs mostly without any written contract, only a verbal agreement. This arrangement is for one rice growing season, or for one year. The tenant has to re-negotiate with the land owner every year for the next growing season. As mentioned above, rental is often paid in-kind with paddy. This arrangement could be reduced if the rice yield does not meet expectations or if

the harvest is bad. However, in the case of a 10-year investment in weaving handicraft, the renting of land is made with a written contract and also recognized by the chiefs of village and commune.

Mr. Hen Hear, living in Bos Kralanh village, Chreav commune, sold 0.50 ha of rice land. After selling this land, he had to rent in this same land back from the land buyer for rice cultivation. The rental was in the form of 100 kg of paddy per season. The process of land renting had no written document and it needs to be negotiated every year. The owner (land buyer) would stop renting land to him when he needs to get the land back to resell it.

A prince has rented in land from a villager in Kok Track village, Mr. Liv Lon, to install a weaving handicraft business. Land renting is for a period of 10 years with a written contract and recognized by the chiefs of village and commune, as witnesses. The rental fee is US$100 per month and it will be paid after 5 years of renting. To facilitate this arrangement the handicraft provided an employment for the daughter of land owner.

Results obtained from an in-depth interview show that 5% of FHs and 15% of ALFs have rented in land for rice cultivation. Rental of rice land is often paid in-kind with paddy and ranges from 150 to 250 kg per ha and per cropping season. The variation depends on the relations and negotiations between owners and tenants in which rental could be diminished in cases where the harvest is bad or lower than was estimated. The process of renting does not resort to any written document. It is based on mutual relations of trust and accountability.

- **Sharecropping**

Sharecropping *(kar thveu sre chek phal khnea)* in rice production was often practiced 10 years ago, including between villagers from different villages. Sharecropping arrangements were generally open-ended and conducted with a re-negotiation before the next growing season.

Sharecropping has rapidly declined and has changed to leasing arrangements (*kar chuol dei*) for two main reasons. They are both related to the issue of the embedding of property relations in social relations which warrant both trust and accountability:

- The landowners say they have lost trust in the farmers. However, sharecropping remains practiced between close relatives or neighbours. Landowners accuse the tenants of cheating them by refusing to disclose the real level of their harvest and accuse them of being lazy.
- This change also relates to the change of land ownership from local people to urban people, or urban dwellers who mainly work outside the village on non-farming business. They have no time to follow up the process.

Thus there is a **link between the commoditisation of land relations and the diminishing role of localised social relations**.

The landowners want tenants to pay part of rental costs before starting the cultivation and do not further consider the harvest conditions. Moreover, the contract is not written down. Villagers seem to confuse the process of rental with that of sharecropping. During the interviews, the interviewees talked of sharecropping by using the Khmer word for renting (*kar chuol dei)*, probably because both arrangements are similarly paid in-kind (paddy). The amount could be similarly diminished according to negotiation.

Regarding sharecropping arrangements, the harvested product is shared according to the respective contributions of the tenant and the landowner:

- 40/60, namely two shares for the tenant and three for the landowner if the farmer contributes only labour and the landowner to land preparation;
- 60/40, namely three shares for the farmer if the farmer has traction animals or prepares the land;

- In other cases, the landowner only receives 1/3 or 1/2 of the harvest depending on the negotiation. Sometimes, the landowner provides the tenant with seeds because farmers lacked rice seed or land owners do not want to keep land unused. **The range of arrangements is broad and the interpersonal relationships within them play a key role**.

Ms X, a farmer in Chreav village, Chreav commune, Siem Reap district. She has access to 1.5 ha of rice land from her uncle who has lived in the same village since 2003 without a written contract, and pays a 50% share of paddy to him. Last year, she received 30 thangs (720 kg) of paddy after sharing the harvested product. Her uncle will take the land back because he has a nephew-in-law who will now be in charge of rice cultivation.

For close relatives such as brothers or parents, the product share is not fixed before the cropping season: it is an intermediary case between loan and sharecropping involving relatives. In some cases, the loan of land seems to have been changed into unfixed sharecropping if the landowner contributes to the cost of land ploughing. The land owner wants the farmer to also keep land for clearing. Farmers can give the landowner any amount of the harvested product depending on the farmer's decision and the results of the harvest because they are intra-family. Habitually, the product is shared at the ration of 2/5 for the farmer and 3/5 for the landowner, if farmers contribute labour and the landowner spends on land preparation. In some cases, the loan of land is changed to sharecropping. But sharecrops were not fixed in advance if the landowner contributed to production costs such as ploughing. Sometimes, this arrangement changes if the owner wants the farmer to keep land and clear it or if the tenant is poor and does not have any draft cattle or capital to start farming.

Moreover, urban people settle in rural villages for land brokerage and speculation and they loan land to farmers for sharecropping, aiming to create a close relationship with local villagers. **Urban people try to re-embed property relations into social relations, f**or example,

Yi Vien, is a female elder, who is a widow with three members of her family that were born in Siem Reap town. She moved to settle in Khna village, Khna Sanday commune on 0.75 ha of land that she bought in the form of gold at the cost of 3.8 dam loeng (around US$2,000) in 1997. She felt that living in the provincial capital was more difficult and it had become harder for her to run a business. However, the village chief said she moved to live in this village because she lost belief in her political party. Besides, being a trader and a money lender, she is also a land broker and buys land for speculation. She is an influential woman in this village and if someone wants to sell land they can contact her. At the time of this study, she had 20 plots of land (around 12 ha) along road number 67 from Prey village to Khna village, Khna Sanday commune. Also, she loaned the villagers that land for farming without any written contract due to trust, and to the neighbours in the same village in exchange for labour to keep and clear lands. She also paid for the ploughing service for the villagers. In turn, she didn't demand a share crop from those villagers or farmers, depending on villager's kindness and good harvest results. The farmer can give the land owner any amount of the harvested product he wants. In this case, it could be concluded that it is an evolution from loan to monetary transfer of sharecropping if the land owner contributes to that production costs. As a new settler in the village she made good acts in favour of the local villagers. She aims to strengthen relationships with local villagers and partnerships. As she is a well-off woman she does not care so much for rice sharecrops.

- **Pawning land for credit**

Land pawning *(kar banhcham dei* or antichrèse under the 2001 land law) is the transfer of land use rights to the money lender against access to credit. The landowners pawn land for credit by ceding use right on it for a period to the credit lender. The land acts as a guarantee for the loan, while the cultivation rights serve as a form of interest payment on the granted capital. The villagers pawn their land for a loan from their relatives, people in the same village and people from neighbouring villages. If the landowner cannot reimburse the loan, the money owner will continue

to use the land and the money owner can rent it out to a third person for temporary use. In this case, the villager will not lose the land if they can't reimburse the money. The money lender continues to use the land until the landowner pays the money back. Some money lenders decide to pawn land that is located close to their land because of the optimization of cultivated land size and easier management. Land pawning may be written down or not depending on relationship between land owners and money owners or on the type of money lender. Land pawning practiced by close relatives does not require a written contract, while pawning land to other people such as villagers in the same village, a villager in the neighbouring village is written down and recognized by the village chief as a witness. Sometimes, the written contract is made only between both parties without informing the local authorities. The amount of money and duration of land pawning depends on land size and type and the negotiation between both parties. **In some cases, the villager pawns the land for money to be released from other debts while the other villager buys new land. These cases show that pawning can pertain to diverging strategies: pawning land for repaying a debt is closely related to distress sale (and sometimes may result in a sale) whereas pawning land for buying another plot is rather an accumulative strategy**. Examples are as follows:

Mr. Pich Nem has eight children and lives in Kork Trach village, Khnat commune. He used to have around 1.5 ha of rice land through distribution of the solidarity group and buying. At that time, two of his children received land commonly with the family during the land distribution. In 2002 he pawned 0.75 ha of rice land with 2 chi of gold (US$107) to a villager in the same village with a written contract, which was also recognized by the chief of village. The gold or money was used to pay back to the ACLEDA bank, and also the money lender, as a trader, and also to buy food. In 2004, he sold that land for 1.1 damleng of gold (around US$500) to another villager because that person offered a higher price than the money lender, and he did not have enough money to pay the debt. Thus, he needed more money. In 2003, he pawned 0.30 ha of rice land to villagers for 2.5 chi of gold with a written contract for the duration of 3 years. Until now he has not yet reimbursed the debt but he plans to do so in 2006. In 2004, he also pawned 0.008 ha of land located close to the village for 100,000 riels (US$25) to the villager with a written contract. In 2005, he reimbursed the credit and got the land back. As a consequence, the two elder children who got married in 2003 and 2004 were not able to inherit land from him.

Mr.A, a farmer in Kork Trach village, Khnat commune has nine children. In 1998, he pawned 0.50 ha of rice land to a villager in the same village for 2 chi of gold (US$107) in order to buy the land. Pawning was made without a written contract for 4 years. In 2003 he reimbursed the gold and received the land back. In this case, when the farmer does not have enough money to pay back the debt he does not lose land. The money lender can continue to use the land.

Mrs. Niv, a farmer in Chreav village, Chreav commune. She received in pawning 0.50 ha of rice land from her relatives for 3 chi of gold (US$160) in 2000. Her relatives pawned the land to her because she needed money for her daughter's wedding. Pawning was made without a written contract and was open-ended. She will give land back to her relatives when she receives money. Nowadays, she continues to cultivate rice on that land. This also compares to other farmers in other areas, who sell land for ceremonies, or for their children's wedding. In this case, it could be for mutual help between relatives. The land owner did not want to sell land immediately. Maybe, he is waiting for a high price. This is because Chreav village is located in the urban development zone or the urban area and will be developed toward this village area according to the provincial plan.

Mr. Sure, a farmer in Chreav village, Chreav commune. In 2001, he pawned 0.70 ha of rice land from the villager from Veal village in the same commune for 2.5 chi of gold with a written contract between both parties. He decided to pawn this land because he also has a plot of land nearby. In 2004, he gave the land back after getting the money.

In the above cases, we can see that **pawning (as leasing or sharecropping; see above) can be part of a strategy of rationalising and optimising land use according to accessibility and availability of assets for cultivation**.

- **Mortgaging**

For mortgaging (*kar dak dei or kar dak dei theanea*) or **hypothek** in the 2001 land law, the recipients or farmers have all rights of both land and money use alone. Money is transferred to land owners in return for pledged land in the form of a legal (certificate of possession or ownership) or formal document of land rights. The mortgaging contract is written between both parties and with a thumbprint which is recognized by the village chief as a witness. The document must be returned when the loan is repaid. In some cases, the land owner requests that the money lender sell the mortgaged land as they cannot reimburse the credit due to business failure or illness. Land mortgaging has been practiced in Khnat and Lvea communes of Pourk district, but it has declined since the APSARA authority reinforced its management of the Angkor zones I and II, contributing to decreasing land prices (in the archaeological zone, all kinds of settlement and construction are now prohibited). For example, in Khna village, Khnat commune, the cost of residential land diminished six times compared to costs at the beginning of 2004, before the reinforcement of APSARA authority. Previously, people were able to mortgage land for the credit of a large amount of money from ACLEDA bank or from private money lenders. From now on, villagers should mobilize themselves into a guarantee group of five members to gain access to a group loan of US$125 at maximum.

In 1999, Ms. Prom Ly, living in Krasaing village, Chreav commune, borrowed 1.5 damleung of gold (about US$600) from the private money lender, Ms. Lab; a grocery owner in the neighbouring village, with a 10% monthly interest rate. Borrowing was processed by giving the document of possession of 750 m² of residential land as credit collateral. The document of land possession is recognized and signed only by the village chief. The borrowed money was used for buying a boat and fishing gear. Because Ms Prom has a lot of children and that her mother became sick, she is not able to pay back the credit. Also, she asked the creditor to sell her mortgaged land and share the remaining money so that she can be released from this debt. At the time of our study, the residential land was advertised for sale with US$13 per m². As a consequence, she will move off the residential land.

An example of mortgaging land after a bad experience of borrowing with a daily payment of interest (Luy Rab):

Mr. Pat Non and Mrs Kab Huo, a farmer in Kok Trach village, Khnat commune Pouk district, has four children. He borrowed 200,000 riels (about US$50) (Luy Rab) at an interest rate of 7% per day from one villager for buying food in 2000. He had to pay a daily interest of 14,000 riels. Every day the money lender came to take the money from the farmer. The duration of borrowing is open; he can pay whenever he has money. Also, in 2000, he had to sell his 0.32 ha of land to pay back the debt, and then he became a landless farmer. Presently, he also borrowed US$200 at an interest rate of 12% per month from a Khnat villager (Mr. Palla and his wife are medical servants) by giving the receipt of residential land possession to the money lender as collateral. The contract was written down between both parties by thumbprinting and was recognized by the village chief as a witness. In this case, mortgaging land is more favourable compared to the previous arrangement with a daily payment of interest (Luy Rab).

Mrs. Tong Huot, living in Kamro village, Lvea commune. Her husband was in jail. Thus, she sold 0.5 ha of land in 1989 for US$134 to pay for the release of her husband from jail. In 2001, she mortgaged land (40m x 40m) by giving the receipt of residential land occupation as collateral for the credit of Hatha Kasekor (an NGO working on micro-finance) with US$134 at an 3% interest rate per month in order to buy fishing equipment. However, the fishing business did not go well and she could not earn enough income for the family. In the meantime, her husband often got sick. Thus, she did not have money and decided to sell 0.16 ha of land again to pay back the credit. In this case, Hatha Kasekor requested customers to pay back money for getting back the receipt of land occupation. Then, she became an agricultural landless farmer.

- **Agrarian contracts and derived rights in Siem Reap province**

The diverse modalities of accessing land through agrarian contracts and institutional arrangements are giving shape to a wide array of derived rights in Siem Reap. They are summarised in the following table with a mention of vernacular terms.

Contract form and arrangement in KPT	Rights transferred	Other conditions
Open-ended loans (kar qay dei theu sen)	Cultivation rights (in particular, rice), Mostly without a written contract, then changed to written contract in the following years.	Loans as measures to secure land and be released from tax on unused land. Land poor farmers loan land to their relatives, then they seek to clear land elsewhere in the upland areas or borrow land from military for provisory cultivation. Local authorities who have a lot of plots/ large land, loan land to farmers. Urban dwellers and rich people loan land being bought to farmers or land sellers or land brokers, in most cases without a written contract. New settlers as land brokers, large land owners and speculators loan land to villagers in order to build close relationship with local villagers. In some cases, borrowing land from military and loan of DSR lands of the large land buyer changed to a written contract, recognized by the chief of village as witness and broker. Loan could be changed to monetary transfer of sharecropping if the land owner provides the cost of land preparation.
Access to land for a fixed fee of rental payment or for leasing (kar chuol dei)	Cultivation rights. Verbal contract or without a written contract. Renewable at start of each growing season.	Farmers have either many economic activities or they lack family labour so they lease their land out. Urban dwellers/rich people lease land to farmer. The rental is in-kind of paddy and it could be diminished depending on the result of the harvest and/or negotiations. Rental ranges from 100 to 250 kg of paddy /ha. No right to plantation and owner can take the land back whenever he/she wants. One case occurred where the tenant sold land to pay the rental of 10 ha DSR land due to rice being damaged by heavy rainfalls. Tenants stopped leasing rice land after 5 consecutive growing years due to declining soil fertility Farmer rents back the land that they had already sold. Renting of residential land in 10 years with a written contract, recognized by the village chief for handicrafts.
Sharecropping (kar thveu sre chek phal khnea)	Cultivation rights, Harvest depending on arrangements made. In some cases, land owner provides land preparation cost.	Mostly this was practiced over the last 10 years. Now this system is rapidly declining and has changed to a leasing arrangement. This is because landowners have lost trust in the farmers. This remains practiced between close relatives, intra-family members or neighbours. Changed to leasing and is related to the changing

		of land ownership from local people to urban people /dwellers due to easier management. Payment at the end of harvest and paddy is shared. For example: - 2:3; 2/5 shares for farmer and 3/5 for landowner if the farmer contributed only labor, the owner spent on land preparation; - 3:2; 3/5 for farmer if farmer has traction animals or spent on land preparation; - 1/3 or 50% of paddy being paid to the land owner, sometimes land owner provides rice seed to the tenant and does not want to keep land un-used.
Pawning (kar banhcham dei) (Antichère)	No right to sell, but the money lender can rent or transfer the use rights of land to a third person. The money lender gives the land back after being paid the money.	Practiced between relatives, between villagers and neighbors. Money lender continues to use land until the landowner pays the money back. Some money lenders decide to pawn land located close to their land. This is because of the optimization of cultivated land size and easier management. Pawning made by close relatives occurred without a written contract while pawing to neighbors and moderately-rich people in neighboring villages with a written contract and recognized by the village chief as a witness. Written contract could be opened-ended or not up to 4 years. If farmer does not have money to pay back he does not lose his land. The money lender can continue using the land. Sometimes, the written contract is made between both parties without informing the local authorities. In some cases, villagers pawn their land for money to release from other debts while other villagers buy new land. In areas close to the urban development zone, pawning is practiced as mutual help among relatives. The owners do not sell land immediately. They wait for land prices to rise.
Mortgaging (kar dak dei or kar dak dei Theanea) (hypotheque)	Farmers or recipients have all rights of use both for land and money. Money transferred to land owners in return for pledged land in the form of a document of land right (legal / formal). This must be returned when loan is repaid.	This can be between farmers and banks or farmers and private money lenders. This practice has declined inside the Angkor zones I and II due to land devaluation since the Apsara authority reinforced its management role. Mortgaging is practiced with an interest rate which can be up to 10% per month with private money lenders or 3% with NGOs working on micro-finance. Farmers ask creditors to sell the mortgaged land and share the remaining money when they are unable to pay back the debt. Mortgage contracts are written down and thumb printed by both parties. They are recognized also by the chief of village as a witness. Mortgaging becomes more favourable compared to the past practice of borrowing money with an additional daily payment of interest (Luy Rab) up to a daily interest rate of 7% .

Land sales/purchases

Land sales and purchases have occurred since the privatization policy that was introduced in 1989. Land sales began in 1992/93 for land close to urban areas and main roads. They have risen considerably and peaked in 2004 in response to the effects of the 'open sky policy' launched by the government in 1998. Urban dwellers and rich local people bought land close to main roads for speculation, while they bought new clearing lands in the upland zone (e.g. in Banteay Srei district) and the lowland zone toward the Tonle Sap Lake for tree plantation and receding rice (RR) production.

Land sales have frequently occurred in the urban communes and, particularly since the end of 1997, land sales had rised in Khnat and Toeuk Vil communes. Land was bought particularly by the urban dwellers. However, this has declined since the enforcement of the APSARA authority in November 2004 for land inside the APSARA zones I and II. **APSARA's new competency has had a strong impact on land markets and land sale/purchase patterns in the areas**. Since the APSARA authority has enforced its management role, land sales/purchases have decreased inside the APSARA zones. On the contrary, land prices outside the APSARA zones have risen. Land prices in the APSARA zones have decreased 5-6 times or from US$5 to US$1 per m^2, while they have increased from US$0.25 to 1 per m^2 or 300% for newly cleared land in the upland areas. However, land prices in the upland areas tend to be stagnant since the Forest Administration filed several complaints against land occupants/owners to the provincial court for illegal grabbing of forest land. In the peri-urban areas and outside the APSARA zones, the price of land has increased between 15 and 20 times compared to the last 4 years and increased by 30% compared to 2005. Also, the increasing land market may cause land encroachment on degraded and flooded forests. **The mutual relation between land market development in peri-urban areas and land clearing/encroachment in peripheral areas is at work**.

Land sales have risen in urban communes outside of the APSARA zone, and land speculators moved to Chreav commune. Land has changed hands mostly at the local level and the process is different for rural and urban communes. In urban areas, most land has changed names and is registered at the district office of Land Management, Urban Planning, Construction and Cadastral (OLMUPCC). In Siem Reap which is an urban district, 80% of land changed hands at the OLMUPCC and another 20% changed hands at the commune level. Normally, for changing names on definitive sales and getting sale documents at the OLMUPCC, land buyers have to pay a transfer tax of 4% of the total land costs and US$25 per plot for registration. To the contrary, in Pourk district, far from the provincial capital, 99% of land sale changed names at the commune level. For land sales among people, they think that changing hands at the commune level is enough secure. There is no tariff system for changing names at the commune level, but the land buyer has been requested to pay between US$10 and US$20 per plot, and in some cases, up to US$100 depending on land type, with an additional transaction tax and registration cost of about US$800. This means the illegal payments were eight times lower than legal payments at the district registration unit. In some cases, if they bought land from their relatives, the sale contract was made only at the village level and the chief of village recognized and witnessed it. For example,

Mrs. San Cheach living in Kok Trach village, Khnat commune bought 0.2 ha from her relatives in 1991. She made the sale contract upon the chief of village because she thought that buying land from her relatives did not require her to make a sale contract at the commune level, which is costly. Otherwise, she thought that nobody would grab rural land, as rice land is located far from the village.

By law, land transactions are subject to a sale or turnover transfer tax of 4%[5] and also a registration cost. The inter-ministries of MLMUPC and MoEF issued in 2004 a new declaration to revise the 2002 declaration on income/cost of land registration services. In the four provinces of Phnom Penh, Sihanoukville, Kandal and Siem Reap, the registration costs are 100, 000 riels (US$25) per plot of land located outside the urban or provincial capital and US$50 for land inside the city. However, the sporadic registration costs in these four provinces are higher than in other provinces due to the increasing price of land.

In Siem Reap district, land selling is prohibited in Chong Khneas commune, a floating commune located close to the Tonle Sap Lake. Authorities aimed to create a favourable climate for development projects. In Chreav commune, land sales increased in 2003-04 due to a good opportunity of future urban development planning. As urban land is at stake, the changing of a name after sale takes place at the OLMUPCC in about 95% of cases,[6] with 318 plots of land in 2004 and 62 in 2005 (up to April 28. 2005). Similarly, in Banteay Srei district, an upland district with newly cleared land areas, land selling started in 1997 and peaked in 2004. For example, the cost of a hectare of land has risen from US$2,500 to US$10,000. Most buyers are urban dwellers from Siem Reap and Phnom Penh. Some of them buy land for speculation while others buy land for growing crops or tree plantations. Mostly, in Khna Sanday commune, land to be purchased is degraded forested land and *chamkar chas* (fallow land). However, unclear land rights have led to some serious cases of land disputes (see below). On the contrary, in the APSARA zone II and of Pourk district, the cost of land has reduced five times, from US$5 to US$1/m² after the enforcement of APSARA Authority at the end of 2004. Since then outsiders or urban dwellers would buy land if they wanted to invest in farming only. All new construction is strictly prohibited except for renovation under the authorization of APSARA.

Also, since 2004, investment in the former deep water rice (DWR) land for receding rice (RR) cultivation in the dry season has tended to increase. This has been caused by an increase in land prices of up to US$265 per ha. or about 400%. compared to 2004. Also, the RR cultivation on the ex-DWR land, enabled by constructing water reservoirs, has developed through two modalities of access to land. For example, one investor[7] sought a joint-investment with a farmer community through the mediation of the commune councillors, while other better-off families bought the ex-DWR land by themselves. In another example, in Mukh Paen commune, Pourk district, two unknown better-off persons (probably representing a private company) were seeking farmers who wanted to sell ex-DWR land. Up to April 2005, they had already bought nearly 100 ha[8] at a cost of nearly US$300/ha. Buying large areas of land has been processed through land brokers who are chiefs of villages and communes as well as commune councillors. Those farmers who did not want to sell their abandoned DWR land were convinced and/or threatened by those land brokers to sell because the local authorities intended to preserve that land as state property.

We find here the configuration organising land markets in rural Cambodia we have observed in the other research areas: external (powerful) buyers, local authorities working as brokers and the use of latent violence to force farmers to sell their land.

On the other hand, in Chambak village, Roluos commune, Prasat Bakong district, a group of 125 farmers mobilized themselves in 2002 into a Farmer Community that aimed to prevent their land rights from expropriation by investing in the water reservoir in the DWR area for RR production. The dam management committee consists of seven persons elected for a 5-year mandate, and responsible for sustainable use of the dam. Family fishing in the reservoir is strictly banned by the

[5] *Council of Land Policy, 2002.*

[6] *Interviewed with Mr. Sa Chanphallin, vice chief of OLMUPCC, in charge of administration and registration conservation.*

[7] *Mr. An, investor from Prasat Bakong district. He is doing the same investment in Prasat Bakong district.*

[8] *Estimated by Mr. Aom Sarath, Vice Chief of Agricultural Office of Pourk.*

community and it is made clear that the fish in the reservoir are sold for expenses related to dam rehabilitation. If the money from selling fish is not enough they will ask members to contribute.

The persons who have sold land close to the main road and the urban development zone buy less expensive land elsewhere for farming and use the rest for house construction, while farmers in the upland zone encroached on forested land for farming after they sold their land. We can observe **double dynamics here: between land sales in peri-urban areas and land purchases in peripheral areas, and also land sales in peri-urban areas and land clearing in peripheral areas.**

Twenty per cent of the interviewed farm-households bought land, while about 48% of them sold part of their land because of many reasons, including insecurity (threatening). Also, the Golf Course Company sought to buy large areas land (up to 128 ha) in Lvea commune through the intervention of commune councillors as land brokers. Many villagers sold land to the company and those people who did not want to sell their rice land were forced to sell land to the company through the provincial court. For example,

Mrs. Song Yeouth, owned 1.5 ha of land and then sold it to the Kheng Sameth Company for the construction of a golf course. Previously, she did not agree to sell this land as with this land she could grow sufficient rice to support her family. In 2003, the Kheng Sameth Company offered her US$1 per m² and forced her to sell her land. But in 2004, the court requested her to solve this conflict, threatening that her land has no legal document. The court told her to sell for US$0.5 per m², and "that was better than being expropriated". She agreed, as her plot is located in the middle of the Golf course and there was no road access. Mr. Sun Ay and another eight families also faced the same situation of being forced to sell their land to the company.

For land sales by instalments, sometimes the ex-landowner refuses the price that was agreed upon previously and then asked for a higher price, or decided not to sell the land. When the buyer is actually the broker, after depositing some money, he seeks someone who wants to buy land and waits for a higher price for resale. Sometimes, the dateline of the payment exceeds the time frame. Also, in this case the seller always asks for additional money. For example,

Mrs. Peng Soth lives in Sanday village, Khna Sanday commune sold 10 ha at the cost of US$130 per ha to a land broker in 2003 and the land broker deposited US$100. The reasons why she sold were due to a lack of money for house construction and of family labour. It is a kind of forest land that she has occupied since 1979 and she always thought this land belonged to her. In late 2004, the land broker paid the rest of money to her but she refused it because she wanted to get the current (higher) land market price that the land broker agreed upon.

Sometimes, farmers who initially do not want to sell land decide to sell it because they fear it might be expropriated by local authorities or encroached upon by others (because they have abandoned rice land). The appropriation of newly cleared land in upland areas is not secured. The process is also cumulative: as many farmers/neighbours have sold their land, other farmers fear of land encroachment/grabbing. In this case, they made the hypothesis that selling land was better than nothing. **What is at work here is a strong feeling of land tenure insecurity. It has actually been nurtured by the 'real' functioning of the land market, through brokerage, power relations and threats. For example,**

Mr. Loek Yav, aged 70 years, lives in Sanday village. He sold 0.40 ha of shrub land to Mr. Om Chay in 2004 for US$130 because he feared that someone would encroach on his land. In this case, the buyer bought in a collection of large land, including his land. Even the chief of Khna village sold 5 ha of land to an urban dweller in Siem Reap when other people sold all their land around his land because he felt that his land was not secure.

In some cases, farmers re-occupy the land to be sold because they did not receive a share of money from selling it. Often, the local authorities persuade farmers to sell *chamkar* land and fallow land and other people agree to sell due to the fear of expropriation. This occurred in the communes of Khna Sanday and Romchek, when the land brokers (policemen in this case) did not share money

with them, as described in the section on land disputes. The villagers petitioned the Prime Minister asking for help to get their land back. They claimed that they were persuaded or threatened to sell land. Furthermore, in this area the forest administration has lodged a complaint to the provincial court against land buyers and farmers for illegal land occupation. For example,

The authorities of Khna Sanday commune sold 30 ha of chamkar land which was occupied by villagers to a rich man (an urban dweller) in Siem Reap. The urban dweller bought land for growing cashew trees, but the villagers re-occupied the lands for cultivation because they did not get money as their share from selling this land as promised. In this case, the villagers were accused of land grabbing.

Farmers in Knat commune located in the rain-fed lowland area bought rice land elsewhere far from the main road. It was less expensive after they sold land with a higher price. It could be a farmers' strategy aiming at expanding their land for rice production, inheritance or speculation. For example,

There are six families in Trameing village, Knat commune, Pourk district that sold their land close to the urban area and road at a very high price in 2004. Then they bought 8 ha of wet season rice land from farmers in Kok Snuol and Keo Por villages of the same commune, and bought 5 ha of dry season rice land from farmers of Kok Trach, Khnat and Kok Snuol village.

Sale contracts of rural land sales are mostly registered and recognized at the village and commune levels. Only purchases of large tracts of land by companies or urban dwellers and the purchase of residential land in urban areas are completely legally processed and registered at the district cadastral unit.

However, **many cases of land sales lead to disputes between the new and the former owners due to diverging interpretations over the 'bundle of rights' at stake**: was it a loan, former abandoned rice land, or a part of fallow land and *chamkar* land?

Land conflicts

Land conflicts are becoming a serious problem in Siem Reap since the government introduced the 'open sky policy', leading to a rapid increase in the number of tourists. **The main type of land dispute has changed from disputes over boundaries to ownership rights**. The land market has expanded and this has led to many cases of land disputes due to various reasons:

- Unclear land rights before land transfers or sales such as over loans of over 5 years before the issuance of the 2001 land law, rice land abandoned for 3 consecutive years, etc.;
- Absence of demarcation between the state forest land and private, or community land;
- Ignoring traditional rights of fallow land in shifting agriculture areas;
- Illegal encroachment on forested land for selling;
- Overlapping of administrative boundaries;
- Enforcement of APSARA Authority.

Farmers practicing shifting cultivation want to keep clearing their fallow land, *chamkar chas* or old *chamkar* after selling their rice land, while other farmers in zone III or IV toward Tonle Sap Lake try to clear flooded forest for receding rice cultivation. Clearing the flooded forest often leads to disputes between dry season farmer's groups and the officials of the Fishery Administration. Also, snatching up land illegally has been becoming a serious problem for both groups of people: farmers and rich and powerful men. However, in Banteay Srey district, most land conflicts involved degraded forest land while in Puok and Siem Reap district conflicts were around abandoned deep water rice/floating rice (DW-FR) land or dry season rice land and flooded forest land. The type of land conflicts and parties involved related to land transactions could be summarized as disputes:

- Between land brokers over land encroachment;
- Between land owners and land borrowers (loan) over land rights without a written contract and between their siblings over loans of residential land;
- Between new land owners and old land owners over land rights related to the re-distribution of land to the returnees or occupation of the abandoned land;
- Between two farmer's groups of two neighbouring communes over the commune administrative boundaries (e.g. Khna Sanday and Rumchek commune);
- Between villagers and local authorities, e.g. over selling fallow land without informing shifting cultivation farmers, granting the abandoned DW-FR land to private investors in exchange for reservoir construction and sale of abandoned rice land;
- Between military and farmers over ignoring the right of chamkar land and fallow land;
- Between land owners/sellers and land brokers as military;
- Between local people and provincial authorities over the leasing of a natural lake to be used by villagers to the company, and between a group of farmers and the provincial department of fisheries;
- Between a parliamentarian and the APSARA Authority.

- **Conflict between land brokers over land encroachment;**

This conflict occurred in 2004 over 0.5 ha of rice field in Don Tro village, Lvea commune, Puok district. The conflict occurred between Mr. Kok Un, a commune councillor acting as land broker and Mr. Cham Roeun, a land broker of the Kheng Sameth Company. The commune councillor reported that the Kheng Sameth Company dug a canal into his land which was not sold to the company. Mr Kok Un stopped working as commune councillor. Then, the construction supervisor acted as a land

buyer or broker for the company and filed a complaint against him to the provincial court that he did not give land even though he received the money. He prevented the ground work to be carried out by the company. But, the former commune councillor rejected the land sale rather than receiving money for the brokerage fee. However, the court decided in favour the company by giving land to the company because the company has all the necessary documents of land sale. The commune councillor claimed that the documents were fake. He claimed that he agreed to give land to increase the appearance of land size on document. According to the commune chief and another commune councillor, the company also filed a complaint against its construction supervisor and broker for illegally accepting the money from the company. The company was disappointed that the land size did not fit with the area on the document. To date, the broker of the company was arrested by the court.

- **Conflict between land owners and land borrowers (loan) without any written document**

This conflict occurred in 2005 in Don Tro village, Lvea commune, Puok district over 0.5 ha of land between villagers in Don Tro and villagers in nearby villages. According to the report from conflicting parties and village chief, this land previously belonged to Mrs. You Yem (Party A), a widow in Don Tro village. Mrs You Yem gave (as a loan or open-ended loan) that plot of land to a farmer in the neighboring village who came from a refugee camp (returnee, as Party B) without written contract. Mrs You Yem just said that when her child grows up she will take the land back. After 15 years, in 2005, Party A asked to get her land back from the returnee. However, the other party did not agree to this, claiming that he had been occupying this land for 15 years and claimed ownership. In this case, Mrs. You Yem filed a complaint against Party B to the village chief, but there is no resolution yet. At the date of the study, this land remains occupied by party B and party A has not filed another complaint to commune chief/councillor.

The land borrower claimed for ownership by relying on the fact he occupied and used land before the issuance of the 2001 land law (Art. 30). He used article 30 which states "*any person who, for no less than five years prior to the promulgation of this law, enjoyed peaceful, uncontested possession of immovable property that can lawfully be privately possessed, has the right to request a definitive title of ownership*", and article 38 which states "*In order to transform into ownership of immovable property, the possession shall be unambiguous, non-violent, notorious of the public, continuous and in good faith*". However, occupying land for over 5 years does not automatically mean ownership if borrowing was processed with a written contract.

- **Dispute between siblings over loan of residential land**

The conflicting parties said that this conflict occurred in 2004 in Kok Trach village, Khnat commune, Pouk district over 1,500 m² of land, between two siblings, Mr. Rot Yon and Mr. Rot Saroeurn. In 1987, the solidarity group distributed that land to Mr. Rot Saroeurn, the younger brother. Also, Mr. Rot Yon got another plot of land located far from the village. For this reason, he asked for a plot of land from Mr. Rot Saroeurn, his younger brother, on which to build his house in 1990. In 2003, Mr. Rot Saroeurn sold 0.15 ha of his land to an urban dweller from Siem Reap for US$3,000. He shared US$1,700 with his elder sister and gave US$200 to Mr. Rot Yon. In 2004, he told his elder brother, Mr. Rot Yon, to move off the land. However, Mr. Rot Yon disagreed and claimed that he had occupied that land since 1990. In this case, neither party complained. To resolve this dispute, Mr. Rot Saroeurn agreed to give his residential land to his elder brother, Mr. Rot Yon. Thus, he has lost all land by selling and loaning.

To date in rural areas, the allocation of inheritance land was traditionally processed before the death of the parents. Parents allocated their land to their children without written documents. The father was the decision-maker or had more influence with regard to inheritance. Cases have occurred in which the rural parents allocated land to the children living commonly with them, and did not consider the elder children who had left the family previously or were rich enough. When

there was a dispute over heritage land, the court judges in favour of all successors, based on the equity principle, referring to article 75 (2001 land law) which states that "*in case the partition of the succession is contested, the co-successors are titled to file a complaint to the court to rule the case*".

- **Conflict between new and old owners (both villagers) related to the occupation of abandoned land**

This conflicting case of land right occurred in 2004 in Don Tro village, Lvea commune, Puok district over land of 0.5 ha between two villagers. Mr. Mao Nuok sold land 0.5 ha in 2004. This land is located in Lvea village. Mr. Mao Nuok cleared this land in 1987 and grew rice on the plot over the next 15 years. When he sold the land in 2004, Mr. Lach Ry living in Traing, Levea commune, claimed that the land belonged to him. The village chief had distributed this land to him when he lived in Lvea village. Because of his poor living standard he moved to the Cambodia-Thai border to make money. Since his return, he did not come to live in Lvea again. He has filed a complaint to the commune chief. The commune chief and councillor have asked Mr. Mao Nuok to give US$200 to Mr. Lach Ry in order to end this conflict. Both parties agreed with the resolution proposed by the commune councillors.

- **Conflict between new and old owners (both villagers) related to the re-distribution of land to returnees**

This conflict occurred in 2004 in Don Tro village, Lvea commune, Puok district over rice land of 1 ha between Mrs. Oeurn An and another four families living in the same village. According to the conflicting parties, before 1987 the land belonged to the four families. In 1987, Mr. Un Vong, the commune chief of Levea, took part of the land from each of the four families to grant the land to Mrs. Oeurn An, who was a landless farmer and a new settler in this village. During that time, the commune chief had the right to take part of the land from villagers who owned large tracts of land in order to re-distribute it to landless households. Land was confiscated from four large landholding households and 1 ha was given to Ms.Oeurn An. Mrs.Oeurn An used this land for rice cultivation until 2004. Then, she decided to sell the land for US$20,000 due to her poverty/shortage of money. After that the four families who formerly owned the land (Nav So, Nan So Norm, etc.) asked Mrs. Oeurn An to share the money she received from the sale of the land, claiming that this land belonged to them. Moreover, the four families filed a complaint against the land seller, Mrs. Oeurn An, to the district governor of Puok, Mr. Teas Chan Kiri. The district governor came to meet her and asked her for US$4,000 which would be shared with the families of the four households. At this request, she agreed to give US$4,000. In the land right transfer or the land sale document, she was asked to pay an additional US$500 to the district cadastre office. Finally, a consensus was reached through negotiation and she paid US$350 to this office.

The above disputes briefly presented show that people are far from being completely aware of legal contexts in regard to the issues of continued exploitation of land. As they used to occupy a plot of land, they believe they have kept the ownership rights although they have abandoned the plot. Article 76 of the 1992 land law states that "*any land that a possessor has abandoned for three consecutive years shall be returned to the private domain of the state.*" Local authorities tend to favour new occupants by referring to the 1992 land law (art. 76) and the new 2001 land law (art. 30). However, they do not just re-assert the law, they also act as mediators by organising negotiations according to a principle of equity and an objective of social peace. With regards to the re-distribution of land to newcomers or couples, this is also true. They refer to the period preceding the promulgation of the 1992 land law. Between 1979 and 1989, all land belonged officially to the state and solidarity groups (*krom samaki*). They occupied and used land for agricultural and residential purposes. Thus, to assist the landless people, the expropriation of land by local authorities from large land occupants was officially recognized. However, villagers still think

that the land belongs to them because they did not abandon it. However, to end such disputes, the local authorities often judge in favour of new occupants but request them to compensate the former owner with some money for land clearing.

- **Conflict between two farmer's groups of two neighbouring communes over the commune administrative boundaries (e.g. Khna Sanday and Rumchek commune)**

This conflict over land boundaries occurred in 2004, over 200 ha of forest land between Sanday village, Khna Sanday commune (first side) and Kan Nseng village, Romchek commune (second side). Before, this land was under the control of Khna Sanday commune but in 1983, the Ministry of Interior established a new village, Rumchek, in this commune. In 2004, the conflict happened between villagers on that land. Khna Sanday's villager claimed that this land used to belong to them before Romchek village was established. However, the second group of Romchek villagers stated that this land belonged to them because the government gave it to them in 1983. In 2005, Banteay Srei district chief decided to attribute the land to Romchek commune because they lacked land. Khna Sanday villagers can use and sell that land under the management of Romchek commune.

When land conflicts occur, if people cannot reach an agreement by themselves, they complain to the village and commune chiefs. Some cases are resolved by village elders and village chiefs, particularly disputes related to plot boundaries and those among siblings. If the village and commune chiefs cannot resolve disputes, people take cases to the DCC for intervention. Sometimes, people file complaints of land disputes directly to the DCC, for instance, in cases where the commune council or chief is involved in disputes. There was a dispute case where the chief of commune sold abandoned rice land to an outsider without informing people in Taruos village, Krabey Riel commune, Pouk district.

The villagers and village chief said that there was a land conflict between villagers and commune chief in 2005 in Taruos village, Krabey Riel commune, Pouk district. They accused the commune chief of having grabbed villagers' land. In 1988, the village chief distributed 19 ha of DWR land to 67 farm households. However, villagers abandoned that land in 1988 due to a variety of problems such as a lack of draft animals and poor (sandy) soil. In 1993, the former village chief requested the commune chief to keep land without any written document. The reason was that if the villagers kept land they had to pay a contribution to the authority. However, the commune chief said he bought that land from the former village chief for 100,000 riels without making any sale contract. Later, the commune chief sold that land to other people in Prama and Boeng Veng villages without informing the village chief of Taruos. In 2005, the newly nominated village chief of Taruos, Mr. Yav Van, on behalf of his villagers complained directly to the OLMUPCC in order to reclaim that land. However, he did not sue in this case to the commune councillors because the commune chief was also involved in this dispute. To date, this dispute remains pending.

- **Dispute between a rice farmer group and local authorities on the granting of abandoned deep water rice/floating rice land to private people in exchange for access to the reservoir construction**

Thirty-four representatives of 411 land grabbing protesters from three villages: Chantor, Prasat and Plaing, Prey Chruk commune, Pourk district (Siem Reap) demonstrated in front of the National Assembly on 23 April 2005. They requested a justice resolution from the Prime Minister. Representatives of the victim farmers reported that local authorities expropriated 1,500 ha of DWR land from them with re-grown shrubs and grass in order to grant an economic concession to a private investor for the cultivation of dry season rice with access to the construction of reservoir. However, those farmers who did not agree with the project lost their land and subsequently complained of land grabbing by the local authorities. This dispute occurred in December 2004 and

at the same time, the fishery department alleged that all land is covered by the flooded forest and is located in the fishery domain. Flooded forest is protected for fish spawning or fishery purposes.

- **Conflict between military and farmers over ignoring chamkar land and fallow land**

*The government provided 16 km² of forest land in Omnas near the hill of Chor (*Phnom Chor*) to the soldiers of the Low Military Brigade No.4 (under the Military Brigate No.2). Before 2004, the soldiers' families lived near Phnom Bok (the ancient temple zone) under the control of the APSARA Authority. Those soldiers and their families moved to live on the new land that was allocated to them by the government. This new settlement consists of 740 people. They could get 400 m² of residential land per family without the provision of agricultural land. Due to a lack of farm land, they needed to encroach on the forest land for farming (*chamkar*) or in many cases; they encroached on the fallow land or* chamkar chas *of farmers. Moreover, some farmers encroached on forested land that is part of the area exploited in shifting cultivation by other group of farmers. All this led to serious disputes between military and farmers. The farmers were arrested and stopped by the soldiers from clearing the forested land. Their chainsaw was also withdrawn until the village chief came to resolve this problem. Nowadays, people dare not clear the land anymore. They ask the village chief for help. However, the village chief claims that he had no right to solve this problem because the government granted this land to the military. At the time of this study, the village chief added that the military has applied for official rights to that land.*

- **Conflict between land owner/seller and military as land broker**

The village chief and vice-chief said that this conflict occurred in 2003 in Khna village, Khna Sanday commune, Bantay Srei district, between Mr. Ki Kan (Party A) and Mr. Lach Lorm (Party B) because the land broker (Party B) did not give all the money from the sale of his land to the landowner. Party A sold the land along road number 67 to Party B in 2003. The land costs US$14,500, but Party A received only US$12,000. A payment contract was made by both parties. The first payment was US$1,500 and the second was US$10,500 with an agreement signed by both parties at the commune office. At the time of the study, party B had not paid the full amount of money. Even though the dateline was terminated, party A dared not sue party B because Party B is part of the military.

In this case, Party B is a land speculator and makes profit on selling land. After he deposited a part of the money, he sought another person who wanted to buy land. However, since the forestry administration claimed that large parts of this area is included in the degraded forest land and complained against the illegal occupants, urban dwellers or rich people are reluctant to buy land. Normally, landowners could reclaim without returning the money being paid by Party B. In this case they cannot do so because Party B is perceived to be a powerful man.

- **Conflict between local people and provincial authority**

In Phnom Krom village, Siem Reap commune, Siem Reap district, 386 families protested against the decision of the provincial authorities to lease over 30 ha of 'Trapaing Cheung Kruos', a natural lake to a private company from Korea[9] for 25 years. The company plans to grow lotus for the tourism sector. However, people disagreed with this transaction because this lake is a reservoir for irrigating dry season rice or recession rice (RR), and used for cattle and collecting herbs and fish. This dispute was recently resolved by a parliamentarian[10] (on 03 Jan. 2007). This parliamentarian resolved this dispute in the name of the Cambodian Prime Minister and referred to his recommendation in favour of local people by returning the lake to them.

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[9] *Reported by RK, 05 January 2007.*

[10] *Sieng Nam, a parliamentarian for Siem Reap province.*

In dealing with this collective dispute, the villagers' tactic was to bypass local levels in order to move directly to upper levels and ask influential decision makers to intervene on their behalf. In particular, when disputes over land with powerful men occurred, people complained directly to a parliamentarian who has a close relationship with the Prime Minister. The 2001 land law creates three types of land classification: state private, state public and private land. State public property (Art. 15 and 16) is that land held by the state in public trust which carries a public interest use. It includes the properties of a natural origin such as the permanent forest reserve, floatable waterways, lakes, etc. It is important to note that state public property may not be sold or transferred to other legal entities, though it may be subject to rights of occupancy or used in ways that are strictly temporary in nature.

- **Dispute between a group of farmers and the provincial department of fisheries**

This dispute occurred in Kampong Phluk commune, Prasat Bakong district, in two locations: Boeung Phdao (lake), and downstream dam of Huk. It was a dispute over 50 ha of land. A fishery official alleged that farmers had illegally grabbed and cleared the flooded forest toward Tonle Sap Lake for dry season rice growing or selling. However, people and local authorities consider that the land is situated under the administrative boundary of the commune and, thus, rejected the seasonal payment. In this case it would be important to clearly demarcate the boundary between cultivated land and the flooded forest. In this case, the commune authorities assume the role of managing all land and water areas in the administrative boundary of the commune because the authority is also a government agency.

However, the claim is against article 45 of the law on the administration and management of commune/*sankat* issued in 2001, in which it states that the commune administration shall have no power to decide on forestry. On the ground, there is no demarcation between forest or flooded forest land and private land. Also, the definition with regard to flooded forest is not clear about abandoned rice land with re-growing forest. Some farmers have consecutively possessed land for DSR since the 1980s at the time of distribution and slashed land with flooded re-growing forest.

- **Dispute between a parliamentarian and the APSARA Authority[11]**

This case of dispute was referred to the Siem Reap provincial court. Later, on 18 Dec. 2006 the *court ordered the parliamentarian, Mr. Son Chhay, a lawmaker to vacate his land in Siem Reap town and sell it to the APSARA Authority. The court ordered Mr. Son Chhay to sell his 3.14 ha of land to the state for US$19,740 in total or around US$0.62 per m². However, Mr. Son Chhay disagreed with the price offered. He claimed that the market value is US$100 per m². However, when he (Mr. Son Chhay) bought the land in 1995, the chiefs of Slar Kram commune and Dang Don Pa village signed off on the sale document. The APSARA Authority has the land title and has controlled this land for a long time already. The government lawyer who represented APSARA said (CD, Dec.19, 2006).*

"It can be concluded that land is located in the APSARA zones for protecting the agro ecosystem of the Angkor monuments. When the land was bought, the APSARA Authority competencies were limited and the APSARA zone was not demarcated. However, the local authorities might encourage the sales/purchases of land under their administration because of the brokerage fee without providing information on restricted zone".

[11] *Reported by CD, Dec. 19, 2006 p:16*

Stakeholders' groups in land issues

- **Brokers involved in land transactions**

In Siem Reap, as in the other research sites, brokerage and intermediary actors are a widespread phenomenon as far as land transactions are concerned. One must also analytically differentiate 'brokerage' as *social function* from brokers, as *social actors*. **In Siem Reap, land brokers are extremely diverse: village chiefs, commune chiefs, commune councillors, policemen, the military, villagers, relatives and wives of local leaders in addition to company staff, urban dwellers and real estate companies (for land in urban or peri-urban areas).**

The village chief is a key actor at the village level. He is a person who can resolve conflicts in the village related to land and other matters. Moreover, he acts as a land broker in order to generate more income, and he and his commune councillors or chief of commune builds an alliance for buying large tracts of land at the request of rich and/or urban people or of various companies. We also observed **alliances between commune councillors and land brokers of various companies**. For example,

Mr. Kok Un is a commune councillor of Lvea commune, living in Don Tro village. He also acts as a land broker in the commune. The processes of land sales are as follows. Firstly, the company or land buyer comes to contact him seeking people who want to sell land. The land buyer or company normally tells him where they want to buy. Secondly, he contacts the village chief to seek land owners who want to sell their land. Then, he meets the owners and persuades them to sell their land. Thirdly, he makes separate appointments with the land owner and the buyer to meet each other and negotiate the price. Fourthly, the buyer deposits some money as a guarantee for the purchase. Fifthly, the village chief prepares documents of land sale (contract of land sale and letter of land tenure transfer) upon the commune office. Lastly, the final payment is made immediately after receiving the sale contract document. However, we cannot assess the total amount of money he earned from land brokerage. He receives a brokerage fee of 3% of the total land price from the seller, and the amount he receives from the buyer depends on their relationship. However, villagers think that land brokers have the capacity to earn a lot of money as they can receive money from both parties; the land owner and buyer.

Land sales and purchases between villagers and urban dwellers mostly occur through the intervention of brokers, while sales and purchases between villagers are carried out directly without the intervention of brokers. Local brokers seek villagers who want to sell land and inform urban land brokers or urban land buyers. Urban land brokers contact local brokers, seeking land sellers. In **some cases, the urban/outside brokers come from other districts, provincial towns and Phnom Penh and also build alliances with local brokers**; this means there is a channel between local and external brokers. For example,

Mr. Cham Roeurn and Mr. Chhlob Borb, living in Siem Reap town, play the role of land brokers in Don Tro village. They develop contacts with the village chief and villagers in order to identify potential land sellers. After identifying the land sellers, prices are negotiated between land buyers and other brokers in town. When urban land brokers and land owners agree on the price, the urban land broker deposits some money as a guarantee of land purchase. Then, the village chief prepares land sale documents; the urban land brokers pay the brokerage fee to the local land broker (village chief). The urban land broker continues to make registration of definitive sale contract at the cadastre district office. In this process, the name of the urban land broker can be used as the land buyer in the sale contract registered at village and commune levels. Then, they transfer the right of

land to the company or name of a big land buyer at the district level. However, it is not possible to assess the amount of money which the urban land brokers pay to local land brokers. However, villagers told us that it is around 3% of the selling price.

Brokers can become land keepers/managers after the transaction. Some brokers as soldiers or village chiefs are loaned plots of land by land buyers for provisory cultivation. In some cases, military brokers become land keepers and have been supported with a supply of rice by their commander as the land buyer. In some cases, the chief of village, after the brokerage phase, becomes a land keeper/manager on behalf of a large land buyer. He makes a written contract with his villagers for temporary cultivation of land.

In some cases, urban people, having settled in rural areas engage in land speculation, land brokerage and other businesses such as money lending and grocery running. They loan land to villagers for temporary cultivation as a strategy to build a close relationship with other local villagers. Then, they identify villagers who wish to sell land and then they use this information and knowledge of the local situation to support negotiations with urban people. **Policemen and the military, acting as brokers strive to avoid any direct contact between land buyers and sellers. For example:**

Mr. Kem Sa Roeurng, a police official, is an important land broker in both districts of Banteay Srei and Prasat Bakong. The process of brokerage is that at first, the urban people come to see him seeking a person who wants to sell land. Then, he identifies a landowner and tries to persuade him to sell land. If he agrees, the policeman prepares the document of land right transfer at the village and commune levels. The land broker accepts money from the land buyer as a deposit. The final payment is made after the document of land sale has been completely recognized and registered at the commune level. We do not know how much he gets from each side. However, some people reported that if the broker buys chamkar *land at US$100 to US$130 per ha he sells land to the buyer at US$300 per ha. In many cases, the land buyers and sellers have never met each other from the beginning untill the end of the land sale process.*

Villagers or local brokers organise meetings and direct negotiations between land sellers and land buyers on a small scale, whereas local authorities act as land brokers for entrepreneurs or companies on a larger scale. The brokerage fee of village broker will depend on both sides in the land sale process, while the intervention fee for other brokers is 3% of the price. Additionally, another 2% of the land selling price has to be paid illegally to the commune chief and other local authorities for recognizing the sale contract or letter of land rights transfer and also for changing the name on the back of the receipt of land possession.

- **Formal and informal politico-legal institutions**

A wide array of stakeholders are involved as politico-legal institutions in the land tenure regulations in Siem Reap: the provincial department of land management, provincial court, provincial and district cadastral commission, a parliamentarian, human rights organizations (ADHOC, LICAHDO), as well as a monk and a military official.

Provincial department of land management urban planning and construction (DLMUPC)

The DLMUPC is in charge of the two forms of land registration in Siem Reap:

Sporadic land registration has been conducted since the land registration campaign in 1990 and 1992. This started from the peri-urban communes where there was a high incidence of land sales and people needed to have a land rights certificate as credit collateral. Sporadic registration is implemented at the request of landowners who pay for the service. In three urban and peri-urban districts (Siem Reap, Prasat Bakong and Pourk), 30% of the total plots of land were titled through the sporadic registration process. A certificate of possession right can assist people to access credit from ACLEDA up to US$10,000 while with the receipt of land possession is only up to US$1,000.

*Systematic land registration (*SLR) started in Oct 2004 in an urban commune of Siem Reap under the aegis of the DLMUPC. Titles were provided to people in 2005. SLR is conducted commune-by-commune, aiming at registering all ownership rights in particular jurisdictions. It is now carried out in a second urban commune of Sala Kamreuk.

The SLR program officially aims to prevent and eliminate land disputes and assist people from losing their land by grabbing and expropriation. The owner has the right to require compensation if his land is expropriated, referring to the 2001 land law (art. 5) and 1993 Constitution (art. 44). At the regional level, to prevent land encroachment and land loss, the DLMUPC has implemented a pilot project of participatory land use planning (PLUP) in three districts before the SLR: Angkor Thom, Soth Nikum and Prasat Bakong.

Provincial court (PC), provincial and district cadastral commission (PCC and DCC)

Two legal institutions work on resolving land disputes: provincial court (formal mechanism) and cadastral commission (informal mechanism).

The RGC set up the Cadastral Commission CC on 31 May 2002 by a sub-degree. The CC operates at three levels: national, provincial and district. The NCC is chaired by the Minister of LMUPC. Other members are the Secretary of State of Interior and of Council of Ministers. The Provincial Governor or one of the Deputy Governors chairs the PCC. The CC also has a working group at district levels with the DCC and chaired by the district governor since 2005. The DCC conciliates land disputes while the OLMUPCC is responsible for land registration and titling. Since August 2002, the different mandates of the CC and the Court System have been clarified. The CC works on complaints of land disputes through conciliation based on mutual respect between the parties involved. The CC also deals with land disputes, where parties have no land titles. It does not however, have the authority to rule on disputes unless a case is brought before the NCC in Phnom Penh. The system is organized with cases passing from the district to the provincial and then national level. Officials at the district level conduct investigations on land disputes and collect evidence. A case can then be referred to a higher commission if a high-ranking authority is involved. Currently, attainment of this goal is still complicated by a lack of trained staff and politically partisan appointees at its lower level.

However, at the request of the company, the court threatened farmers in Don Tro village during the conciliation process to sell land which is surrounded by the golf course at the price offered by the company, which is under the market price. However, **the court has not solved one single case related to the grabbing of degraded forest land that was raised by the forestry administration**. The PCC and DCC work on complaints of land disputes through conciliation based on mutual respect or equity principles of parties involved in such land disputes. The DCC investigated cases of land disputes after receiving complaints from villagers or cases returned from the PCC. However, the PCC could not conciliate such disputes without the participation of a parliamentarian. In 2004, farmers repossessed their land in 8% of total complaints and received the temporary use rights for rice cultivation on disputed land (55%). However, ownership rights remain uncertain[12].

Parliamentarians

One parliamentarian[13] assisted villagers involved in land disputes with powerful men and the military or government institutions by monitoring and organising conciliation. In some disputed cases, he was able to assist farmers to continue cultivating on disputed land. He will bring the unsolved cases of the PCC to the president of the National Assembly for intervention. Recently, he resolved a dispute in the name of the Prime Minster in favour of local people by giving back to the

[12] *Interview with ADHOC provincial coordinator.*

[13] *Sieng Nam, a parliamentarian for Siem Reap province.*

people the natural lake located in Phnom Krom village, Siem Reap commune. This lake had been leased by the provincial authorities to a private company.

Monk and pagoda

In some cases, monks play an effective role in the conciliation of land disputes. In the case of one dispute over land rights between two villagers from two nearby villages (Pongro Chas and Kouk Run of Sasar Sdam commune), the DCC and monk succeeded in arbitrating a dispute by requesting that both parties swear at the pagoda in face of both the Buddha statues and monk. Both parties agreed to give the disputed land to the monk for public use in this commune.

ADHOC and LICAHDO

These two human rights NGOs have assisted people through training around land issues. They have taught people how to file complaints and monitored those complaints that have been referred to the court, PCC or DCC. ADHOC and LICAHDO monitored the land dispute process and investigated it for the court. In cases where the local authorities could not solve the problem, the villagers filed complaints to ADHOC. Rural people are far from being fully aware of the existence of the DCC and PCC and of the roles that these institutions play. Despite the fact that both of these human rights organizations are well known, they are not able to do a great deal except to monitor the cases in dispute. However, collaboration with the legal institutions is still limited.

Local authorities

The chiefs of villages and communes also play a major role in resolving disputes over plot boundaries between villagers. Most cases that are conciliated by them are based on reference documents and equity principles.

Military official

In some cases, villagers did not complain to the local authorities, the DCC or PCC. However, they filed their complaints to their relatives, high–ranking officials working at the Ministry of Interior or Defence or to the opposition political party. However, these cases were sent back to the provincial governor. The governor referred them to the PCC, and the PCC referred them back to the DCC for investigation.

The Provincial Committee on Forest Clearance and Encroachment

This committee secured the return or expropriated 47,701 ha of forest land, around 7,000 ha of it in Banteay Srei district, with 54 *deikas (*provincial decisions*)*, referring to *botbanhchea* (government regulation) No 01, in May, 2006, at the request of the National Authority for Land Dispute Resolution (NALDR).

Land inequity

In the areas studied in Siem Reap, nearly 63% of interviewed FH who had land equal to, or less than 1 ha per FH occupied nearly 23% of the total land. Around 13% of FH held more than 3 ha per FH and occupied around 44% of total land. However, a Gini-coefficient (0.53) confirms the conclusion that 20% of investigated FH own around 4% of total land, while another 20% of the FH own around 57% of the total land.

Agricultural landless farmers

The number of agricultural landless farmers (ALFs) has increased significantly between 2002 and 2004, the peak period of land sales. The rate of landlessness is highly variable from one commune to another. However, the number of ALFs is on average 16% of the total households,[14] ranging from 2% in Khnat commune, to 31% in Khna Sanday commune, depending on location and zones. It is lower in Khnat commune in the APSARA zone (2%) compared to 31% in Khna Sanday commune outside the APSARA zone. The main reasons that farmers do not have farm land are illness, a lack of food, being a new couple, indebtedness and immigration. **The importance of immigration as a factor of landlessness shows at once that mobility is a key factor in land tenure and that mechanisms for outsiders' inclusion are not effective.**

In some cases, the sale of land occurs as a result of strong pressure (from persuasion to threat) exerted by brokers or buyers. This demonstrates that **the real function of land markets is not only a matter of supply and demand but of power and violence**. Some households have lost all their land through land encroachment. For example,

Mrs. Heng Ren, widow, aged 58 years, has seven children who all live in Khna village, Khna Sanday commune, Banteay Srei district. She practices shifting cultivation, therefore it's easy for her to lose her land, especially at times when she lays her land in fallow. Her land was encroached and fenced by someone after she moved to new land. Therefore, she fears and dares not to grow on her old (fallow) land. The other land located far from the village was occupied and controlled by the army. As a consequence, Mrs. Heng Ren has no agricultural land now and has become an ALF. In order to secure her livelihood, she has borrowed the soldier's land for cultivation, firewood gathering and charcoal production.

The ALFs we have interviewed diversify their activities to sustain their livelihoods: collecting non-timber forest products, selling labour for farming and borrowing land. Also, regarding access to land for temporary cultivation, the ALFs ask for loans (also to land keepers) (40%), clear degraded forest land (25%), and rent in (15%). In the near future, many ALFs show their interest in agricultural production such as pig raising (20%) and renting in land for farming (20%), while 10% and 5% of ALFs will clear land and buy *chamkar* land for farming, respectively. About 45% of ALFs suggested that the outsiders or government should assist them by providing capital/credit in order to start a new business such as selling groceries or buying a motor bike to operate a transport service. Thirty-five per cent suggested that the government should provide land for rice farming.

[14] *Rapid survey with the chiefs of villages in the four selected communes, May-June 2005.*

Summary of the main findings

- **Modalities of access to land**

In Siem Reap, access to land follows different modalities: appropriation (administrative distribution, clearing, re-occupation, occupation, inheritance, purchases and investments) and agrarian contracts (loans, renting in, sharecropping). Agricultural land was distributed by the local authorities to solidarity groups, before it was redistributed many times in the early 1980s. However, the lack of land forced farmers to clear more land for cultivation.

In the upland areas, ignoring the right of fallow land for shifting cultivation led to many land losses. Several farmers lost all of their land by expropriation and the granting of land to the military (military development zone). They became agricultural landless or land-poor farmers. **Expropriation, encroachment and military grants have generated new dynamics in terms of access to use rights.** To sustain their livelihoods they had to borrow land for cultivation in exchange for labour to clear land. However, loans without contracts have recently changed to become loans with contracts with the recognition of the village chief, in order to avoid disputes on land rights and illegal sales.

The number of farm-households losing all their agricultural land was at its highest level in 2002-2004, parallel to the land sales peak. As a consequence of the 'open sky policy' land sales (often under the pressure of threats) and expropriation for selling and providing land to the military happened without proper investigation. ALF coping strategies are diverse. However, agriculture remains an important survival measure through which ALFs could gain access to land, through loans, clearing and renting in. Some ALFs can cultivate on the land of their relatives through loans. Increasingly, however, this has changed to sharecropping.

Loans are linked to land sales/purchases: Land buyers from urban areas or from abroad buy land for speculation or for investment in tree plantations. However, it is loaned to villagers or local brokers for temporary cultivation. Sharecropping has declined and has changed to a leasing system over the last 10 years. However, this system is sometimes practiced between relatives.

Land lease duration has increased depending on the negotiation process between land owners and tenants. There is no written contract for short term rental, while it is carried out with the village chief as witness. In some cases, for a long-term investment, particularly in the non-agricultural sector, renting in with written contract is practiced in order to prevent withdrawing land before the dateline.

- **Land sale/purchase**

The government's 'open sky policy' and tourism development has shaped the current land market and increasing land concentration, which has had an effect on the evolution of agrarian contracts. In some cases, farmers have sold their land, fallow lands or abandoned DWR land under pressure of threats or because of the fear of expropriation (anticipating strategy).

Land sales began in 1992/93 which relate to land in the proximity of urban areas and main roads. It has increased steadily, as an effect of the 'open sky policy' and peaked in 2004. **Since the APSARA authority has enforced its management role, land sales/purchases have decreased in APSARA zones 1 and 2. However, land prices outside the APSARA zones have increased**.

Land sales/purchases occurred between villagers and urban dwellers through the intervention of brokers, while sales/purchases between villagers are carried out direct without intervention of

brokers. In many cases, external brokers came from other districts, provincial capitals and Phnom Penh. There are channels between local brokers and external/urban brokers. Some local brokers have been loaned land by land buyers for cultivation or have become land keepers.

By law, land transactions are subject to a transfer tax of 4% and the registration cost. In practice, a great deal of tax is evaded. Land changes hands by transaction that is generally approved by the village and commune authorities. Officially, land transactions have to be registered and changed into the names of the owners at the district office of land management, urban planning, construction and cadastre (OLMUPCC). However, fewer people follow this rule because of the associated costs and time. Most people by rural land without registration at the OLMUPCC. For an unofficial fee, village or commune chiefs change names on the back of receipts as the rural land changes hands. An exception is the collection of large areas of land by rich and powerful urban dwellers or companies in order to invest in a large projects or plantations, where the buying of land in the urban areas is registered at the OLMUPCC.

- **Land disputes**

Land conflicts have become a serious problem since the government launched the 'open sky policy'. Types of land disputes changed from disputes over boundaries to those of land possession or ownership rights. Since then, the number of tourists has increased. Land market has risen and led to many cases of land disputes due to a variety of reasons such as: 1) unclear land rights before transfer, 2) absence of delineation between state or public land and private land, 3) ignoring the traditional right of fallow land, and 4) illegal encroachment on forested land for selling.

People have been confusing the act of possession with the borrowing of land for temporary use. Many people asked for land from their neighbour or their relatives for temporary cultivation before 1989-1990. Similarly, people have asked to borrow land from the owner before 1996. Then, they claimed the right of ownership under article 30 of the 2001 land law.

Rice production remains a main source of rural income even though the tourist sector has rapidly grown. **Increasingly, more farmers are interested in converting their deep water rice and floating rice (DW-FR) land to receding rice (RR) land with the construction of a reservoir. Moreover, many private investors seek access to that land by capital investment in the reservoirs, with the intervention of local authorities. Disputes over rights to that land would be a serious problem if the authorities grant or provide the DW-FR land of farmers to private individuals or companies by referring to article 76 of the 1992 land law, even though it was invalidated by the 2001 land law.** To avoid expropriation of that land, a group of farmers mobilized themselves into a farmer community in order to collectively invest in a reservoir in DW-FR area for RR production. Therefore, a dam committee was elected for a mandate to manage the dam/reservoir in a sustainable way.

The shifting cultivation farmers hoped to clear their fallow land, *chamkar chas* after selling their rice land, while other farmers in zones III and IV toward Tonle Sap Lake tried to clear flooded forests for RR cultivation. Sometimes, they were encouraged by rich and powerful people to clear land and then sell it to them. As a consequence, snatching up land illegally has become a serious problem for both groups of people: farmers and rich and powerful men. However, **land encroachment has declined since the forestry administration officials filed complaints to the court and claimed for repossession of state forested land**.

Land security is the key to sustainable development. There is no empowerment and no hope for farmers who lack land security. **Ignoring the traditional rights of shifting cultivation farmers on fallow land and the rights of farmers on former DW-FR land will cause an increase in the numbers of agricultural landless and land poor farmers**. Farmers who lose all their land by expropriation and the granting of land to the military have an uncertain future. Their livelihoods are currently based on loans of land for cultivation in exchange for labour to clear the land. However, loans could be changed to leasing if all land has to be cleared.

CHAPTER IV.

Kampong Thom

Pel Sokha, Sam Vitou, Laing Lan & Pel Setha

Context

• Regional context

The development of irrigation is the priority of the third mandate of the Royal Cambodian government. In Kampong Thom province (KPT), it is closely correlated with the development of receding rice (RR) or dry season rice (DSR) production, in particular, where former deep water rice and floating rice (DW-FR) land has been rehabilitated for RR cultivation (*cf.* the government declaration on the issue). Irrigation and RR cropping systems have been developed in relation to different land transfer modalities which have made land prices increase.

In KPT, many reservoirs/dams for blocking flooding water were constructed in former DW-FR areas. Up to June, 2006, 71 reservoirs were constructed (and re-constructed) for RR in five districts: Baray, Santuk, Steung Sen, Kampong Svay and Stoung (31 in Stoung, 23 in Steung Sen, nine in Kampong Svay, four in Baray and four in Santuk). However, only 21 (30%) of them had gone through a formal/legal process with the permission of provincial *deika (*decision) for construction.[15] For example, 30 reservoirs in Stoung district cover 3,444.7 ha and can irrigate 5,546.6 ha of RR (with a ratio of 1:1.6). All reservoirs are able to irrigate 17,353 ha[16] of RR land in the Tonle Sap basin of KPT. This area remains limited when compared to the 'vacant' grassland of 162,627 ha (PRDC, 2005). Thus, the potential for increasing RR production remains high. As a consequence, flooded forest declined from 109,300 ha in 1985-87 to 84,335 ha in 1996-97 (or -29.6%) (RK, 04-05 June 2006). Furthermore, the unclear boundary between flooded forest/shrub and former DW-FR land area and the different understandings on flooded forest and former DW-FR land with regenerated shrub/grass often led to disputes between farmers and Fishery Administration (FiA) officials. In the 1960s, there were 86,000 ha of DW-FR field in KPT, but this decreased to 27,000 ha in 2001 (Pel Sokha et al. 2002), before increasing to 28,447 ha in 2005[17]. Also, over 60,000 ha of abandoned former DW-FR land remain unexploited due to natural disaster (drought and rapid flooding). The provincial authorities and governor intend to convert that land into cultivated areas through a policy of reservoir[18] construction (RK, Feb.11, 2006).

• Local context

This section briefly presents the villages where field research was carried out with regard to population, surface, land use and farming systems, history of settlement and displacement, development projects and external investments.

We will show that **villages are very different from one another, as far as ethnicity and the history of settlement and displacement are concerned** (one Kuoy village with recent Khmer immigration; variable importance of forced displacements under the Khmer Rouge regime).

Roung village, Trapaing Russey commune, Kampong Svay district had 147 households with a population of 682 in 2004. Between 1998 and 2004, the annual household growth rate declined 1.7% with a declining population rate of 4%. This was because of out-migration of local people mainly to areas such as Anlong Veng district (Otdar Meanchey province and Roveang and Tbeng Mean Chey districts (Preah Vihear province) for buying and clearing (encroachment) forest land. The

[15] *Reported by Mr. Nou Hensenara, chief of administration office of PDA of KPT (RK, Jan. 06, 2006).*

[16] *Report of the provincial governor during the meeting on disaster management, 27 July 2006, (64 reservoirs)*

[17] *PDA, 2005 or RK, 02.Nov.2006.*

[18] *Report of H.E. Nam Tom, KPT provincial governor, to Japanese expert (RK, Feb. 11, 2006).*

village covers 328 ha, of which 44 ha (13.4%) were allocated for residential land, 79% for rice land and 7.6% for Chamkar land. The village population density is 208/km². Roung is an old Kuoy village (Kuoy are an ethnic minority group which is also present in Kratie, Stung Treng and Preah Vihear provinces). No villagers can remember the history of the village. According to word-of-mouth tradition, this village was a forest land and there was one lake which had one mound in the middle with a big cave snake (*Roung*). This would be the origin of the village name of *Trapaing Roung* village *(cave pond)*. In 1950, 2-3 Khmer families came to settle in this village. In the Lon Nol regime (1970-1975), 40 families moved to live here. The majority of them were from Takeo province. These families moved to settle here before 1979, while others settled after 1990 as they came along to be near their relatives. They heard about the possibility of running businesses in this village. According to the slope of land and cropping systems, this village is located in the rain-fed lowland rice zone and can be classified into two sub-zones; (1) residential and rice cultivated land located straddling NR 6, (2) shrub-land, located about 4 km from NR 6 where one has observed changes in cropping patterns. Before 2004, people cultivated only rice. However, after that year, people no longer grew rice in this area due to soil fertility degradation. People sold their rice land to an urban dweller, Mr. Oum Chhay, to plant fast-growing trees (acacia, eucalyptus). Actually, about 20 ha of shrub-land has become eucalyptus plantation. Many people from KPT downtown and Phnom Penh bought land for growing trees and speculation.

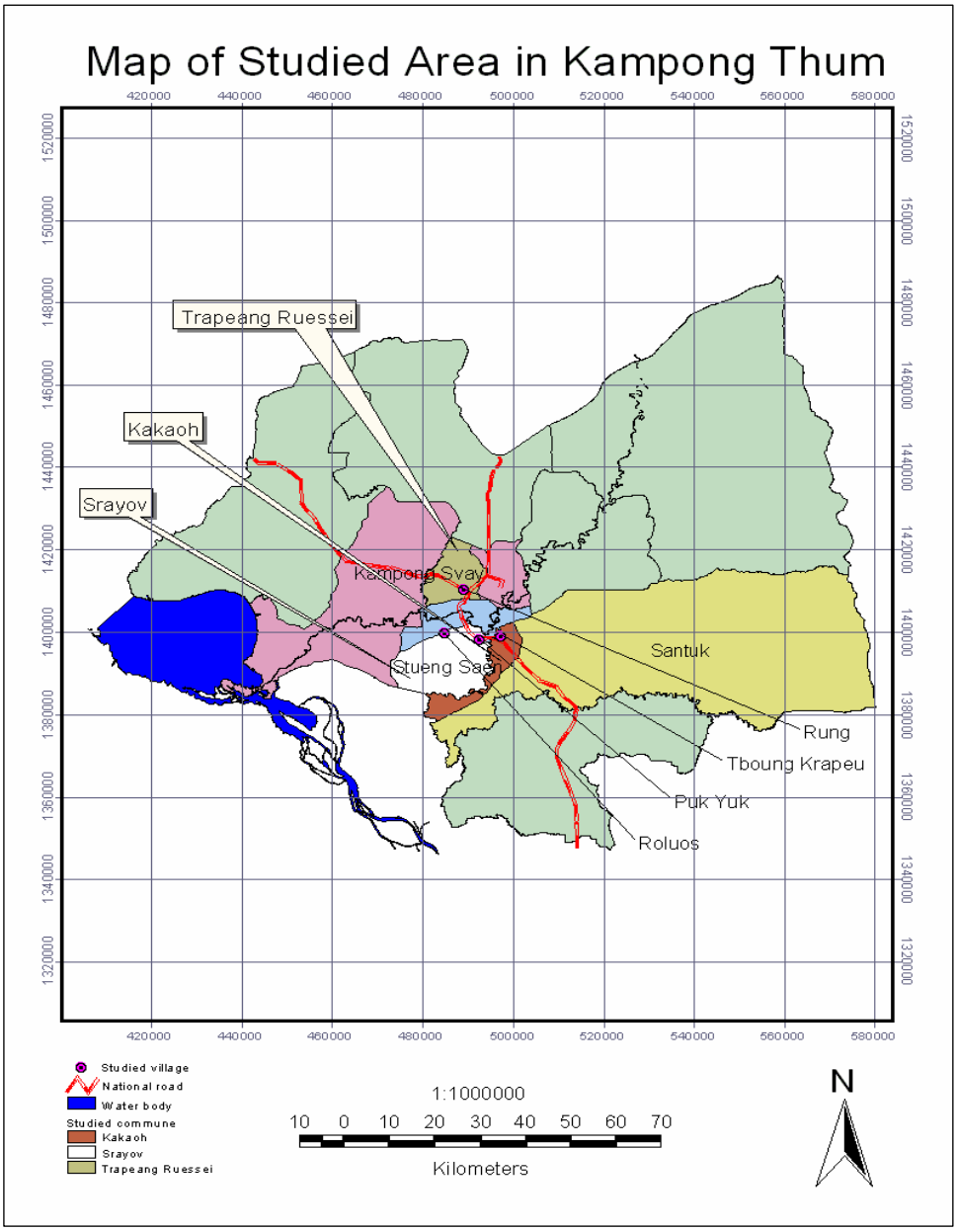
Roluos village, Srayov commune, Steung Sen district accommodated 430 households in 2004 with a total population of 2,274 persons. From 1998 to 2004, the growth rate of households and population was 1.8 and 1.5% per year. The village covers nearly 691 ha of which 42 ha (6%) are allocated for residential land, 50.5% for rice cultivation land. The population density is 191 people/km². Roluos is an old village and nobody clearly remembers its history. According to local oral tradition, the place was a hilly forest land a long time ago. The king always prayed to gods at this hilly forest before leading the troops to fight against the Siamese enemy. Because of this, people believe that the village was named according to its role as *Tuol Romluos Kam* (released from bad luck). Later on, people came to live in this area and named the area Roluos village. During the Khmer Rouge regime, villagers were forced to move to other villages but came back after 1979. According to the slope of land and cropping system, Roluos village is located in the upper field DWR zone and lower field DWR zone. Also, sub-zone 1 is residential land with fruit trees and cash crops and DWR rice land. Sub-zone 2 is floating rice land, located about 20 km from the village. The cropping system changed due to the abandoned of DWR cultivation at the *Sre Krom* (lower land in the west part of the village). After 1986 due to (1) natural disasters (drought, rapid flood); (2) low prices of DWR products; (3) insecurity (in particular in the remote rice field areas or lower DW-FR field and (4) lack of rice seeds or varieties resistant to more than 3-meter water depth such as *Kanlong Phnom, Bangkok, Popeay*, and less than 3 meters (*Kanhol*).

Puk Yuk village, Srayov commune, Steung Sen district had 474 households in 2004 with a population number of 2,227. From 1998 to 2004, the annual growth rate of family was 1.75%, but the population number decreased by 0.38%. The village covers 1452.10 ha of total land; 69.10 ha (48%) are allocated for residential land, 54% for rice land. The population density is 153 people per km². Puk Yuk is an old village. In the Lon Nol regime (1970-75), nobody lived in this village because of their fear of being of bombed. During the Khmer Rouge regime, some people moved to other villages, while others came here. However, after 1979, those people returned to their home village. Similar to Roluos village, Puk Yuk is located in the upper field DWR zone and lower field DW-FR zone. Sub-zone 1 is residential land with fruit trees and rice fields along NR 6 and sub-zone 2 is DW-FR fields located up to 27 km from NR 6. Since 1988, the DW-FR cropping systems gradually changed to RR from around the natural lakes on the cleared land. Farmers grew DW-FR before, but some of them have abandoned their DW-FR land for the same reasons as those farmers in Roluos village. Then, the shrub/forest has regenerated.

Tboung Krapeu village, Korkoh commune, Santuk district located about 25 km, south-east of KPT town, straddling NR 6. In 2004, Tboung Krapeu had 121 households with a population number of 1,099. From 1998 to 2004, the annual population growth rate was 0.36% per year and the density of population was 83 people per km^2. The total land surface of this village is 1,325 ha, of which 71 ha (5.4%) are allocated for residential land, 73.6% for rice field and 16.2% for *chamkar* land. Tboung Krapeu is also an old Khmer village. According to the legend, a king from *Phnom* (hill) Santuk came to visit that village (forest). He saw a crocodile (*Kra Peu*) cave in the eastern part of the village. So, he named this village "Rong Kra Peu" or "Pong[19] Kra Peu". Later on, people named this village "Tboung Krapeu". In the Lon Nol regime (1970-1975), people escaped from this village because it had become a battlefield between the Khmer Republic and Khmer Rouge armies in 1970-1973. After the Khmer Rouge victory, they came back home. Moreover, other people, particularly soldiers, returned to what was formerly their home village. According to the slope and cropping systems, Tboung Krapeu is located in the rain-fed lowland rice zone and could be classified into two sub-zones; (1) rain-fed season rice fields which is located on both sides of NR 6 (due to the lack of water people cannot grow dry season rice); and (2) *chamkar* land and forest toward the foothill of Santuk. Currently, people face constraints such as droughts and land shortages. Moreover, urban dwellers have started to buy big areas of *chamkar* land in this village for the plantation of fast growing trees (acacias and eucalyptus). As a consequence, land prices have rapidly increased. The increase of land prices caused land encroachment on degraded forest land located in the natural protected area/resort site of *Phnom Santuk* (delimited according to a provincial decision on 11, May in 1995). People have been accused of illegal occupation of state land. Consequently, *chamkar* land in the foothill, *chamkar* land with a distance of more than 200 m from NR 6 and within 3,000 m around the Santuk hill were not titled, even though people have occupied it for growing cashew trees and other field crops since the end of 1980s.

[19] *This means " eggs".*

Figure 2: Map of area studied in Kampong Thom



- **Land transfer modalities in the communes studied**

As in other areas under this study, **non-commoditised forms of access to land have been exerting a strong influence from the 1980s onward**:

- Land distribution has not been restricted to *Krom Samaki* creation, dismantling and distribution to returnees continued in the 1990s.
- Economic land concessions (ELC) have been rapidly developing from the end of the 1990s. We can clearly see the importance of the provincial level in granting concessions, obviously without much coordination with the national level.
- There is a more recent (and rather limited to-date) development of social land concessions (SLC).
- There are strong dynamics of land clearing oriented toward the peripheral areas of the region (uplands) and also in flooded forest areas.

In relation to the last point, we also observed **the dynamics linking the development of land purchases (or investments in water reservoirs) by outsiders (urban entrepreneurs and civil servants) and farmers' mobility, moving to clear land in remote areas after having sold their fields to outsiders**.

The dynamics of land sales and purchases are, nonetheless, not as strong as in Siem Reap province and Sihanoukville where tourism and urbanisation play a strong role in the development of land transactions.

Land tenure dynamics (land purchases and land clearing) are also linked to specific **agrarian dynamics**:

- The development of water reservoirs as a central device for irrigation development.
- The growth of plantations, especially with fast-growing trees (eucalyptus, acacias), but also cashew-nut trees and rubber trees.

With regards to derived rights, we observed similar tendencies as in Siem Reap and Sihanoukville:

- Links between land purchases and loans (by the buyers to the former owners), but also **links between access to land through capital investment (water reservoirs) and agrarian contracts (leasing, sharecropping)**.
- Shifts from loans (and sharecropping) to leasing.
- Division between agrarian contracts made between or outside the localised sphere of trust/accountability.

Land appropriation

In KPT, land appropriation has been following different modalities, as mentioned above: land distribution by the local authorities and solidarity groups, re-occupation of former properties, free access by land clearing (aimed at claiming ownership), occupation of state private land, inheritance and sales/purchases, development of leasing arrangements (and decreasing importance of loan and sharecropping) and social land concessions (SLC). The forms of land appropriation have also varied according to historical changes, as shown in the following table.

Date	Mode of appropriation
1979-1980	Local authorities distributed the rice land to solidarity group, *krom Samaki*
1979-1980	Local authorities distributed residential land to farmers
1979-1980	Re-occupation of pre-1975 residential land
1982-1986	- Department of Agriculture and local authorities distributed DW-FR land to the solidarity group - Solidarity group re-distributed land to members or families several times - However, farmers occupied forest lands to expand their fields
1986-1987	Farmers occupied and cleared forest land in the upland areas, in particular in Santuk district
1994	Establishment of new settlements with distribution of land to refugees from Cambodian-Thai border in Trapaing Russey commune
1995	The provincial declaration on conservation of natural eco-system of Santuk for resort zone. The zone over 200m from the national road 6 and 3km around the Santuk hill. Land in the resort zone is not registered by the LMAP project for any person
1997	GTZ implemented a pilot project of systematic land registration (SLR) in Kokoh commune, Bareay district
1998	The MAFF granted ELC to Ever Sky Investment Company to grow fruit trees, fibber tree and to construct a processing factory in Santuk district. To date, no activity of the company is remarkable but farmers are encouraged by the private sector to grow trees (acacias)
1998	Provincial government provided 100 ha of chamkar land in Tapreach village, Kokoh commune to Community Development Program of HAGAR, an NGO, for establishment of development community by distributing land to the vulnerable women as SLC
2000	24 women volunteered to resettle in the development community assisted by HAGAR, and each woman was distributed 2 ha of farm land
2001	Issue of sub-decree for establishment of state new rubber plantation in Tomring commune, Sandan district. The government granted red soil land to the state rubber company of Chup, and promised to give 3 ha of young rubber plantation to each farm household in form of land consolidation or exchange with expropriated *chamkar* land
2003	Granting of the former DW-FR land remained as state property, to farmer groups by the district authority in Baray district
2003/2004	Peak of clearing forest land by local people for selling or growing cashew trees, and clearing flooded forest for RR cultivation by rich people
2004	Peak of investment in DW-FR land; many urban dwellers in Kampong Thom seek to buy former DW-FR land for cultivation of RR by construction of water reservoir
2004	Started to grant/offer DW-FR land, as ELC, to the private investors. The provincial authorities have granted DW-FR land that farmers had abandoned for more than 3 years to private investors for development of RR production through the construction of reservoir. For some cases, this led to dispute between farmer groups and investors

2005	- Chinese Korea company bought around 100 ha of land for a car factory investment - In 2005, a serious dispute occurred between 136 farm households in Tom Ring commune, Sandan district and the state rubber company because, to date, they have not yet got 3 ha of land for ownership as the Prime Minister promised in 2001 in exchange with the expropriated chamkar land - The government granted 9.863 ha of ELC in two communes (Sala Visei and Toul Kreul), Prasat Balang district, to An Mardy Group for cultivation of agro-industrial crops (acacia) and animal raising, with duration of contract of 70 years - The provincial authority provided 300 households with 300 plots of SLC in Toul Kreul commune, Prasat Balang district
2006	In May, the provincial authority expropriated 1,200 ha of state forest land in the communes of Kampong Thmor and Beung Lvea (Santuk district) and Mean Rith (Sandan district) at request of the National Authority for Land Dispute Resolution (NALDR), and following the government *Botbanhchea*, Regulation No 01, in May, 2006

- **Land distribution**

Land distribution was conducted in different stages. In 1979, agricultural land was distributed to solidarity groups by the authorities. Then, it was re-distributed several times between 1982 and 1986 to individual households on a rather egalitarian basis (depending on household size). The residential land was distributed by local authorities. However, in some areas people could re-possess their former land prior to 1975. Up to 1989, the government officially recognized the distribution of land to the solidarity group (de facto dismantling of the *krom samaki*).

Land distribution did not stop at the end of the PRK era. The commune of Trapaing Russey (Kampong Svay district) has 20 villages; three of them are new settlements created in 1994 for returnees from Thailand. The three settlements were first administered and managed by the military in the operating zone of KPT province. After a period, the military handed it over to the authorities in Tropaing Reussey commune.

Over 63% of interviewed FHs accessed land through the process of distribution by the solidarity group, while nearly 55% accessed it through the local authorities. About 13% of FHs accessed land through re-possession of their former land prior to 1975. Distribution was between 600 and 2,600 m^2 per person for agricultural land and between 800 and 2000 m^2 per household for residential land.

- **Economic land concession**

Economic land concession (ELC) *(dei sampatein sethakech)* is one of the land transfer modalities that refer to the sub-decree issued in December 2005.[20] The MAFF (Ministry of Agriculture, Forestry and Fisheries) is allowed to grant over 1,000 ha of state land to private investors for a period in order to stimulate economic development. Up to 10,000 ha of ELC could be provided **(Article 59 of the 2001 land law)**.The provincial authorities are allowed to grant state land up to an area of 1,000 ha. This policy is backed up by the recommendation of both Prime Minister and Minister of MAFF for the rehabilitation of former DW-FR land through the cultivation of RR through reservoirs. This policy was attractive to investors who applied to receive a grant of ELC.

In KPT, the ELCs were granted in two areas: the flooded land in the Tonle Sap lake basin, considered as wetlands, and the upland areas. **In several cases, the lack of negotiation and the brutal implementation of the concession led to land conflicts**. For example,

In Tom Ring commune (Sandan district), the government granted 4,359 ha of land as ELC to the rubber state company of Chub through the sub-decree issued in August 2001 for the establishment

[20] *Approved by the ministers meeting under the leadership of Prime Minister on December 16, 2005.*

of new rubber plantations. Moreover, the company was also granted land occupied by villagers (912 ha). Thus, land consolidation arrangements provided that each household would receive 3 ha of young rubber tree plantations in exchange for the other plots of land expropriated by the company (929 ha in whole). Land close to the village was distributed in exchange to the villagers. Referring to the sub-decree, the Chup state rubber company will provide rubber farmers with technical support and land titles will also be given to them. During the visit in Tom Ring commune the Prime Minister promised to establish the Forestry Community and ordered companies to stop exploiting the forests where people are tapping or collecting resin (NGO Forum, 2005). All this was presented as measures for preventing land disputes. However, the improper implementation of land consolidation has led to land conflicts. In 2005, a serious dispute over land occurred between 136 farm households (11% of the total households in the commune) and the state rubber company. Those people living in seven villages (Tom Ar, Ron Teah, Khaos, Samroung,...) of Tom Ring commune complained through their representatives to ADHOC and the public forum between people and parliamentarians represented in KPT. This was because they did not receive 3 ha of land for cultivation as promised by the prime minister in 2001. Some of those households were newly married couples between 2001 and 2005 and officials objected to their claims that were not registered as land distribution beneficiaries.

Another case of a land dispute was caused by the granting of an ELC in April 2005. The government had granted an ELC of 9.863 ha in two communes (Sala Visei and Toul Kreul), Prasat Balang district to the An Mardy Group (company) for the cultivation of agro-industrial crops and animal raising.[21] Even though the ELC area was made of degraded forest land, people were worrying because the ELC boundary was close to the housing area. They also used this area for collecting non-timber forest products (NTFP) and for animal raising. The first protest happened in April, 07. 2006. The main claim was about solving the problem through the granting of a social land concession (SLC). This dispute was resolved by providing land as a SLC for farming to farmers, referring to article 4 of the sub-decree no. 146 on ELC (Dec. 2005). This article states that the evaluation of ELC demands shall be based on seven criteria, which state that any links and mutual support between SLC and ELC shall be considered (one might cast doubt upon the effectiveness of this promise). Moreover, four other ELCs have been granted since 1998 in Santuk district (communes of Krayea, Beung Lvea) for fast-growing tree plantations in the upland of Santuk district.

In the flooded areas toward the Tonle Sap in KPT, modalities of access to the former DW-FR lands are different, including distribution by solidarity group (1985-86), clearing, granting ELC of flooded shrub and grass lands remaining as state property to concessionaires or farmer group, buying of former DW-FR lands from farmers and borrowing land from farmers or commune militants link with sharecropping. Also, the concessionaires gained access to DW-FR land through two modalities: (1) ELC granting on state land and (2) buying, while investors gained access to those lands by (1) borrowing or renting in exchange with irrigated water; and (2) borrowing in relation to sharecropping arrangements (see below the section on agrarian contracts). However, **some of them play two roles: (1) acting as concessionaire; and (2) investor**. Rich people bought former DW-FR land before submitting a proposal of ELC to the provincial authorities. The loan was mentioned in the written contract. But in practice, it was a rental contract with a group of farmers represented by the village chief who acted as fee collector. The contract eventually mentions a loan from people represented by the village chief with validation from the commune chief.

- **Access to land through capital investment**

In KPT as in Siem Reap, **local and external private investors seek to invest in reservoirs on former and abandoned DW-FR lands in exchange for parts of that land. This way of accessing land must be differentiated from purchases**. This arrangement is formalised by a written contract of temporary

[21] *Rasmei Kampuchea Daily dated 09-10 April 2005.*

cultivation (up to 25 years) between the investors and the group of former landowners. Interestingly, it is seen as a mechanism for resolving disputes over the rights to abandoned DW-FR land.

In Stoung district, many wealthy people had access to land by capital investment in reservoirs. The provincial authorities granted former DW-FR lands that farmers did not cultivate and abandoned a long time ago (or that had remained within the state domain) to concessionaires for RR production through water reservoirs. To prevent land right disputes and to satisfy both groups, different arrangements were made, such as providing water to farmers who were expropriated from DW-FR land in exchange for access to concession land and sharecropping. Land will be returned to the state or commune at the end of the contract (this clause is written down) for the sake of commune peoples' use. However, people expressed concern that land might be repossessed as state land, or that the government would give ownership to concessionaires, expressing a **strongly-felt insecurity as regards land tenure**.

Since 2004, the provincial governor has granted former DW-FR lands to private investors by the issuance of *deikas Khet* (provincial decisions). The investor must give an entrance fee and a yearly rent. However, use rights of that land are poorly specified; this has led to many cases of conflict with farmer groups.

An example of this is the dispute over rights to DW-FR land in Kampong Chen Tboung commune, Stoung district. The former DW-FR lands were allocated to farmers but they abandoned for more than three years since the end of 1980s due to many reasons such as insecurity (kidnapping) and natural disasters (drought and rapid flooding). Then the provincial authority granted that land to the concessionaire for RR cultivation for up to 25 years. The unclear land rights (before investment) led to land dispute between the investor and the farmers' group when farmers reclaimed their land as the former owners. This dispute was resolved by sharing benefits, under which the concessionaire agreed to share water to farmer or make sharecropping with farmers.

Another example was in Ngoun Siam and Svay Sa villages, Kampong Chen Tboung commune, Stoung district, where a serious dispute over DW-FR land occurred between two private investors in rice production who are living in Chheu Teal village in the same commune and a group of 197 farmers. In 1981, DW-FR land was distributed by the provincial department of agriculture in collaboration with the local authorities to the solidarity group (Krom Samaki). Then, in 1984, Krom Samaki redistributed land to the farmers. In 1986-87, after 5-6 years growing, farmers abandoned DW-FR land due to insecurity and kidnapping in those areas. Farmers said the area was a battlefield between the government army and Khmer Rouge guerrillas. In 1997-98, many farmers started again to grow DWR but the repeated floods from the Tonle Sap in 2000-2002 destroyed DWR production and seed. As a consequence, the DW-FR cultivated land was abandoned again. In March 2005, the provincial governor leased that land without informing the farmers; 160 ha of abandoned DW-FR land in Ngoun Siem village and 120 ha in Svay Sa village for a period of 25 years to two private investors for RR production for the construction of a reservoir.

On June 12, 2004, a group of 50 farmers who were affected by the reservoir issue split up into two groups: one supported the construction of water reservoir, while the other group opposed this project. The opposition group complained that the commune chief had given DW-FR land to investors without informing the farmers. Moreover, the investor collected fake documents with thumbprints as evidence to the provincial authorities in order to make a decision in favour of the investment plan. However, they said those farmers who gave thumbprints do not have land in that area. On the other hand, the group supporting the project said DW-FR land was abandoned. Based on the investigation, the provincial governor resolved it by requesting the investors to respect the contract and to give compensation in the form of land to those farmers who lost their land because of the reservoir construction. Thus, the investors have to clear the land surrounding the reservoir for compensation. However, the compensation is not written in a deika khet *(provincial decision). The provincial decision states that the investors have to share water with farmers around the reservoir as*

much as they can. In this case, the provincial governor conciliated in favour the project-affected farmers.

In conclusion, land changed hands without informing the farmers as land owners. The authorities consider abandoned lands over three years as state private land by referring to the article 76 of the 1992 land law. Those lands can be granted to the investor as ELC. However, this article should be compared with article 70 according to which fallow land for reproducing soil fertility is not considered as abandoned land. Also, the authorities should keep recognizing the farmers' possession right, because DW-FR lands were abandoned due to many reasons (insecurity, kidnapping and natural disaster). Referring to the sub-decree on SLC issued in March 2003, and following the poverty reduction strategy of the government, farmers should have an opportunity to mobilize the farmer association or community in view of making decisions on their land together, in order to meet their interest or utility. In such a case, they could lease land to the investors or practice sharecropping with them instead being subjected to an outsider's decision.

Article 76 of the 1992 land law, states that "any land which the temporary possessor has abandoned for 3 consecutive years shall become the private domain of the state", but officials say that the three year abandonment rule does not apply to land to which a person has legal certificate. However, the provincial authorities' intention to preserve those lands as the state property refers to the 1992 land law even though it was un-validated or repealed by the 2001 land law, especially articles 30 and 38. Article 30 states that "*any person who, for no less than five years prior to the promulgation of this law, enjoyed peaceful, uncontested possession of immovable property that can lawfully be privately possessed, has the right to request a definitive title of ownership*", and 38: "*In order to transform into ownership of immovable property, the possession shall be unambiguous, non-violent, notorious of the public, continuous and in good faith*".

In Samproach commune, Stoung district, the granting by the provincial governor of abandoned DW-FR land in July 2004 was smoothly processed without land dispute because farmers and investors agreed upon the project. The following case is interesting as it shows **links between access to land through investment in capital (reservoir building) and derived rights (sharecropping arrangements) expressing the agreement between investors and local farmers**.

Mr. Som Korn, aged 53, living in Ma Chheay village, Samproach commune, applied in 2004 to the provincial authorities for the construction of three water reservoirs covering 125 ha of land in the commune. It was a 25-year grant as written in the application. He borrowed the former DW-FR land from the commune and received also the farmers' support. The land should be given back to the commune in 2029. After receiving the authorization in the same year, he invested jointly with a wealthy entrepreneur from Siem Reap province. Both reservoir owners grow rice by themselves and give portions of the land in sharecropping to nine other farmers from Prasat Bakong district of Siem Reap province (and a female farmer, Mrs Sar Navy, living in Rolous village, Rolous commune, Prasat Bakong district takes 5 ha in sharecropping from both investors). The investors provide farmers with cultivation rights, ploughing, constructing rice dikes in the first year and water, while the farmers cover the rest of the production costs. Then, the rice product is shared 50:50. Due to the lack of capital, the investor's need the farmers to go through the sharecropping arrangement. Moreover, they want all the land to be cleared to protect rice pest damage (e.g. rat damage). There is no written contract in this sharecropping case.

In Steung Sen and Kampong Svay districts, the granting of former DW-FR land has occurred. Moreover, many rich men and government officials have bought ex DW-FR land for RR cultivation through reservoirs. Purchases are processed in two ways. Some of them have occupied the land since before the 2001 land law, but needed to expand the area under cultivation. Thus, they did not apply for concession land. On the contrary, other investors gained access to land through investment in reservoirs in exchange for land, or by buying land from the former DWR farmers after the issuance of the 2001 land law. However, they needed to apply to receive a land concession, which was granted for a period ranging from 18 to 25 years. The land will be returned to the

commune or state when the concession contracts terminate. In this case, the purchase of former DW-FR lands seems to be similar to a transaction on use rights. There is no brokerage (private or local authorities) in the process of purchasing large plots of DW-FR land. In this case, if the land investor requests village and commune chiefs to sign a sale contract for registration and recognition, the land buyer has to pay them an unofficial fee. The authorities need to be paid for surveying the plot to be sold. The buyers have then cultivated rice by themselves (with hired labour), leased land to farmers or/and practiced sharecropping with voluntary farmers. In this case, the ownership of land remained unclear, as the land investor/buyer could not always apply for a certificate of ownership rights. There is also an idea to preserve that land as state land which could be bought after the issuance of 2001 land law.[22]

Moreover, **some reservoirs directly affect the livelihood of farmers**. Dams block the flow of rainy water which causes harsh problems for land ploughing and prevents preparation to be made on time in the early rainy season. Moreover, this situation has an impact on and damages rice production during the maturity stage. In the following cases, we see also **examples of links between access through capital and agrarian contracts (sharecropping and leasing)**.

*Mr.Iv Vanna, living in Kampong Krabaov village, Kampong Krabaov commune, Steung Sen district, and other four representatives of farmers in four villages were granted as an ELC 1,500 ha for the construction of three reservoirs through a Deikar (decision) of the provincial governor dated September 2004 (**although the sub-decree on ELC issued in December 2005 states that provincial authorities can grant land of ELC up to 1,000 ha**). However, during the working process in 2005, they confronted the farmers who are the former landowners but had abandoned this land since the mid-1980s. The reservoir construction also confronted the claim of both the fishery community and farmers who complained that the reservoir dam enclosed the natural lake where people had previously fished, accessed and used water for free to raising animals and also block the oxen cart path. Mr. Vanna gave part of the land back to the people and kept only about 420 ha. This land was allocated for the first growing year 2006. 250 ha was arranged for renting and for sharecropping with farmers from four villages of Sroyov commune with water provision. In this case, the chiefs of villages as brokers assisted in seeking farmers who wanted to grow RR. The arrangement contracts (informal) between Mr. Vanna and farmers were recognized by the village chiefs as witness. The owners developed RR farming by themselves on 78 ha and the rest was planned to be cleared in the following years. With regards to leasing, the rental fee is 1 ton/ha for the first year but it is expected to be reduced to 0.8 ton/ha for 2007. In the case of sharecropping, the harvested paddy product is equally shared between the investor (landowner) and sharecropper. For this, the owner gives cultivation right, provides the tenant with chemical fertilizer, pesticide, irrigated water, cleared land and threshing, while farmers need to spend on rice seed (in average 200 kg for broadcasting) and labour to take care of rice plants and also the harvest.*

However, Mr. Vanna planned to change from sharecropping arrangement to renting in the growing dry season 2007, because he claimed that farmers/sharecroppers do not make an effort to take care of the rice plants. During Feb.-March of 2006 he sought to buy more former DW-FR land from farmers to expand his land.

In Baray district, a group of farmers living in both communes of Sralau and Soyoung, was granted by the provincial authorities the ex-DW-FR lands that had remained state property. This did not raise conflict because these areas were not allocated to farmers during the 1980s. Farmers have the right to temporary cultivation of RR through group investment in reservoirs (in Sralau commune). The land was granted without a dispute and it has been suggested[23] to preserve these areas for granting to farmers or for SLC or to lease to LPFs and ALFs.

[22] *According to Mr. Long Be, the deputy director of DLMUPCC.*

[23] *Stakeholder workshop in Santuk district in January 2004, with 16 participants.*

In some cases, however, the granting of land did not lead to disputes over land rights but did lead to disputes over community boundaries (within or between communes) as people became aware of RR as a good harvest.

Farmers of Sralau commune complained to the authorities to return land being used by farmers from Soyoung commune, a neighbouring commune, to them even though farmers of Soyoung paid the cost of reservoir construction and cleared the land. As a resolving mechanism, farmers of Soyoung are not permitted to exploit more shrub land. Moreover, another two ELCs over 3,000 ha in the flooded area were offered by the provincial authority in 2006 to two Villager Communities of Sralau commune for an acacia plantation.

As mentioned above, the reservoirs have increased the potential for RR production (against the decline of DW-FR) and given room to a new activity beside (or replacing) NTFP collection and selling labour for wood exploitation. However, the reservoir dams have impeded the natural flow of water from uplands and affected the livelihoods of many small farmers. This has resulted in conflicts between reservoir owners and farmers. The reasons for such disputes are: (1) farmers who own upper land cannot plough land for broadcasting on time because the land is submerged by deep water; (2) rice was harvested in water even in the dry season and the losses of harvest paddy product by submersion are high; and (3) ox-cart paths were blocked or the dam crossing has become more difficult to access. However, farmers who used to sell labour for keeping cattle during the dry season faced a lack of place for cattle grazing and abandoned this complementary activity. Farmers and fishing communities complained about the lack of water for cattle and the loss of fishing area because the natural lakes were enclosed by the dams. Many farmers often say that their cattle became sick because of pesticide residues.

One must refer to the articles 58 and 144 of the 2001 land law, in which it is stated: "A land concession can only be granted on land that is part of the private property of the State. The land concession may not violate roadways or their borders and the ground necessary for their maintenance, nor to waterways, pools, ponds and water reserves to be used by the people in their daily lives" (article 58), and "lower land shall receive waters flowing naturally from upper land. The owner of lower land may not build dams, dikes, barriers, or other works to impede the water flow" (article 144).

Nowadays, accessing former DW-FR land through ELCs directly granted by the provincial governor has become difficult due to the confrontation with people's claim on their former land.

Moreover, the rehabilitation of long-unused DW-FR land and flooded shrub/ forest is often confronted with the Fisheries Administration's diverging interpretations of "flooded forest" and "former DW-FR land with re-generating shrub/forest".

There are **initiatives involving various actors at the provincial level** to organise negotiations to solve conflicts and issues related to these areas and the consequences of the water reservoirs policy:

To claim land rights, farmers have complained to human right organizations: ADHOC and LICADHO and the provincial governor. The public forum gathering people and parliamentarians from all parties represented in KPT province in March 2005 and organized by COMFREL and ADHOC was an opportunity for the farmer representatives to complain to parliamentarians. The latter promised bringing the case to the parliamentarian commission on human rights protection and reception of complaints. Then it was forwarded to the Prime Minister.

In order to prevent serious disputes over land grabbing and preserve state private land for ELCs, two sub-decrees on economic land concession and state land management were approved in October and December 2005. Also, on April 07, 2006, a meeting was organized under the presidency of the provincial governor and the director of Tonle Sap Biosphere Reserve, to discuss converting the former DW-FR land into RR by reservoir construction, while preserving the flooded forest and bird zones. The objective was to solve issues related to flooded land use and

conservation, including the questions of new clearing in the area and of reservoirs, and inappropriate constructions that negatively affect the social and environmental situation. As a result of this meeting, an Integrated Commission was set up as secretariat of the provincial governor for reservoir development. The concrete duty of this commission is to conduct environmental and social impact assessments (ESIAs) and report to the governor. The commission is comprised of five district governors and CCs (KSP, 20 April 2006).

- **Social land concession**

Social land concession (SLC) *(dei sampatein sangkumkek)* is a legal mechanism to transfer private state land for social purposes to the poor who lack land. That is, they do not have land for residential and/or family farming purposes (article 2 of the sub-decree No 19 on SLC, in May, 2003). In KPT, the Provincial Land Use and Allocation Committee and District Working Groups in each district were nominated in October 2003, and comprise of officials from different departments and offices. They have implemented a SLC project in Toul Kreul commune, Prasat Ballang district.

In Santuk, Hagar, an NGO is working to assist vulnerable women and children living on the street. They set up the Community Development Program in 1995. In 1998, the provincial government provided 100 ha of degraded forest land close to the foothill of Santuk, a natural resort for establishment of a new community 'Tapreach'. In 2000, 24 women volunteered to resettle in the community with the allocation of 2 ha for farming and housing, a 20m² (4 m x 5 m) wooden house with latrine and well, a grant of US$20 per year per child to assist them to send their children to school, training on agricultural techniques and follow up support, irrigation equipment for a women's group, and land preparation during the first 5 years of cultivation (e.g. beans). For the time being, they have received use rights of land through this formal distribution and they can apply for land ownership after a consecutive period of 5-year exploitation (article 18 of sub decree No 19 on SLC, 2003).

For another example, in Toul Kreul commune, Prasat Ballang district, the provincial Land Use and Allocation Committee has provided 300 households with 300 plots of SLC to establish a new village 'Boung Pe Thmei'. Each plot is 25 m x 56 m. However, people have said that they needed more land than this for farming during the protest that happened in April 2006, as mentioned above[24].

- **Land clearing**

Since 1986-87, people have occupied and cleared degraded forest land in upland areas. However, clearing has become difficult since 1999 due to the **ban on deforestation** in accordance with *sechkdei prakas* (declaration) n° 06 of the government to (with a bit of irony) "Eliminate anarchy in forestry sector and land clearance", issued in September 1999.

On newly cleared lands, farmers have cultivated perennial crops to assert/protect their land rights. In the upland areas of Santuk and Baray districts, located over 5 km from NR 6, people cleared more land even though they already owned agricultural land that had been allocated to them by solidarity groups for growing industrial crops, in particular cashew-nut trees. In the studied area, nearly 40% of interviewed FHs cleared land in the upland area and occupied over 11% of total plots, while the ALFs said they never cleared land because they have not occupied forest land. The latter result seems paradoxical as landless farmers are the ones who logically should be interested in this mode of accessing land. It could be a matter of labour availability.

A study in Kokoh and Phnov communes conducted by the PDA (June, 2006) found that 23% of the interviewed families cleared flooded forest for cultivation of RR during the dry season. Since the issuance of *botbanhchea* (regulation) no 01 of the government in 2004, forest land clearing has

[24] *Rasmei Kampuchea Daily dated 09-10 April 2005.*

become increasingly difficult. In the uplands, the FA complained about illegal grabbing of state forest land, while clearing flooded shrub and regenerated shrub led to the complaint of Fishery Administration (FiA). However, 16% of interviewed farmers cleared flooded forest for RR between 2001 and 2006. According to article 29 of the 2001 land law, "*any beginning of occupation for possession shall cease when this law comes into effect*". However in practice, it is difficult to know who cleared land after 2001 and claimed for ownership, and all the more if the local authorities register land with the intention to help them by changing the date of occupation to before 2001.

However, in January 2006, representatives of the ministry of agriculture spoke about the change from warning to suppressing the encroachment into forest land and flooded forest land of over 2,700 ha in KPT. The big land owners were accused of illegally snatching forest land through 'persuading' people to clear it in exchange for the cost of clearing (around US$75 per ha) and a loan of land for 2-year cultivation. In many cases, they bought newly cleared land from local people and then requested the witness and recognition of the chiefs of village and commune[25] for the sale contract. We are back here to the classical **configuration linking land purchase by powerful outsiders, the use of persuasion/threats and the imposition of agrarian contracts (loan, exchange labour/capital) on the former owners.**

- **Inheritance**

New couples inherit land from their parents (see Ledgerwood 1995 on bilateral Khmer kinship, Nepote 1992 for another view stressing matrilineal kinship). Most of the cases we have investigated confirmed that land was distributed to them, personally, together with their parents during land distribution in the early 1980s. Nearly 48% of FHs accessed land through inheritance and occupied nearly 17% of total plots. The inheritance process goes through negotiation among family's members, but usually the father is the actor who has most influence on the final decision. **Inheritance is a strictly intra-family matter and there is no written trace of the decision made**.

When the parents do not have enough land, they keep it for themselves and will pass it to child who will be in charge of looking after them when they get old. However, we can distinguish different modalities of inheritance:

- Allocation of land to all children; the parents distribute land to all children but the elder child will get more than the younger ones. In this case, the explanation given is that the elder child has helped them more than the others in farm work.
- Giving land to the children who had a share in the landholding jointly with their parents during land distribution in the 1980s, and giving plots of land bought or cleared since then to other children.
- Allocation of farmland to the children who had a share in the landholding jointly with their parents during land distribution in the 1980s and giving residential land to the youngest. Traditionally, in the rural areas, the parents will keep the residential land and house, if they do not also lose it, for the youngest child. In particular, the youngest daughter will look after them in their old age.

The two last modalities highlight a relation between the origin of land rights and the modality of their transfer through inheritance rules (see the following examples).

[25] *Extension meeting of government officials led by the Under-Secretary of State of MAFF in Kampong Thom in Jan, 4. 2006, and reported also by RK Daily dated 05 and 06 Jan 2006.*

Allocation of land to all children, but the elder child will get more land than the younger

Mr. Seap has six children, lives in Rolous village, Srayov commune, Stung Sen district, and is member of a fishing community. He received around 2 ha of rice land from a solidarity group and during land distribution, only four of his children got land. He allocated two plots of 1 ha to his two children because they were married. He said he still has 1 ha more to distribute to the other children. He will divide the big plot into small plots.

Allocation of land given by solidarity group to some children, but giving bought land to other children

Mr. Um Khem has nine children and lives in Chey Monkul village, Chrob commune, Santuk district. He received 2 ha of rice land for both upper and lower DW-FR land in 1984 from a solidarity group. Only six of his children received land from the solidarity group, in common with the family during that time and the other three did not receive land because they were born after the time of land distribution. Moreover, he has bought around 2 ha of rice land. When his three children got married he allocated 0.5 ha of rice land for each without written contract and registration at the commune office. The allocated upper DW-FR land was recently (in 2005) registered on behalf of his children by the SLR. He will distribute the land which he bought to his other children.

Mr. Ki Try, the chief of Kuk Nhoun village, has eight children. During land distribution by a solidarity group in 1984, only four of his children received the land, with a total size of 1.5 ha. Moreover, he bought 0.5 ha of rice land. Two of his children got married but did not take the land from their parents because they moved out to live in another district. He will allocate this land to his other children by sub-plotting.

Allocation of land to the children who received land during land distribution and of residential land to the youngest

Mrs. Chou In has four children and lives in Rung village, Trapaing Russey commune. Now, he is a landless farmer because she has distributed all land to her children. She said that during land distribution in 1984, she received 0.75 ha of rice land and 0.25 ha of residential land. Three of her children received land from a solidarity group but another child did not receive land because she was born after the time of land distribution. She distributed 0.75 ha of rice land to her three children because they got married. She said she will distribute residential land to her youngest child.

Agrarian contract (derived rights)

Poor land farmers or agricultural landless farmers (ALFs) must negotiate other terms on which to gain access to land through rental, loans of land, and sharecropping agreements. The institutional arrangements for accessing land in KPT **are** summarized as in table below.

One must take note that **we have not included ELCs in this section on agrarian contracts and derived rights. Although ELCs are formally close to long-term rental agreements, the concrete modalities of ELC attribution show similarities with administrative transactions and grants**. See for instance the unresolved question of the fee and the extreme opacity of the whole process.

Contract form and Arrangement in KPT	Rights transferred	Other conditions
Open-ended loans (*kar oay dei theu Sen-min kamnot pel*)	Cultivation rights (in particular rice) in exchange for labor to keep land or clear.	Smallholders loan land to their relatives, then seek to clear land elsewhere. Urban dwellers loan land they have bought to farmers, in most cases without written contract.
Plantation right (*kar tenh /mao palitphal chamkar)*	Right to collect plantation fruit for sale after loan.	Urban dwellers by land for establishment of cashew tree plantation. Most loan the young plantation to villagers /land sellers for annual crop cultivation between rows in exchange for labor to keep the plantation. They take the plantation back when the tree is big enough or continue to sell the harvest right of cashew nut to villagers.
Access to land for a fixed fee of rental payment or leasing (*kar chuol dei)*	Cultivation rights. Contracts are renewable at the start of each growing season.	Urban dwellers/rich people lease land to farmers. The rental fee ranges from the amount of rice seed being used (*Deam Pouch)* to 500 kg/ha depending on soil and distance from settlement. One case of land leasing in Trapaing Russey village was made with a written contract for 3 years. Later, the owner took land back for leasing to another farmer. In case of crop damage, the land owner does not take rental of paddy or reduce the agreed amount.
Sharecropping (*kar theu sre chek phal khnea*)	The delegation of use right of land to farmer tenants for a growing season or year, in exchange for a part of harvested rice product, according to negotiation. Tenants have cultivation rights. Division of input costs and the harvested product will depend on negotiation.	Arrangement depends on cropping or harvest situation. Payment after harvest, and rice product is shared depending on rice cropping system and land types: - For DSR; 1/3 going to landowner and 2/3 to farmer tenant. - For RSR; rice harvested product is shared 2:3 or 50:50. In the last case, landowner just pays the amount of seed being used. - For RR production on the former DW-FR land: 1) Land and reservoir owner gives cultivation right and provides water, and sharecropper covers all expenses. Sharecroppers pay 40 thangs/ha (1 ton/ha) of paddy to landowner after harvest, and the same as 2); 2) Farmer/sharecropper has land but needs irrigated water from reservoir owner. He pays 40 thangs/ha to reservoir owner. The content of agreement did not state as sharecropping, instead it stated as cost of irrigated water;

		3) Concessionaire gives land, land preparation in 1st year, rice seed in 1st year and threshing till the end of the borrowing land contract. Farmer covers other costs (fertilizer, pesticide, harvesting). Then, the product is shared 50:50 after extraction of seed; 4) Concessionaire gives land, water, rice seed, and farmer broadcasts. Other costs are calculated and shared equally before sharing the harvested rice 50:50; 5) Reservoir owner gives water, land preparation in 1st year, rice seed in 1st year and threshing. Sharecroppers, as former commune militants give cultivation right, built dikes, take care of plants and harvesting. The product is shared 50:50 after extraction of seed; 6) Investors /reservoir owners give cultivation right of land to be borrowed from the commune, water, ploughing and building dikes in the 1st year, and sharecroppers pay for all production costs. Products are shared equally.
Loan (*Kar Oay Dei Theu Sen*) contracts with access to land against provision of labour)	Cultivation rights of annual crops. The owner will take the land back when he wishes.	In some case, a rich man pays back the credit instead of farmer as borrower and buys land from farmer. He loans the land to a farmer as land seller for cultivation between acacia rows. Urban dwellers loan young plantation of cashew nut to farmers for bean cultivation between rows.
Land access through capital investment	Modality to get part of land to be shared by the farmer group for provisory cultivation of RR.	Private investors or companies gain access to former DW-FR lands, as private land for cultivation of RR through capital investment in reservoirs and/or canals to retain flood water. Growing year could be extended to 25 years. Investors agree to share water with farmers or practice sharecropping with farmers.
ELC, granting state land refers to the Sub-Decree on ELC in 2005 to investors/ companies in order to stimulate economic growth. The provincial authorities are allowed to grant state land less than 1,000 ha to concessionaires	Cultivation right within a period of 25 years as written in the contract. Right of temporary cultivation on state land as former DW-FR land.	- The provincial authorities grant former DW-FR land remaining as state land to farmer's groups for growing RR or acacia trees. - The provincial authorities grant former DW-FR land that farmers abandoned to concessionaires for RR growing through water reservoirs. To resolve land disputes and satisfy both groups, different arrangements are made such as: providing water to farmers in exchange for access to land and sharecropping. Land will be returned to the state or commune as written in the contract.
Mortgaging *(kar dak dei or kar Dak dei theanea)* (hypothek)	Recipient has all rights of use alone. Money transferred to land owner in return for pledged land. Land documents must be returned when loan is repaid.	Some farmers mortgage land for credit from the bank and lose land at the end because they cannot reimburse the debt. Mortgaging is conducted with written contracts, witnessed and recognized by the chief of village. In many cases, mortgaging land to the bank leads to land disputes that are ended by a judgement of the court, which rules that the mortgaged land is to be sold to reimburse the bank.
Pawning (kar banhcham dei) (Antichère)	No right to sell but the money owner can rent or transfer the use right to a third person.	Between farmer and farmer or relative; landowner can take land back when the loan is reimbursed. If farmer cannot reimburse the debt, the money owner will continue to cultivate on the land.

- **Loans of land**

Loans are based on the temporary transfer of use rights without codified fees or compensation from tenants. There are many types of loans of land: open-ended loans, short term loans and fixed term loans. Rights usually cover annual cropping, but not tree planting, nor the delegation of rights to a third party. **Loans are mostly practiced in the communes where there is a high incidence of land sales to urban dwellers**. The land buyer loans the land for temporary use to a farmer who is often the land seller. In some cases the urban dwellers loan their new plantation (acacia and cashew nut) to farmers for growing annual crops (rice, bean, water melons etc.) in exchange for labor to take care the plantation.

In KPT, there are two types of land loans: open-ended and fixed terms.

Open-ended loans

Open-ended loans are made of rice land bought by urban dwellers and given in loan to farmers or their relatives for cultivation. In most cases, there is no written contract and no intervention by a broker. There is a **stronger link between land loan and land purchase when the land is given in loan to the farmer who has sold the plot**. The open-endedness of the transaction means that there is no time limit; however, the owner can take the land back whenever he wants. He must, nevertheless, inform the borrower of this decision before the time of land preparation.

There is no payment in cash to the land owner. However, sometimes land borrowers have to provide the landowner with a service of labour. For example, in assisting with transplanting or ploughing the owner's land, making the **boundary between loan and land-and-labour exchange is somehow blurred**. **Another interpretation** (depending on whether the service is negotiated or not, voluntary, fixed, etc.) would be that **the land-tenure dimension of the agrarian contract is embedded in broader social ties of reciprocity and dependence**.

One observes a **progressive decline of loan frequency. This arrangement is often turned into renting and the landowner takes back his land** (for instance, plantations). For example:

A farmer has nine children and lives in Po Sensnay village, Srayov commune, Stung Sen district. In 1984, a solidarity group distributed 0.50 ha of rice land to her and her aunt because during that time she lived with her aunt. Then, she cultivated on that land with her aunt until 1996. In 1996 she loaned the land to her aunt for cultivation and she also cultivated on another 1 ha of rice land which belonged to her husband. In 1999, she sold that land (her husband's land) and returned to cultivate on the former land. Her aunt had moved to live with another niece. In 2004, during the systematic land registration (SLR) her aunt allowed the registration team to register the land in the niece's name. The niece said if her aunt gets sick, she will give money for medical treatment instead of selling the land.

*Mrs. Yung San, a widow with three children, lives in Tbong Kra Peu village, Kokoh commune, Santuk district. She sold all of her land due to a lack of labour and food shortage. In 2000, she became a landless farmer because other villagers encroached on her land. Actually, she has abandoned the land and the forest has re-grown. In 2004, the vice chief of village loaned a plot of land (15m*30m) to her without a written document. However, she helped him to transplant and harvest the rice. The village chief said that he has loaned the land to Mrs. Yung San because she is his third step wife (there is some confusion between the chief and vice chief of village).*

Mr. Ngen Ben, who has eight family members lives in Tbong Kra Peu village, Kokoh commune, Santuk district. He is a new settler to this village. This explains why he does not own any land. Since 2002, he has borrowed 0.45 ha of land from his brother without a written document for growing rice and water melons. However, he just plowed land for his brother. Besides being a farmer, he is also a fisherman and a worker in the village.

Fixed-term loans

Fixed-term loans are related to land purchase by outsiders and the developing economy of plantation. When urban dwellers buy degraded forest lands and/or plant trees (usually fast-growing trees such as acacias and eucalyptus), they loan the land to farmers for annual cropping (watermelons, mung beans) between the rows of young trees.

This kind of institutional arrangement occurs between villagers and urban dwellers who are relatives. **The boundary between loan and land-for-labour exchange is somehow blurred in this case, f**or instance, when the landowners transfer harvesting rights in exchange for labour to take care of the plantation. For example, two farmers in Tbong Kra Peu village, Kor Koh commune, Santuk district have accessed cashew plantations through loans by urban dwellers. These contracts are not written down.

One urban dweller bought 7 ha of cashew nut plantation in 2005 for US$300 per hectare. Then, he loaned this plantation to his relatives, Mr. Chhan Hak from Samnak village. Mr. Chhan Hak can harvest fruit for selling in exchange for looking after the plantation. This loan is made without a written contract.

Both interviewed farmer groups, LHFs and ALFs, have borrowed land from land buyers for cultivation. Nearly 8% of interviewed LHFs and over 15% of ALFs have accessed land through loans. **This form of derived rights thus remains important in improving poor farmers' livelihood**.

- **Sharecropping**

Sharecropping has strongly declined in KPT. It remains practiced for rice cultivation between relatives and between villagers from the same village. The agreement is not written down and is made for a growing season. It is an open-ended transfer and needs to be re-negotiated before each growing season. Landowners transfer the temporary use right to villagers, but they can take the land back whenever they want. However, this must be done before the ploughing season. **Sharecropping as practiced in KPT is thus representative of the social embedding of agrarian contrasts in local relations of trust and accountability in a context where wealth inequalities are limited** (see the examples below).

Sharecropping on RSR land (upper rice field) has progressively declined, while sharecropping on DW-FR land remains practiced. For RSR, sharecropping was still practiced 5 years ago. Now, this practice has been replaced by land renting. Rice harvested product was shared at a 2:3 or 50:50 rate. In the case of equal harvest sharing, the landowner just provides rice seed to sharecropper. For dry season rice (DSR), 1/3 will go to land owner and the remainder is for the farmer tenant. Also, sharecropping for rice land is arranged and varied depending on negotiation.

Landowner also provides seed and helps to harvest rice, while sharecropper spends on other inputs. 2/5 share of the rice product is paid to the owner and the remainder is for the tenant.

Landowner gives land use right to the sharecropper and helps to harvest or prepare land and seed. The harvested rice product is equally shared (50:50).

Sharecropping on RSR land (upper land)

Mr. Dy Pech, the farmer in Roca village, Srayov commune, Stung Sen district. He practiced sharecropping on 0.60 ha of rice land with his mother in-law in 2004 because his land is small. His mother in-law practiced sharecropping with him because she has no draft animal and a lack of seed. He practiced sharecropping with her without a written contract and the product shared is 50:50. Last year he harvested 10 thang[26] *from sharecropping.*

[26] *The thang is a Khmer unit to measure rice product, equally 24 kg of paddy.*

In 2004, Mr. Mao Teth, the village chief of Puk Yuk village, Sro Yov commune practiced sharecropping on his 0.80 ha of rice land with a villager because he lacked rice seed (drought continuously for 3 years). He also paid 50% of the hired labor costs for working and he received 50% of total harvested product. The land was delegated without a written contract.

Mrs. B has a child and lives in Roca village, Srayov commune, Stung Sen district. She lives with her mother. In 2004, she practiced sharecropping on 0.50 ha of rice land which she inherited from her mother with a farmer in the same village because she had no seed or draft animal and lacks labour. She gave the land use right to the farmer for 1 year without a written contract. The shared product was 2/5 for owner and the remainder of 3/5 for sharecropper. Last year (2004), she received only 5 thang of paddy from sharecropping.

In Ponhea Chey village (Steung Sen district), farmers gained access to RSR land through sharecropping at a 50:50 harvest rate on the condition that the landowner contributes 50 % of labour costs for rice harvest. The harvest product is shared equally after extraction of the amount of harvested rice product equal to amount of rice seed furnished by the tenant.

As we have seen in the cases above, sharecropping is practiced on ELC and land accessed through capital investment through different arrangements (see the table above).

The concessionaires or investors give the land in sharecropping and provide the tenant with land preparation, rice seed and chemical fertilizers, while the farmer covers all the other costs. The product is equally shared.

Another arrangement is where the concessionaire gives land and rice seeds and the farmer contributes labour for broadcasting and also takes care of the rice plants. All production costs are calculated before the equal sharing of the product.

Sharecropping on DW-FR land

The chief of Rolous village, Srayov commune, Stung Sen district practices sharecropping on 5 ha of rice land with an urban dweller in KPT who bought DW-FR land for receding rice production through reservoir construction. The process was made without a written contract, and the landowner provides water to the village chief. The village chief must pay 40 thangs per ha to the land owner at the time of rice harvest.

Mr. Som Korn, aged 53, living in Ma Chheay village, Samproach commune, applied in 2004 to the provincial authorities for the construction of three water reservoirs covering 125 ha of land in the commune for 25 years. He borrowed the former DW-FR land from the commune with written contracts and farmers' thumbprint for supporting the investment. After receiving the authorization, he invested jointly with one colleague. Both reservoir owners grow rice by themselves, and practice sharecropping on part of the land with another nine farmers from Prasat Bakong district of Siem Reap province. The investors give the cultivation rights, do land ploughing and dike construction in the 1st yea, and provide water, while the farmers cover all expenses on production costs. Then, the rice product is shared 50:50. Due to the lack of capital, the investors need the farmers to make a sharecropping arrangement with them. Moreover, they want all the land to be cleared to protect rice pest damage (e.g. rat damage). There is no written contract.

- **Leasing**

In the case of rental agreement, the tenant has temporary use right to grow annual crops but no right for plantation. Renting generally regards rice land. Landowners can take the land back whenever they want but they have to inform the tenants before the time of land preparation. Land renting is usually arranged without the intervention of a broker (see the example below).

Two forms of this type of transaction are practiced, according to the actors involved: between villagers or between a villager and an urban dweller. In the second case, written contracts are more

frequent, with the recognition of the chief of village. In the first case, there is no written contract for a rental period of one year or season. However, it is renewable for the next growing season. In one case in Trapaing Russey commune, an urban dweller has rented land with a written contract for three years, changing the tenant at the end of this period, which is a way of providing security for himself (he feels secure). **The observation of a link between social/local dis-embedding of the agrarian contract and the increase of its formalisation (written contract, recognition by local authorities) is confirmed**. For example:

Mr. Ngeth Ngim, a farmer living in Trapaing Russei village, Trapaing Russei commune, has rented 2 ha of rice land in Snor village from Mr. Heng Touch, a pig seller in the urban market of KPT. The rental is in-kind, 500 kg of paddy per ha, and he harvests an average of 2,000 kg per ha. In case of bad harvest, the rental fee will be reduced depending on the concrete situation. This renting is done through a written contract between land owner and tenant. He rented the land through the villager broker in Snor village. The landowner said he takes the land back from the tenant after 3 years leasing and rents it out to someone else because he is afraid of losing his land by grabbing if land is rented out to the same tenant for a long term period. He has heard that if someone uses land more than three years, that land will belong to that person. ***This is a distorted interpretation of the content of article 76 of the 1992 land law as mentioned above****.*

Most villagers rent lands from other villagers. Leasing is practiced for both types of rice land: RSR and DW-FR. Rental fees range according to the amount of rice seed being used *(deum pouch)* for DW-FR land to 15 thang (US$38) per ha for RSR, while it ranges from US$50 to US$75 for *chamkar* land. In 1998-99, when *chamkar* land had recently been cleared, the rental was US$100 per ha. It varied depending on distance from settlement, soil fertility and type of rice land. The rental is paid at the time of harvest. A land owner can reduce the rental depending on the harvest result. Tenants pay a fixed sum of money or fixed amount of paddy to the land owner either after harvest or 50 % in advance. In the case of paying in advance, tenants can keep all rice products if the value of harvested rice is lower than production cost. In most cases, the rental is usually paid in paddy. Leasing in cash happens when landowner urgently needs money. However, tenants prefer practicing sharecropping because they fear crop damage. For RSR land, renting in an area far from the town occurrs in most cases between villagers, while renting in the peri-urban happens between villagers and urban dwellers. For DW-FR land for DWR growing, farmers/tenants pay only the rice product equally *deum Pouch* (rice seed being used) to land owner.

Currently, many urban dwellers have bought DW-FR land from farmers and converted it into RR land by constructing water reservoirs. Some urban dwellers practice **sharecropping** with farmers. Arrangements are diverse, but in some cases, landowners provide irrigated water to farmers, clear flooded shrub /forest in the first year while the farmers cover all production cost/activities. In another case, a **rental arrangement is preferred that includes access to land and to water**. Tenants/farmers are allowed to access land and irrigate water from a reservoir in return for 40 thang (1 ton) of paddy per ha to the land and reservoir owner. **Even if a farmer has land, the same amount has to be paid to the reservoir owner for water services**. 8% of interviewed FHs accessed farm land by renting in and occupied 3% of total plots. For example:

Mr. Um Khem has nine children and lives in Chey Monkul village, Chrob commune, Santuk district. He has rented in 0.5 ha of rice land from a villager since 2002 with the rental equivalent to rice seed being used for broadcasting (Chuol Yok Deam Pouch). He said he used 4 thang of seed for rice broadcasting of 1 ha. In 2004, he harvested 20 thang and gave 2 thang to the landowner. The landowner has rented the land to him because he had no draft animal.

Mrs. Sor Neng 57 years old has two children and lives in Po Sensnay village, Srayov commune, Stung Sen district. In 2004 she rented 0.6 ha of rice land out to the vice chief of village because she is growing old and does not want to continue with farming. The rental is 4 thang per hectare without a written contract for one year.

One elder man, aged 65 years, lives in Roca village, Srayov commune, Stung Sen district. In 2003 he rented 1 ha of rice land out to a villager because he had no draft animal. The rental is equal to rice seed (deum pouch) for one year without a written contract. The rental is usually 4 thang, paid at the time of harvest.

A farmer living in Po Sensnay village, Srayov commune, Stung Sen district, rented in 0.90 ha of rice land in 2004 from his relatives living in another commune (Balaing) in the same district without a written contract for 9 thang, equivalent to 10 thang, per hectare. The rental is paid at harvest time. In the case of crop damage, the landowner will not take the rental fee. His relatives rented land out to him because they have no draft animals.

- **Harvest right sale on a plantation**

Urban dwellers have bought land for establishing cashew-nut tree plantations. Most of them loaned the young plantation to villagers or land sellers for annual crop cultivation between rows for a period in exchange for labor to keep the plantations. They have taken back this plantation when it became productive. However, some of them continued to sell the harvest right of cashew nut fruit to villagers. For example, around 10 households in Toul Vihear village, Chrab commune, Santuk district bought the harvest right to cashew nuts for one period and needed to renegotiate this arrangement each year. In this case, the owner preferred to sell cashew nuts because they need to work on other businesses as well. The tenant – the buyer of the harvest right - collects the fruit, but he must also look after the plantation. This means that **this arrangement is hybrid, combining the purchase of a right (to harvest and use/sell the product) and an exchange for labour (taking care of the trees)**.

Usually, the agreement happens without a written contract for a collecting season or a year. In the case of a bad fruit collection/harvest, the buyer or tenant is obliged to pay without exception. For example:

A farmer whose family lives in Chey Monkul village, Chrob commune, Santuk district, bought in 2004 the harvesting right of 1.5 ha of cashew nut plantation with 2,000,000 riels (around US$500). He was requested to look after the plantation instead for the owner until the end of the harvest season. The land owner was busy with other economic activities. Now the plantation has returned to the land owner.

- **Land pawning**

Land pawning is one type of agrarian contract. It is commonly practiced in the area studied. Pawning (or antichrèse) is a contract pursuant to which the debtor delivers an immovable property to his creditor as a guarantee for the payment of his debt (article 206 of the 2001 land law). **The land acts as a guarantee for the loan, while the cultivation rights serve as a form of interest payment on the granted capital**. Pawning has increased, especially for cashew-nut plantation. Pawning period depends on the negotiation between landowner and pawnbroker, but it is usually for 2-3 years. The pawning process is made with a written contract and with the village chief as witness. If people need money immediately or face serious problems, they pawn land to villagers, relatives or money lenders. For relatives, the contract is often practiced without a written contract. However, in many cases, such processes involve a written contract which is witnessed by the chief of village. If the farmer cannot reimburse the debt, the money owner will continue to use and cultivate on the land. In this case, the villager will not lose the land. **The money owner can delegate temporary use rights on the land to a third person, but he cannot transfer ownership right to the third person**. The land will be returned to the landowner at the end of the process if the landowner has enough money to pay back the pawnbroker. However, in this case, he must pay before the time of land preparation. Five per cent of interviewed FHs have gained access to cultivation rights through pawning. In some

cases, the money lender has requested a fixed-term pawing of 3 years, in relation to the benefit of a plantation. For an example**:**

Mrs. Nhen Nol, a widow, lives in Tbong Kra Peu village, Kokoh commune, Santuk district. In 2000, she pawned her 1.5 ha of cashew tree plantation to the village vice-chief for 5 Chi of gold (approximately US$250) to pay a debt. The agreed period of pawning was 3 years with a written contract and recognized by the village chief. The village vice-chief said he could not get benefit from the land if the period of land pawning was too short. At the time of our study, the vice chief still keeps the plantation for selling fruit because Mrs Nhen Nol has not yet paid the money back to him. Although the contract has terminated, the owner of the plantation has negotiated a delay by making a new contract.

Mr. Meas Leng has six children and lives in Rolous village, Srayov commune, Stung Sen district. In 2001 he pawned 0.12 ha of rice land to his relatives in the same village for 1.5 Chi of gold without a written contract because he needed money to cure his son's disease. Until now he has not yet reimbursed the debt. He will get the land back when he reimburses his debt in cash or gold.

In some cases, the land owner has requested more money from the pawnbroker. At the end to the process, as the land owner did not have enough money to pay back. He had to sell the plot of land to the pawnbroker. Then, **pawning is turned into sale**. In some cases, pawnbrokers ask for a supplementary amount of money to compensate currency devaluation compared to the gold price. Five per cent of interviewed FHs received cultivation right through pawning. For example:

Mrs. Sari Chanthy has twelve children and lives in Rolous village, Srayov commune, Stung Sen district. She pawned 1.15 ha of rice land for 1 Chi of gold (US$35) in 1994 to Mr. Chun Houn, a villager in the same village. She pawned the land without a written contract for money to cure her daughter's illness. Because she could not reimburse the debt, she took an additional 2 Chi of gold in terms of selling land. Moreover, in 2004, she pawned another 1 ha of rice land to her nephew for 200,000 riels (US$50) without a written contract. The arrangement is opened-ended. She pawned land for money to cure the disease of her grandson. She will be able to take the land back if she has money to reimburse the debt.

Mrs. Cheach Savat, a woman who is the head of her farm household. She has five children and lives in Puk Yuk village, Srayov commune, Steung, Sen district. She grows rice, raises animals and fishes. In 2001, she pawned 920 m^2 (23m x 40m) of land to Mr. Oeurn Hom living in the same village for 300,000 riels (3 chi of gold) to cure an illness. The pawning was written in a contract for 3 years and recognized by the village chief. Over this period land will be the ownership of the pawnbroker. In 2004, she paid the 300,000 riels back to Mr. Oeurn Hom, but he disagreed and asked for 600,000 riels as the equivalent of 3 chi of gold at that time (2001). This conflict was resolved when Mrs. Cheach Savat agreed to pay 600,000 riels back to Mr. Oeurn Hom.

This case led to conflict as the landowner requested more money. For the second time of payment, the money lender made a written contract which was actually a sale contract. It was rejected at the time of reimbursement and the landowner accused the money lender of having cheated him about the contract.

The following case shows interference with and a manipulation of the systematic land registration (SLR) process in the context of a dispute around a pawning arrangement.

The following dispute occurred during SLR in 2004 over 1 ha of rice land. In 1995, Mr. Ton, an elder (party A) pawned the land to Mr. Chheang Chhoeun (party B) for 2 Chi of gold (US$107) for 2 years without a written contract. Two years later, party A had no money to reimburse the debt. Also, he borrowed additional money from party B with a written contract. The time to reimburse had come. Party B did not receive any reimbursement and mentioned that party A sold that land to him with a written contract. However, party A said he signed on the contract, but denied the contract of land sale (party B asked party A to sign the contract at 19.00 o'clock). The dispute could not be resolved

at the village level. It has been referred to the commune level, but it remains un-resolved at the time of our study.

- **Mortgaging**

Mortgaging of land is a transaction through which a villager borrows money from a bank (e.g. ACLEDA) or credit institution by giving the legal or formal document of land right as collateral for a loan, but the borrower has all use right alone; the money is transferred to the land owner in return for pledged land which must be returned when the loan is repaid. Article 198 of 2001 land law states that "*a mortgage is a surety in rem which, without dispossessing the owner of such immovable property allows the creditor to claim the sale of such immovable in court on the due date of the debt*". If the money borrower fails to pay his debt by the due date, the bank may have the right to sell the land to take the money back, and the rest is given to the money borrower. In this case, the land owner will lose the collateral land. In some cases, the bank complains to the court for its right to sell the land.

For example, 12 farm-households in Roung village, Trapaing Russei commune, Kampong Svay district sold their land due to a lawsuit loss with the bank. One case was noted where rice land had to be sold to reimburse credit of the ACLEDA bank. Then, the borrower left the village with the remainder money to go elsewhere. For example:

Mr. Chhay Vanna, working at CMAC,[27] *actually he lives in Pailin province. In 2000, he lived in Roung village, Trapaing Russei commune, Kampong Svay district. He borrowed US$4,000 from the ACLEDA Bank in 2000. With this amount, he has given US$2,000 to Mr. Por Vannei because he was the one who went to borrow the money. Both men have to pay the interest together. They paid interest to the ACLEDA Bank for 2 years. The rest which had to be reimbursed was US$1,790, but Mr. Chhay Vanna was not able to pay to the ACLEDA Bank because Mr. Por Vanne did not pay him. When he was unable to pay back loan to ACLEDA, Mr. Chhay Vanna fled to Pailin municipality. In 2003, the ACLEDA Bank filed a complaint to the provincial court to expropriate his land. In 2004, the court convoked Mr. Chhay Vanna for judgement. However, the court judged in favour of the bank and he had to pay $US 2,690 (loan, interest, a penalty and the lawsuit cost). In 2004, Mr. Chhay Vanna sold 0.50 ha rice land for US$4,630. He paid the ACLEDA bank, and then went back to Pailin municipality with the remainder of the money.*

In some cases, there are **linkss between mortgaging, sale and loan. Urban dwellers or wealthy people reimburse a loan to the credit institution or private moneylenders on behalf of farmers under the condition that the farmers agree to sell the mortgaged land to them.** They agree to offer a higher price than the cost evaluated by the credit institution. For example,

A farmer in Rung village (Mr Ngi Torn) who borrowed credit from ACLEDA could not pay it back. Then, Mr Chhay, a wealthy urban dweller and president of Chhay Chhay Company, reimbursed the money on the farmer's behalf but the land was sold to him. Moreover, in order to sustain his livelihood, this farmer had to borrow from Mr. Chhay the plot of land he had sold to him for growing rice in exchange for keeping other land or young acacia plantation. In another case regarding the same businessman, Mr Cheurn Phal sold all his land to Mr Chhay. Then, he left to work for in CMAC[28] *in Preah Vihear province.*

[27] *Cambodian Mines Action Center.*

[28] CMAC, a military group of the ministry of defense in charge of clearing explosive mines.

Land sales/purchases

There have been land sales and purchases since the privatization of land in 1989. They mainly concentrate on the areas located close to the national road (NR) 6. By law, land transactions are subject to a sale, or turnover, transfer tax of 4%[29]. In practice, a great deal of tax is evaded. Changing hands by land transaction generally receives the approval of the local authorities (chiefs of village and commune). Officially, any land transaction has to be registered and the name of the owner must be changed at the OLMUPCC. However, few people follow this rule because it is costly in terms of money and time. In practice, the village or commune chiefs change names against an unofficial fee on the receipts as the lands change hands. Sometimes, the village chief is not informed and the sale is only expressed an agreement between buyer and seller.

Since 1998, land sales and purchases have increased, resulting in increase land prices. Many urban dwellers in KPT have been interested in investing in DW-FR land. The price of abandoned DW-FR land far from the village increased 4-5 times from about 50,000 riels (US$20) per ha in 1998 to $US80-100 in 2005, while the price of newly cleared land in upland area has increased about 1,900%, from US$40 per ha. For example,

In Kampong Reussei commune, where farmers possess many plots of land in different agro-ecosystem zones there has been a high incidence of land sales since the end of 2004. They have sold all their DW-FR land to urban dwellers. In Rung and Kok Ngoun villages, farmers have sold all their DW-FR land and prefer keeping only rain-fed lowland rice land straddling the NR 6. The returnees sold their land and then migrated to the district of Anlong Veng, north of Cambodia. This area was formerly occupied by the Khmer Rouge untill 1998. It is believed that access to land is still easy and freely available there. Most urban dwellers and rich farmers in local areas bought land for speculation or planting fruit and wood trees (acacia and eucalyptus) in upland areas, while they bought DW-FR land in lowland areas for RR production through the construction of reservoirs. There are also farmers who bought land to extend their cultivated land or convert it to residential land. Over 20% of interviewed FHs bought more land for cultivation.

Currently, investment in large plots of DW-FR land has become increasingly attractive thanks to the government policy oriented to development of RR production through reservoirs instead of DW-FR. Land transfers had been made mostly at the commune level. The only purchases legally registered at the provincial and district levels are purchases of large areas by companies. Degraded forested land around Santuk hill, the natural resort site, had been sold through a sale contract being made between both parties. Some of the sale processes were **recognized by the chief of village even though he knew about the provincial declaration banning land sales. The lack of coherence between administrative levels does not only regard the provincial/national link, but also the local/provincial one**. However, land sales between villagers were usually made without a written contract. However, they have been changed to written contracts with the thumbprint of two witnesses of the neighbours. In some cases, villagers purchased land without informing the chief of village. **The following example illustrates once again the link between land purchase and derived rights (sharecropping/leasing)**. For example:

In Kuk Nguon village, Kampong Russei commune, former DW-FR land was sold in 2005 at 150,000 riels (for land already cleared) and 50,000 riels (for land with regrowing shrubs). Mr Moul Kim Oun, an urban dweller and former official of provincial rural department, bought land with the intention to

[29] *Council of Land Policy, 2002.*

grow RR with the construction of reservoirs. The investor planned to make sharecropping with volunteer farmers in which farmers would contribute labour, rice seed and other costs such as land clearing, water and land preparation in the 1st year would be in charge of the land investor. The land owner will get 720 kg (equivalent to 30 thang) of paddy per ha. In this case, there is a fixed rental. Thus, it is a leasing arrangement, but people still refer to this as sharecropping because the owner contributes the production cost and the rest of the costs remain for farmers. ***Actually, the contract is hybrid, but the owner's contribution to production costs is perceived as crucial by the tenants who thus, categorise such arrangements as sharecropping****.*

Land buying without informing the village chief has sometimes led to land disputes with the village chief. The buyer loses this buying land as the land had been registered on name of the village chief during systematic land registration (SLR).

In Tboung Krapeu village, Korkoh commune, it was a dispute between the chief of village (Mr. Tob Bunheng, 57) and a farmer living in Samrong village, Tipou commune (Mr. Chhe Yoeun, aged about 60), in the same district of Santuk. Mr. Chhe Yoeun bought a residential land of 8192 m² (128 m x 64 m) from a farmer of Tboung Krapeu village in 1982. The plot changed hands without registration at the office of local authority or with the chief of village. A land dispute occurred when Mr. Chhe Yoeun, a land buyer, planted fruit trees in 1995 because the chief of village banned the planting of trees on land. The chief claimed that the he did not recognize this transaction. Thus, Mr. Chhe Yoeun complained to the chief of commune and to the district and provincial governors. However, the provincial governor recommended him to conciliate with the chief of village. Nonetheless, the case was not resolved. Land was registered on the name of the chief of village during the SLR in 2002. Supposedly, Mr. Chhe Yoeun filed a complaint to the provincial court because the court subpoenaed (invited) the chief of village for investigating the case. But, the chief of village informed the court that he received land title from the SLR team. Thus, the court recognised the village chief as the land owner.

Thus, land titles have been an instrument for local authorities in land disputes. It allows them to solve cases quickly and to their own benefit. However, SLR can also provoke land grabbing disputes. As we will see in the next section, arbitration mechanisms have not always been fair and people have lost their land although they have occupied and used it over the last 5 years before the issuance of the 2001 land law.

Land conflicts

As far as land conflicts related to land transactions are concerned, we observe three important trends:

- The transfer of land without clear rights, or where people's land rights are ignored, leads to disputes. Disputes are becoming hot issues since the provincial authority has granted land for large scale agricultural projects. In a way, **we could say that the problem might not be the mere lack of rights clarity, but also rampant expropriation by provincial authorities in favour of allied entrepreneurs. Furthermore, local authorities were reluctant to report disputed cases involving powerful men or state companies (see below)**.
- However, land disputes have changed from disputes over boundaries to disputes over unclear ownership rights.
- As an effect of private investment in DW-FR land, granting land to private and state concessionaires has also led to many cases of land disputes.

Land conflicts related to land transactions in KPT can be categorised as follows:

- Between farmer's group and private investors in a reservoir over the affect on the farmer's livelihood, related to unclear right to the abandoned DW-FR land;
- Between farmer's group and a provincial authority over unclear rights to former DW-FR land before granting land to concessionaire;
- Between land owner and children of former (old) owner prior to 1975;
- Disputes over the possession rights of land between ex-owners and new owners;
- Between land owners and land borrowers;
- Between land owners and land occupants;
- Between villager and villager on pawning (with fake land document, without a written contract, inflation compared to gold price), on buying land by instalment;
- Between two villagers, as land owner and money lender over land pawning without a written contract;
- Between money borrowers and banks or money lenders;
- Between successor or relatives on heritage land;
- Between villagers (group) and the chief of village over the right to village (public) land during SLR, and on informal purchasing of land;
- Between fishery community and farmer's group growing dry season rice.

We have already evoked these serious cases of land disputes in the commune of Kampong Chen Tboung, Stoung district.

The dispute over DW-FR land occurred between two concessionaires of ELC for RR production and a group of 197 farmers. Farmers who had abandoned DW-FR land more than 3 years tried to claim their land back from the concessionaires. However, the contract mentions the borrowing of land (against money) from villagers represented by the village chief and recognized by the chief of commune. As a result of the provincial governor arbitration, from now on, investors who want to

invest in RR production have to buy the land/use rights of former DW-FR land before submitting any ELC proposal. At the end of the contract, the land will be re-allocated as state land, generating misunderstanding for people convinced they have (bought ownership of) land without knowing the legal texts. The transfer of ownership shall be considered valid upon the registration of the contract of sale with the Cadastral Registry Unit (article 69 of 2001 land law). Moreover, the provincial authority intends to preserve those lands as state property in accordance to the 1992 land law, even though it was un-validated or it was repealed by the 2001 land law. Otherwise, investors give land in sharecropping to farmers in exchange for access to land for reservoir construction and rice cultivation. But according to them, the farmers are inefficient in protecting the rice plants through weeding and pest control, and they use this reason to turn sharecropping into renting with irrigated water selling.

Discrepancies and ambiguities between 1992 and 2001 land laws gave room to diverging interpretations from different administrative levels. Article 76 of the 1992 land law states that "any land that a possessor has abandoned for three consecutive years shall become the private domain of the state" but this article should be also compared with article 70: "Keeping land vacant for improving the soil fertility will not mean abandon". The lack of coordination between government officials; provincial officials and farmers also leads to land disputes. The provincial authorities proceed to expropriated land in accordance with article 76 of the 1992 land law. But officials say that the 3-year abandonment rule does not apply to land to which a person has a legal certificate. However, article 30 of the 2001 land law states, "Any person who, for no less than five years prior to the promulgation of this law, enjoyed peaceful, uncontested possession of immovable property that can lawfully be privately possessed, has the right to request a definitive title of ownership".

Buying DW-FR land might mean buying the use right of land. Then, the buyer has to submit a proposal for receiving a land concession and all land will be repossessed as state private land when the contract terminates (after 25 years). As written in the 1st and 3rd points, the concessionaire has to pay at the beginning US$2.5 per ha and US$7.5 per ha yearly for the provincial budget. However, those lands must be given back at the state's request. In a way, **the sequence made of concession granting and state request constitutes a form of economic expropriation for the state, the private sector playing an intermediary role in this respect, the granting of a concession contributing to ground the state claim over land**.

There is a high incidence of land disputes in Steung Sen district as farmers' livelihood is affected by reservoirs, while in Stoung district some cases of serious disputes occurred around the expropriation of ex-DW-FR land. Moreover, **disputes over unclear plot boundaries of DWR land and land right between ex-owners and new owners were very common during the SLR**. Most cases of land disputes during the SLR related to boundary because plots of DWR land were not clearly measured during land distribution in the 1980s and have no dike for demarcation. Moreover, disputes over land right between new owners and old owners and between successors often remain unresolved because of diverging interpretations of the law, even though they were brought to the NCC.[30] Disputes over plot boundaries were resolved by equal allocation to both conflicting parties according a principle of equity: the chiefs of village and commune or the Administration Commission (AC) equally share the disputed plot. Legally, land dispute which is not resolved or conciliated by the AC during the SLR process has to be referred to the NCC in Phnom Penh, and the disputed plot is not titled. This has led to a reduction of dispute cases and titles could be issued. However, the **SLR process has let emerge numerous land disputes highlighting the plurality of historical and legal layers of land property**.

Dispute between land owner and former (pre-1975) owner's relative

In Svay Kal village, KoKoh commune (Santuk), because of a dispute involving a plot of homestead between new owner (Mr. Kang Sinoeun) and a relative of the former (pre-1975) owner

[30] *National Cadastral Commission, the government body in charge of resolving disputes over land without title.*

(Mr. Lach Saron) since 2002. The plot was not registered, although the provincial court had judged in favour of the new owner who has occupied this land since the 1980s. The former owner's relative, a retired district official, has allegedly referred this case of dispute to the appeal court in Phnom Penh. In this case, the AC referred the case to the NCC in Phnom Penh because the provincial court can only resolve disputes on titled land. Moreover, Mr. Lach Saron also claimed another residential plot for ownership during the SLR, from an elder farmer in Svay Kal village (Mr Yet, aged 67). This residential plot used to belong to his mother in-law until 1975. However, this plot was registered on the name of Mr. Yet according to the article 7 of the 2001 land law which states that "any regime of ownership of immovable property prior to 1979 shall not be recognized".

In some cases, the AC conciliated disputes over land rights between ex-owners and new owners not by sharing land, but by giving compensation according to the equity principle.

Disputes over the possession rights to land between ex-owners and new owners

This dispute occurred during the SLR in 2004 between a group of villagers who claimed their land back. In 1984, the solidarity group had distributed 0.1 ha of shrub lands per person to the farm household, but no one had cultivated on these lands. Until 1999, Mr. Nuon Chhuon, chief of the group, cleared these shrub lands to cultivate rice without any objection from other group members. In 2004, during the SLR display, members of the group claimed ownership of their former land. However, the chief of the group did not agree to give land back to them. The dispute was conciliated by the administrative committee (AC). To resolve this conflict, the chief of group had to pay 80,000 riels to all members of the group, as a result of conciliation which was based on the equity principle. These lands were registered for the chief of group.

However, arbitration mechanisms are not always fair and people happen to lose their land.

Dispute over abandoned rice land between ex-owner and new owner

This dispute occurred during the SLR campaign in the Roluos village, Sra Yov commune, Stung Sen district. A farmer from this village claimed the abandoned rice land for ownership. He received 1.65 ha of rice land from the distribution of solidarity group. In 1985 he sold 1.15 ha and he kept the rest of 0.5 ha of land for himself. Then, he moved to Kampong Chhnang province because he heard that it was easy to do business there. In 2001, he came back to his homeland, Roluos village. Later, he returned to Kampong Chhnang until the SLR campaign. During the SLR process he came to claim the remaining land back. He could not find his land. Therefore, a conflict occurred between him and the villagers. A complaint was filed to the AC. As a consequence of not finding his land, he lost his land through encroachment by his neighbour. Also, for lower DW-FR land, farmers do not build dikes to maintain water as the RSR. If they abandoned land for a while they may confuse the location. Otherwise, other farmers were unfair and tried to encroach on the abandoned DW-FR land.

Dispute between villagers and chief of village over right to village (public) land during the SLR

Since January 2005, a serious dispute occurred between 97 villagers in Po Ta Un village, Sra Yov commune, Steung Sen district and local authorities over four plots of public village land. Theoretically, this area is preserved for new settlers for temporary use, village development and a loan to the village chief in addition to a low fee paid by the government. Under the village rule, land will be handed over to the new village chief for his mandate. However, during the SLR in the early months of 2005, the SLR team registered the land to the village chief. Villagers have turned to ADHOC for assisting them to keep land for community development. This case was also discussed in a public forum organised by Comfrel and ADHOC, two NGOs, gathering people and parliamentarians at KPT province level. Despite the district governor's promise to solve the case, to date, this case remains pending.

Dispute between the chief of village of Tboung Krapeu and a land buyer from a neighbouring village over informal land buying (without informing the village chief)

As regards the theme 'unclear land rights', we have observed that **many cases of land loans or informal occupation started around 5 years before the 2001 land law resulted in disputes, as people use article 30 to ground their claim to ownership**: "*Any person who, for no less than five years prior to the promulgation of this law, enjoyed peaceful, uncontested possession of immovable property that can lawfully be privately possessed, has the right to request a definitive title of ownership*". **Due to the room for interpretation generated by the absence of written contracts and the informal nature of many settlements and arrangements, arbitration results were often different or inconsistent. Moreover, SLR process was instrumental in the expression of claims.**

For example, seven cases of rice land loans led to disputes between owner and borrower in Chong Da village, Korkoh commune in May 2004 during SLR.

Dispute over borrowing land during SLR

Since 1993-1994, seven farmers have borrowed land from the former owner for farming without (formal) written contract. During SLR, the owner complained to the SRL team to get the land back but the land borrowers refused to givethe land back. This was because they had cleared the land and claimed that they occupied it more than 5 years (Art. 30 of 2001 land law). The authorities resolved these disputes in favour of the former owners because they knew them and had distributed land to them before. The owners had receipts of request for land possession from the local authorities. During the public display of land owners, the new owners did not complain. Thus, the land was titled in the name of the former owners. One case has not been resolved yet. The chief asserts that Mr. Seng Rou has cultivated rice since 2000 on the land of Mr. Moeung Lout who lacked a draft animal. During the SLR, the borrower did not agree to give the land back to the landowner. This case was referred by the Administration Commission to the NCC. It was still pending at the time of this study. However, in another case, the land was titled with name of the borrower and the owner lost his land. Mr. Pich Yort, a farmer, has 0.8 ha of rice plot which was distributed to him by the local authorities, but he never cultivated on it. In 1984, he lent (loaned) land to a farmer from the nearby village of Kalmek. In 2004, after the public display of systematic land titling, Mr Pich Yort complained to the local authorities to take the land back but the land title had already been issued to the borrower. In this case, the chief of village said if Mr Pich Yort complained during the public display (of 30 days) it would be possible to assist him.

Conflict over loan between siblings

Villagers and the village chief of Roung reported that a conflict occurred in 2004 between two half-brothers (different mothers) named Uong Khoeun (party A) and Kong Kam (party B) over the 0.8 ha of rice land. The houses of both parties are nearby each other in Roung village, Tapaing Russei commune, Kampong Svay district. In 1993-1994, party B, who is the younger brother, gave that land to party A to grow watermelons. In 2004, party B asked party A to give the land back, but party A refused and argued that it was him who had cleared and occupied land for a period of time. The chief of village tried unsuccessfully to resolve the conflict. He referred this case to the commune level. The commune authority decided to split the plot into two equal sub-plots for each conflicting party.

In another case, the loan of DW-FR land led to dispute over land right. This dispute occurred in Posen Snay village, Sra Yov village, Steung Sen district). The borrower has claimed land for ownership since 2004.

Conflict between land owners (group of villagers) and land borrower, who occupied DW-FR land more than 5 years before the issuance of the 2001 land law

In 1989, 30 households who had cleared deep water rice (DWR) land for growing rice, had to abandon the area due to many reasons: several years of rapid flooding, rat damage, robbery,

insecurity and its remote location. Thus, the DW-FR was vacant. In 1994, Mr. Chheng Ang borrowed 150 ha of that rice land for DWR growing from farmers without making any written document. After 1998, when the last Khmer Rouge surrendered, security improved and the land price rose due to the development of recession rice (RR). In 2004, all former farmer owners wanted to take the land back. But, Mr. Chheng Ang disagreed and he said that he held that land for more than 5 years before the 2001 land law. Thus, that land must come to him; hence his claim for ownership on that DW-FR lands. The conflict hasn't been resolved up to now.

There are also **many cases of land transfer from the former owner to the land occupants (thus the new owners) under the aegis of the local authorities or AC, because the new owners claimed that they possessed land 5 years before the 2001 land law**.

In 2004, a land conflict occurred in Puk Yuk village, Sra Yov commune, Steung Sen district over 15 ha of rice land. In 1984, a solidarity group allocated rice land to households as members of this group. Then, some farmers grew rice on that land but some didn't. Since 1988, other villagers from the same village cleared regenerated shrub for growing rice. However, in 1998, the former land owners claimed that land from the new owners which was refused by the new owners. As a consequence, in 2002, two former land owners filed a complaint to the village chief, but he was unable to resolve this conflict. Then, they filed the complaint to the OLMUPCC. However, the OLMUPCC could not resolve it and referred it back to the commune authority.

Another type of conflict involves credit, pawning, mortgage (see also cases in the section on these transaction modalities).

Conflicts between landowner and money lender over credit collateral

The village chief and the conflicting parties reported that this case happened in 2004. Mrs. Oeun Nann stole a land title from her mother-in-law (Mrs. Cheng Yem, party A) to make a photocopy and use this photocopy title for credit collateral of US$460 from Mr. Samrith Ros (party B). Party B is a seller in Kampong Thom Market and Pol Pot's nephew. The village chief added that on the loan contract, there was stamp seal of commune office. However, the commune chief said that he did not sign that loan contract. Until July 6, 2004 when Ms Oeun Nann run away from home, Mr Horn Khon, the neighbor of party A, told him (party A) that he had seen Ms Oeun Nann taking the land title to access credit collateral in Kampong Thom market. Then, party A went to ask party B. Party B showed him the land title but party A refused it. Until December 2004, party B filed complaints against party A to the police asking them to intervene to assist in getting reimbursement. The police convoked party A to explain the case and decided that party A has to pay to party B on behalf of his daughter-in-law. But, party A refused to accept the decision of the police. Until now, no solution has been found.

In this case, the complaint was lodged to the police instead of the court, which was too far from the locality. This also means that people think the police could resolve the dispute. Usually, the police try to reach conciliation first without referring to the court. One could **ask whether the lack of solution is caused by the informal nature of the process or by the police's inability to arbitrate this type of conflict, reflecting a poor knowledge of the distribution of competence as far as justice is concerned. Another hypothesis could be that the police tend to favour social peace (e.g. by trying to reach a compromise) rather than to 'say the law'. This attitude would be similar to that of the local authorities who equally share the disputed plots** (see above).

Conflict between two villagers, a land owner and a money lender, over land pawning without a written contract

The conflict occurred in 2004 during the SLR between Mr. Ouch Mao (Party A), land owner, and Mr. Oeurn Ham (Party B), money lender. Both villagers live in Puk Yuk village, Srayov commune, Steung Sen district. In 1999, Mr. Ouch Mao pawned 1,750 m² of land to Mr. Oeurn Ham for the 40,000 riels. However, Mr. Oeurn Ham said that he had bought that land from Mr. Ouch Mao for 40,000 riels in 1995. Pawning was made without a written contract. As a result, the chiefs of village and

commune conciliated this conflict by selling the plot. Thus, Mr. Oeurn Ham agreed to pay 300,000 riels (US$75) to the land owner, Mr. Ouch Mao.

Conflict over inheritance can be complicated (case 1) or solved (case 2) through the SLR procedure.

Conflict between a woman and her daughter over land inheritance and titling

This conflict occurred in 2004 in Sra Yov Chhoeung village, Sra Yov commune, Steung Sen district. In 1995, a woman sub-divided her land into two plots (28 a per plot); one plot for her daughter and one plot for her son. For registration, she made only one land title (certificate of possession right) which belongs to her daughter in order to reduce the tax amount to be paid to the administration. In 2001, her son moved to live with his relatives in Tang Kra Sang commune, SanTuk district. At the same year, the mother and her daughter mortgaged money from the ACLEDA bank by giving the land title as loan collateral. In 2004, when the SLR was conducted, the woman demanded her son's share of land but her daughter disagreed and said that all of the land belongs to her as is proved by the certificate of possession right. This conflict hasn't been resolved yet.

Conflict between a woman and her children on inherited residential land

In 2003, a land conflict occurred on 0.20 ha of land. In 1986, a mother gave 0.10 ha of residential land to her daughter and she kept 0.10 ha for herself and her granddaughter. But in the same year, her daughter, Mrs. Sim Nan, sold her land to people in KPT downtown because of her poverty. Then she became a landless farmer. So she demanded some more land from her mother. Her mother did not agree to this. When the conflict occurred the village chief and other people (relatives and neighbours) intervened to conciliate it. Mrs. Sim Nan's siblings agreed to fingerprint on the land register document for her mother, attempting to give that land to Miss Dy Noun, a niece, who looks after their mother. But, Mrs. Sim Nan also disagreed. Finally, the SLR team decided to give that land to Miss Dy Noun. However, at the time of this study the land title has not been issued.

The following cases involve fishery areas and communities. Since the government decided in 2001 to cut 536,289 ha of fishing lots, equivalent to 56.23% of the total exploitation lots, in order to put at the people household's disposal with the establishment of Fishery Communities (FiCs). It led sometimes to dispute between FiCs and a group of dry season rice (DSR) farmers who have used water for a long times ago for irrigating their rice.

Dispute between a Fishery Community (FiC) and a farmer group of DSR

The dispute occurred since 2004 during the period of ploughing. It was caused by the group of farmers from O Kontho and Baktouk communes, Stung Sen district who, came to cultivate DSR near Antong Lake (the conservation lake of FiC in Roluos village, Sro Yov commune) and used the water of this lake to irrigate their rice which caused the lake to dry out. Farmers who used the water did not stop their activities even when the representative of FiC asked them to stop. They relied on the argument that they have cultivated on this land for 10 years. Actually, the case of land dispute between FiC and this group of farmers is also occurring in Minav village, Sra Yov commune, but the dispute has not been referred to the commune level.

However, all FiCs in KPT province are formal but still not recognized legally by the provincial authorities (at the time of the study). The fishery administration (FiA) is waiting for the Fishery Law. FiCs legal recognition and a fully-fledged integration of fishery management into community development plans are still a challenge due to the conflict of interest between the FiC and officials.

Stakeholders' groups in land issues

The stakeholders involved in land tenure dynamics and more specifically in land transactions in KPT fulfil different roles: brokerage in land transaction, legal brokerage, dispute arbitration, regulation enforcement, policy making. Each function does not correspond to a specific type of actor and many of them are involved in different forms of action. A typical case in this respect is represented by local authorities acting according to their context as land brokers, dispute arbitrators or for the enforcement of regulations. From this point of view, which is more or less private or public depends on the situation and does not necessarily reflect their official position.

- **Brokers involved in land transactions**

Until 2004, land sales and purchases were mostly processed without brokers' intervention. From 2004, brokerage has been playing a growing role, particularly as far as large plots of land are concerned. In such cases, brokers are often local authorities' representatives (chiefs of village) and urban dwellers.

Many categories of people can act as land brokers, however: villagers (rice farmer and cattle traders), money lenders, village chiefs, urban dwellers (also traders of agricultural products, motorbike repairers and land keepers). The latter keeps land for an urban land buyer and he is intermediary in other sales and purchases of land. People do brokerage to earn additional income.

Professional activities can play a role in facilitating access to the strategic information controlled by the broker. For instance, an urban dweller knows someone who wants to sell land during the collection of agricultural products at the farm gate. **Local authorities act as intermediary actors in various ways**:

The chiefs of village may be requested by urban people or wealthy investors to persuade villagers to sell former DW-FR lands, to share land in return of water, or to register those farmers who want to grow RR in practicing sharecropping for reservoir owners. In this case, **the broker is not only controlling strategic information, he plays an active role in persuading (or threatening, see below) people to sell or to engage in other land transactions**.

In some cases, the land buyer or company requests the urban dweller broker to seek villagers who want to sell land in zones determined by them. We have also observed **alliances between urban and local brokers allowing them to reach a broad sphere of information and action**.

The following example is unique (as far as we know) but significant. A wealthy man bought land from villagers who were not able to repay his loan, and bought land from other debtors of the bank through his client. One of commune chiefs (Kampong Russei) was offered US$2,000 by the company for assisting the purchase of 100 ha of land.

In many cases, the chief of village persuades his villagers to sell abandoned DW-FR land to urban rich people. In most cases, they take money for recognizing the signature on sale contract from land seller or someone who made the sale contract. Only 50% of the selling plots sought formal recognition from the chief of commune, and 8% were sold without informing the chief of village due to the associated costs.

The brokers might earn more money than they told us because **in many cases, the land sellers never met urban land buyers**.

In one case, a Khmer citizen, a school teacher, bought land through the intervention of a land broker instead of an international religious organization that was engaged in the process. According to article 8 of the 2001 land law, "*only natural persons or legal entities of Khmer nationality have the right to ownership of land in the Kingdom of Cambodia. A foreigner who falsifies national identity to become an owner of land shall be punished".*

*For example, land buyers go to meet the village chief, in Kok Ngoun village, Kampong Russei commune; the village chief plays another important role as land broker. The chief of village had actively sought to buy DW-FR land for an urban dweller in return of receiving a brokerage fee from both villagers and land buyer. The land buyer pays 10,000 to 20,000 riels per plot or hectare for land sale letter/contract at the village and commune levels. In the majority of cases, they take money for recognizing the signature on a sale contract from a land seller or someone who made the sale contract. Farmers sold DW-FR lands following the neighbours of Krasaing village where all DW-FR lands were sold in 1998 to an urban dweller. He also tried to negotiate with farmers in Kok Nguon for buying DW-FR land but did not reach an agreement on land price at that time. In 2005, through the village chief, 99 farmers (69.7% of the total households) agreed sell all their DW-FR land located about 20 km from the settlement to another urban dweller, a former official of provincial rural development department (Mr. Moul Kim Oun). However, the land price was lower than the previous offer. Those farmers who did not want to sell their land were threatened in order to follow other farmers who sold land "if you did not sell land you throw the money" (*Beu neak min lak dei neak noeung choal luy heu*), it means that DW-FR land will be expropriated as well because many farmers abandoned DW-FR land since the end of the 1980s, and some plots since 2001. In particular, those who did not have draft animals and abandoned land since the 1980s could not remember where their DW-FR plots were located. The village chief arranged a meeting in order to let farmers sell their 300 ha of land. Then, he went to meet the land buyer in the provincial capital. In this case, all farmers agreed to pay the mediation costs, 10,000 riels per farmer. The broker might also get a fee from the big land buyer. Moreover, each farmer contributed other 10,000 riels for the community fund which was established after the land sale. All 99 farmers are members of the community fund. They elected a fund management committee composed of five members. The chief of village, who also acts as a land broker, was elected as the chairman. Currently, all money has been lent to the members at a monthly interest rate of 4 %, and 1 % of it is for management cost according to internal regulation. Each member can borrow up to 150,000 riels in one time or for one cycle. Collected interest will be used for village development projects selected through participatory discussions.*[31] *The land sale contract was processed with registration at the commune level and recognition by the commune chief.*

- **Formal and informal politico-legal institutions**

The social field defined by land transaction processes is structured by various stakeholders (state/non-state, individual/collective) in KPT: MLMUPC/DLMUPCC, the provincial governor, FiA, AC, the National authority on land dispute resolution (NALDR), local authorities, human rights organizations such as ADHOC, Comfrel and LICAHDO, development agencies such as GTZ, NGOs (HAGAR for instance).

Ministry of land management, urban planning and construction (MLMUPC) and GTZ

Identifying the land registration process led us to understand the intervention of the government in preventing and resolving land disputes. LMAP, a project lodged at the MLMUPC, has conducted an SLR. GTZ funded the pilot SLR project in Kokoh commune of Santuk district in 1997 before taking action in 11 provinces for a first period of 5 years (2002-2007). The process of land registration and titling can follow two paths: sporadic land registration and systematic land registration:

[31] *Interview with three villagers or farmers in Kok Ngoun village, as land sellers, Mrs Chhay Mon, aged 73 and Mr Mom Khong, aged 74 and also a member management committee of the community box, Mrs Leng Yeat.*

Sporadic land registration: Between 1992 and 2002, the department of cadastre, currently DLMUPC,[32] conducted sporadic land registration. In particular, there were more applications for land possession in Steung Sen than in other districts because it is an urban and peri-urban area with a strong dynamics of land sales and purchases. Around 30% of residential lands in Stoeung Sen district have certificate of land possession. Around 30% of total households in Santuk district have receipt of residential land possession provided in the early 1990s.

Systematic land registration (SLR): In 1997, the pilot project of SLR was conducted with technical assistance and funding from GTZ in the commune of Kokoh, Santuk district. Lesson learned from this pilot project are used for implementing the SLR project in 11 provinces for the first 5 years (2002-2007). DLMUPC in cooperation with LMAP and other programmes has carried out an SLR in several communes such as Tipou, Chrab and Srayov. Rice lands and homestead plots were registered while *chamkar* land on the foothills, newly cleared land or *chamkar* land located over 200 m from NR 6 and 3,000 m of distance around *Phnom* (hill) of Santuk were not titled even though people have occupied and cultivated this land since the end of the 1980s. The land is considered as state private property, and used for conservation of natural eco-system, a resort site of Santuk, refer to *deika khet* (provincial decision) on 11, May 1995. Also, rice land in all destructed reservoirs and canals weas not registered but farmers can cultivate it temporarily.

In most cases of inheritance and sales of rural land, the plots have changed hand without registration at the OLMUPCC.[33] With **regards to land sales, there was often (not always) formal recognition at the commune office**. An SLR is an opportunity to actualise official names (title holders) of the successors and buyers. For example,

In Chroab commune, 30 % of the total registered plots (2,992) of land changed hands to their successors through inheritance and 1 % to land buyers during the SLR[34] *in 2005. Similarly, in Sroyov commune, 30% of the total registered plots that are mostly rice lands changed hands to new landowners through sales/purchases, inheritance and gift in 2004. However, in Tipou and Chroab communes of Santuk district, many people are still reluctant to pick up their land titles. They argue they lack money for the contribution fee*[35]*.*

Administration Commission (AC)

The AC was set up during the SLR to resolve land conflicts activated or generated by the process. The AC was set up during the SLR to resolve the conflicts regarding land without title of ownership. The AC was a transitory body and was demobilized as soon as the SLR campaign was over. If the conflicts could not be resolved by the AC, they were brought to the national cadastral commission (NCC) in Phnom Penh. **Article 3 of the sub-decree on SLR no 46**, issued in May 2002 states that "*the composition of AC includes a representative of the provincial/municipal governor, 2 officials of DLMUPC, the district governor or representative, the chief of commune or representative, the chief of village or representative and two village elders*", eight members altogether. In KPT, the AC was composed of the vice director of the DLMUPC, the chief of OLMUPC, three commune councillors, the chief of village and two village elders. They referred many cases to the NCC. However, many cases of land dispute have remained unresolved, which also means without the eventual issuance of land titles.

[32] *Department of land management, urban planning and construction (at province level).*

[33] *Office of land management, urban planning, construction and cadastre (at district level).*

[34] *Interview with Mr Yin Phan, Chief of OLMUPCC and member of SLR team of LMAP.*

[35] *For new land policy, LMAP claims for people's contribution for land tilting about 1 riel / m² for agricultural land, 10 riels for rural residential land, and 20 riels for urban residential land.*

Fishery administration (FiA)

FiA plays a main role in facilitating the establishment of Fishery Communities (FiCs), management of fishery domain and flooded forest. However, some NGOs complained of a lack of cooperation from the FiA in the establishment of FiCs. Also, **disputes occurred between the FiA and RR farmers because the flooded forest boundary is still not delineated. There is a different understanding of the flooded forest land in differentiating from the former DW-FR land for re-growing shrub/forest**. According to the 2006 fishery law, the construction of crossing dams or filling in the water bodies or digging or construction of new buildings in the fishery areas/flood plains has to be evaluated by the MAFF/FiA (**article 25**). It is prohibited to expand cultivated land and to provide ownership or occupation rights of land in the fishery area/flood plain (**article 28**). However, the enforcement of this law will probably generate or activate many disputes.

ADHOC, LICAHDO

The two human right NGOs have tried to assist people by organising training on land law and workshops on land issues. They have helped people involved in land disputes to lodge complaints and monitored claims and complaints that have been brought to the court or to cadastral commissions. In other cases, they have monitored the land dispute process and helped people in collaboration with the companies or projects involved in a specific action, to define compensations for project-affected people in exchange for moving out from land.

Comfrel

The NGO Comfrel, in cooperation with ADHOC, has organized public forums between people and parliamentarians from all parties represented in KPT. In the forum, farmers or their representatives have an opportunity to ask and make complaints on land disputes to parliamentarians. Usually, they promise to pass cases of disputes to the parliamentarian commission on human rights, protection and reception of complaints and to the prime minister.

HAGAR

HAGAR is an NGO that has worked to help vulnerable women access land since 1998 through SLCs. In Santuk, Hagar has implemented the community development programme since 1995. In 1998, the provincial authority of KPT provided this programme with 100 ha of degraded forestland, in which the community of Tapreach was established at the end of 1998. In 2000, 24 women volunteered to resettle in this community. Each woman was allocated 2 ha of land for farming and homestead; titles would be given to the women after 5 years of consecutive cultivation.

Local authorities

Local authorities are key players as far as land transactions are concerned: they act as brokers, arbitrators and state representatives. They follow customary approaches and local principles of justice, favouring negotiation and compromise for resolving land disputes involving neighbours and/relatives. The village chiefs help facilitate the negotiation when the conflicting parties prove to be unable to reach agreement by themselves. If the land dispute is not resolved, they pass the complaint to the commune councillors /chief of commune. When the disputes can not be resolved at the commune level, they sometimes assist people to the district cadastral commission (DCC). On the other hand, as we have seen in several other examples, local authorities do not only act as 'neutral facilitators', they are deeply involved in the local politics of land, corrupt practices and collusions with entrepreneurs and other 'big men'.

NALDR and the Provincial Governor

NALDR was established by a royal decree in February 2006 and its composition was fixed by a sub-decree in March 2006. The NALDR mandate is the resolution of disputes referred by the NCC and conflicting people. NALDR has requested the provincial authorities to investigate illegal encroachment into forest land and seeks to bring this land back to the state domain. In May 2006,

the provincial governor issued four *deikas* (decisions) to repossess 1,200 ha of state forest land in the communes of Kampong Thmor and Beung Lvea (Santuk district) and Mean Rith (Sandan district) at request of NALDR, and referring to *botbanhchea*, the government's regulation no 01 issued in May 2006 on the prevention of forest clearing for claiming land ownership. The repossessed land will be used for reforestation or SLC. However, up to mid-June 2006, the authorities (Forest Administration and provincial deputy governor) found that another 12,083 ha (3,493 ha in Stoung district, 2,055 ha in Prasat Sambo, 327 ha in Sandan, 2679 ha in Prasat Ballang and 1,114 ha in Kampong Svay) were cleared for illegal ownership and that land is expected to be repossessed as state land[36].

Land inequity

The analysis of land inequity lets us evaluate the high level of land concentration in KPT province. Nearly 28% of interviewed FHs, who had land equal or less than 1 ha per FH, occupied over 6% of total land. Nearly 23% of FHs hold more than 3 ha of land each and occupied almost 48% of the total land. However, a Gini-coefficient (0.43) confirms the conclusion that 20% of FHs investigated own around 1% of the total land, while other 20% of the FHs own around 42% of the total area. There are farmers who used to have land but sold all their land and are now ALFs.

[36] *Rasmei Kampuchea Daily, June 15, 2006.*

Agricultural landless farmers

In our study, we define agricultural landlessness or agricultural landless farmer (ALF) as people who have never had farm land and have had to sell all agricultural land to meet an immediate need.

In KPT, the average number of ALFs is about 8%. This varies from 5% in the rural areas to 11% in the commune close to the urban area. Forty-five per cent of ALFs used to have land but they lost all of their agricultural land due to many reasons such as selling, inheritance and rural migration. The main reasons that they sold all their agricultural land are: indebtedness, lack of food, changing village (displacement) and illness. **In KPT, we have observed similar mechanisms in the working of the land markets, namely the widespread use of persuasion and threats, often through brokers. Nevertheless, this trend seems less developed than in Siem Reap and Sihanoukville where urban interests are stronger. Moreover, the rapidly growing economy of plantation and RR production play a central role in the process of land commoditisation and concentration**.

However, farming remains an economic measure to sustain livelihood of the ALFs. Fifteen per cent of interviewed ALFs have borrowed land for cultivation. However, in the next 2-3 years they will practice farming through land clearing (20%), land borrowing (5%) and buying *chamkar* land (5%). Thus, they requested to the government or outsiders to assist them by providing agricultural land and credit for farming.

Summary of the main findings

Modalities of access to land

People accessed land through both land appropriation and agrarian contract. Many farm households accessed land through administrative modes. **Even though land was distributed in the early 1980s, many farmers have cleared more land in both the upland areas for selling or cultivating perennial crops and in the flooded land for RR cultivation**. Many urban dwellers bought land in the upland areas for tree plantation and loaned it to the land sellers or other villagers for growing annual crops in exchange for labour (plantation keeping) while others purchased DW-FR land for RR cultivation, with the intention of renting it out to farmers or practicing sharecropping. In many cases, there is an **interaction between land purchases and loans** (fixed term loan for young tree plantation). However, those people who occupied new-cleared land in the upland areas for cultivation have faced **the state policy of land repossession strategically resorting to *botbanhchea* (regulation) no 01 of the government issued in 2006**.

Since 2000, many urban dwellers have been interested in buying *chamkar* land and DW-FR land due to the limited potential to run off-farm businesses. They have also had good opportunities to buy it at a lower cost. Particularly, **since 2004 many urban dwellers have purchased DW-FR land for RR production because smallholders were not able, even collectively, at community level, to invest in reservoirs**. Moreover, RR production has rapidly increased as the impact of policy of rehabilitation of DW-FR land remained unexploited for a long time and was enforced by the issuance of the sub-decree No 146 on ELC issued in 2005, and the right of provincial governor to offer/lease state private land (Art. 29). As a result, the rights to former DW-FR land have changed through different modalities: purchases, granting ELC in exchange for reservoir/canal investment, granting ELCs to farmer's group/communities, sharecropping and renting. However, the granting of ELCs has led to disputes due to ambiguous rights over abandoned DW-FR land before the investment started and the neglect of rights for new couples.

The provincial governor granted former DW-FR land to concessionaires for RR production through reservoirs. To prevent land right disputes and to satisfy both groups, different arrangements were made, such as providing water to farmers who loaned DW-FR land in exchange for access to concession land and sharecropping. The land has to be returned to the state or commune at the end of the contract. However, **people expressed their concern that land will be repossessed as state land or the government will give ownership to the concessionaries, thus expressing a widespread feeling of distrust toward state authorities**.

We can observe the following trends as regards agrarian contracts:

Sharecropping remains an easy way to gain access to land in the short-term. But it is increasingly being replaced by leasing systems.

On the former DW-FR land areas, sharecropping with a written contract is a mechanism helping to resolve land disputes between land concessionaires and former land owners. In this case, however, it is replaced by an **arrangement combining land renting and water selling, which is favourable to the land owner and investor in terms of cost and management.**

However, sharecropping remains an important mode of land access at the level of relatives and neighbours involved in a localised sphere of mutual accountability (generally, there is no written contract, only a verbal agreement).

The development of leasing does not necessarily go hand-in-hand with the diffusion of written contracts. More precisely, one-year agreements do not require written contracts, which are reserved for long-term leasing as a means for land grabbing prevention.

Access to land through capital investment (in water reservoirs) entails an important shift in land transactions and land tenure dynamics:

The construction (or re-construction) of water reservoirs to retain flood water has increased the potential for RR production, while providing a new activity, complementary to (or replacing) NTFP collection and wage labour in wood exploitation in the upland area.

Many small farmers could gain access to land for RR cultivation through sharecropping and renting with a written contract. However, many natural lakes have been transformed into reservoirs and constructed/reconstructed reservoir/dams without technical assistance have impeded water from naturally flowing downstream. This has affected the livelihoods of other small farmers and caused conflicts between reservoir owners and farmers/fishers.

Land sale/purchase

Access to large pieces of land through purchase is made easier by the intervention of brokers, who are very often local authorities' representatives (village chief, commune chief, commune councillors). They play an active role in persuading villagers to sell their land and are paid as private persons (brokerage tariff). **These configurations of actors show to what extent the functioning of land markets is structured by power relations rather than by the interplay of so-called 'supply and demand'**.

By law, land transactions are subject to a sale, or turnover, transfer tax of 4 %.[37] In practice, a great deal of tax is evaded, and fewer people follow this rule because of cost and time. The changing of hands by land purchasing is generally registered at the commune office, but for an unofficial fee: we are here in a **'grey zone' between the formal and the informal**. Systematic land registration (SLR) – in the zones where it has started – seemingly allows a formalisation of land transaction registration.

Since 2005, investors who want to invest in RR production have to buy the use rights of former DW-FR land before submitting the proposal for receiving ELC, with all the land being returned to the state when the contract is over. Actually, provincial authorities try to play with the discrepancies between 1992 and 2001 land laws (referring to the former even if the article was theoretically abolished by the latter). In a way, **the sequence made of concession granting and state request constitutes a form of economic expropriation for the state, the private sector playing an intermediary role in this respect, the granting of a concession contributing to ground the state claim over land**. However, provincial authorities face complaints from big farmers who have possessed land without interruption since the late 1980s.

Land buying without informing the village chief has sometimes led to land dispute with the village chief. The buyer loses land, as the land was registered with the name of the village chief during the SLR. Thus, land titles have been instrumental for local authorities in resolving land disputes, allowing them to solve cases quickly and also to their own benefit. However, SLRs have also provoked land grabbing disputes. Arbitration mechanisms have not always been fair and people have lost their land although they have occupied and used it over the 5 years before the issuance of the 2001 land law.

[37] *Council of Land Policy, 2002.*

The number of ALFs varies from place to place and increases in areas, epending on the proximity to urban areas. The main reasons that they sold all their farm land are: indebtedness, lack of food, changing village and illness. These reasons may be closely correlated. When they faced problems of illness and the lack of food, rural people had to sell land or borrow money even though they have had to pay a high interest rate to private money lenders. **There is also a widespread use of persuasion and threats in the functioning of land markets, often through brokers. The rapidly growing economy of plantation and RR production play a central role in the process of land commoditisation and concentration**. However, cultivation remains a main economic activity for ALFs, so that they gain access to land by borrowing, sharecropping and clearing. However, they still faced the problems of not having draft cattle, a higher cost of land preparation and the repossession of state land.

Land disputes

As a general trend, land disputes have changed from disputes over boundaries to disputes over unclear ownership rights. But it is not clear whether the problem is about the lack of rights clarity or if it reflects rampant expropriations by provincial authorities in favour of allied entrepreneurs. Furthermore, local authorities were reluctant to report disputed cases involving powerful men or state companies.

As an effect of private investments in DW-FR land, granting land to private and state concessionaires has also led to many cases of land disputes. Farmers who did not cultivate the land and have abandoned DW-FR land more than 3 years try to claim their land back from new occupants or concessionaires. Both farmers and land buyers claim to protect their right on DW-FR land occupied before the issuance of the 2001 land law.

Borrowing of land led to disputes as borrowers have occupied land since before the issuance of the 2001 land law. Land borrowers always claim for ownership because they thinks that they have occupied and used the land before the issuance of this law (Art. 30), or the new owners as land occupants of the abandoned land claim that they have possessed the land for 5 years before the 2001 Land Law. In many cases, land was transferred from former owners to land occupants as new owners. However, resolving disputes over land rights between new owners as land borrowers and former owners is not consistent under the conciliation of the local authorities or AC. Disputes over loans or occupation of the abandoned land were resolved based on the equity principle by splitting the plot into two sub-plots for each conflicting party in a way similar to disputes over plot boundaries, or if the former owner agreed to receive compensation from new occupants.

In the SLR zones, cases of land disputes have decreased, but many disputes over land rights are activated rather than generated by SLR (between a new owner as land borrower and the former owner, between an occupant and former owner, and between successors) remain un-resolved even though they were referred to the NCC. In many cases, land mortgaging has led to disputes and no intervention could assist in preventing people from losing their land.

The rehabilitation of DW-FR land was unexploited for a long time. Flooded shrub/forest often creates conflict between farmers/fishers and the FiA due to diverging interpretations of what is (and where are the boundaries of) 'flooded forest' and 'former DW-FR land with re-generating shrub/forest'.

CHAPTER V.

Sihanoukville

Pel Sokha, Sam Vitou, Laing Lan and Im Sothy

Context

• Regional context

Sihanoukville (SHV) had a population of 161,449 in 2004. It is situated in the south-west of Cambodia about 204 km from Phnom Penh. Sihanoukville has a main marine port and is going to be a tourist-economic area, especially when tourism plans and the special economic zone (SEZ) are implemented.

Due to the historical background of the marine international port, the RGC plans to develop the industrial zone, airport and fishing port. It aims to enhance household income through the promotion of investment in agricultural production in the peri-urban area. The polder dam protecting salty water intrusion from the sea was reconstructed in 1998 to promote rice production. The government planned to develop three main sectors in these three different districts. Prey Nup district is planned for the agricultural development zone, Mittapheap is planned for the urban development zone and Stoeung Hav for the industrial development zone (possibly a duty-free zone for Chinese investors). However, there is request to establish a special development zone (SEZ) (or industrial development zone) in Prey Nup district. Tourism is now seen as another orientation in the development of this area. Consequently, these development policies and orientations will have (and have already had) an impact on land sales and other land transfer modalities.

• Local context

This section briefly presents the three villages under the study with regard to population, surface, land use and farming system, settlement, development projects and external investment:

Pou Thoeung village is located about 20 km from the town of SHV along NR 4. In 2004, the total population was 1,233. Between 1998 and 2004, the annual household growth rate was 4.01% and the annual population growth rate was 1.14%. The village covers 389 ha, of which 80 ha (20.57%) allocated for residential land, 239 ha (61.44%) allocated for rice land, and 70 ha (17.99%) allocated for *Chamkar* land. The village population density is 317 per km^2. Pou Thoeung village was created in 1953. At that time, the village was administratively under Ream commune, Prey Nup district, Kampot province, and had 50 families. During the Pol Pot regime, people from this village were displaced to Sre Ambil, Cheung Kor and other places. In 1979, this village was re-created administratively under Bet Trang commune, Prey Nup district. In 2002, 10 farm families who migrated from Kampot province, Veal Renh commune, Klaing (Vietnam), and Prey Nup to settle in this village. They migrated in because they thought tha, in this village, they could practice fishing and cropping (on cleared forest lands) easily. However, they met disaster (flood) in their homeland. Based on cropping systems and the slope, Pou Thoeung village is classified into 3 sub-zones: 1) Sub-zone 1: residential lands in which people can grow fruit trees, vegetables and other crops and some farmers cultivate rice; 2) Sub-zone 2: rice lands; and 3) Sub-zone 3: foothill land in which people have cleared forest to cultivate rice and fruit trees. Large parts of this land are disputed with soldiers. All families in Pou Thoeung village cultivate wet season rice even though they do not own rice land. They currently rent in lands from companies or urban people after the latter stopped loaning land.

O' Oknha Heng village had 277 households with a population of 2,071 in 2004 and an annual population growth rate of 8.95% between 1998 and 2004. O' Oknha Heng village covers 1,083 ha, of which 15 ha (1.4%) are residential land, 19.7% rice land, and 73.9% chamkar land. The village population density is 191 per km^2. O' Oknha Heng village was created a long time ago. Before, this village was called Teuk Thla. In 1975, a road and bridge were reconstructed. During the reconstruction, a construction manager named Heng died. This is the reason why the village was renamed O' Oknha Heng. Before 1986, this village covered a large area. But in 1986, the commune authority attributed part of the land in this village (free and unused lands) to the O' Tasek village, which was created in 1986. O' Oknha Heng village could be classified into four sub-zones according to the topography, soil types and cropping patterns: 1) sea-inundated rice land area with rice seed resistant to salty water, non-rice crops on chamkar land and on residential land; 2) wet season rice land area; 3) inundated forest; and 4) chamkar land, foothill land and mountain. About 80% of the total land area of this village belongs to urban dwellers and companies. The majority of farmers borrow land from urban dwellers and companies for rice cultivation. Rice growing faces salty water intrusion and drought. During the dry season, farmers do not grow anything because there is no water.

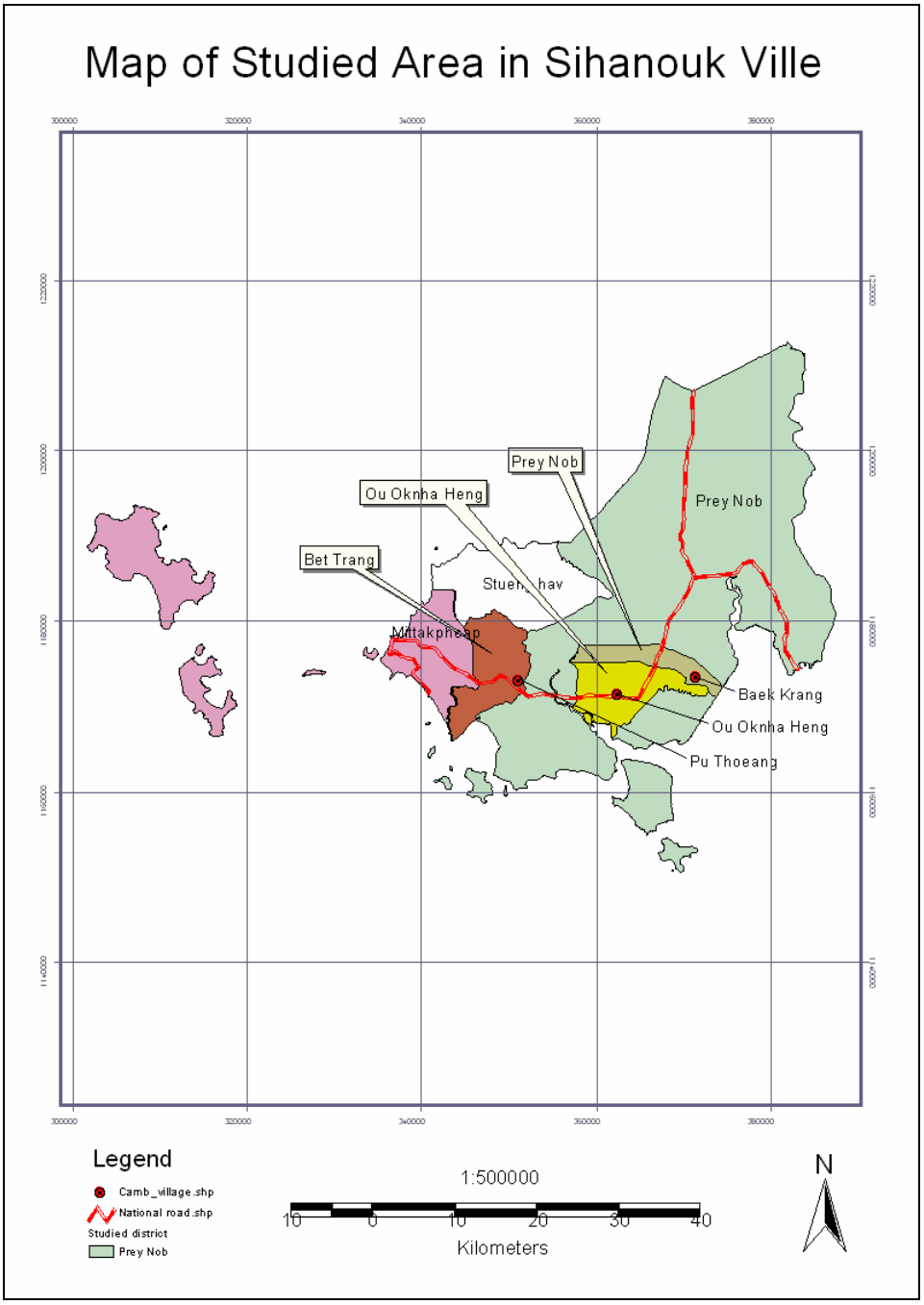
Bekrong village had 136 households with a population of 736 in 2004 and an annual growth rate of 11.21% between 1998 and 2004. The village area is 671 ha of which 5 ha (0.7%) is residential land and 666 ha (92.3%) is farmland. The population density is 110 per km^2. Bekrong village was created in 1982 due to the increase of newcomers. Most newcomers were Khmer-Krorm,[38] and have immigrated to fish or seek fishing work. The reasons for the in-migration to this village were racism and small landholding of internally displaced people from Takeo and Kampot provinces. They moved into the village to seek fishing work. Ninety per cent of the villagers are Khmer-Krorm (south of Vietnam). At first, people called this village Totoeung village as it consists of one dam lying width-cutting[39] of the village or the 75 Canal. In 1994, the name of village was changed to Bekrong because villagers had a good rice harvest surpassing their storage capacity.[40] However, some new settlers left their home village in order to seek release from indebtedness. The village is located in a lowland area toward the sea and is classified into two sub-zones: 1) residential land area, with other crops; and 2) rice land area. In Bekrong, most farm-households are agricultural landless farmers (ALFs) as they are newcomers and immigrated from *Kampuchea Krom* (the Mekong Delta in South of Viet Nam, formerly a Khmer area). Moreover, rich and powerful men have occupied the rice land since the end of the 1980s but have not used it, or abandoned it due to salty water intrusion. Consequently, the newcomers encroached on that land for rice growing and this led to disputes. Despite this, the rehabilitation of the protecting-dam was completely finished, but rice farmers still faced a lack of water for complementary irrigation. The rice harvest depends on rains and limited rice damage, e.g. by rats.

[38] *Khmer Krorm: Khmer people living in the Mekong Delta in Vietnam.*

[39] *Toteung means 'width-cutting' in Khmer.*

[40] *Bekrong means 'storage overcapacity' in Khmer.*

Figure 3: Map of area studied in Prey Nub, Sihanoukville



- **Land transfer modalities in the communes studied**

In SHV, accessing land through commoditised transfer (purchase as regards appropriation rights) is widespread and **urban influences** are very strong in this respect.

However, **non-commoditised forms of access to land exert strong influences**, for example, administrative transactions such as land distribution, grants to the military, resettlement of returnees. Also it includes land clearing and land grabbing.

There are also **relations between different forms of land appropriation** which are embedded in **strong asymmetries of power**:

- Land to be transferred by inheritance is often partly or totally sold by poor farmers to avoid an extreme fragmentation of the patrimony, contributing thus to the emergence of landless farmers.
- Poor farmers often sell land (often under the pressure of their economic situation: distress sale, or of potential buyers: threat, corruption) to clear land elsewhere (it seems that the main trend for poor farmers is to leave rice land to move to chamcar lands).

As far as use right transfers are concerned (i.e. different forms of agrarian contracts and derived rights), besides leasing and sharecropping, we have observed forms of loans that are closely linked to the dynamics of land appropriation: land loaned to the seller (namely as a promise to 'persuade' him to sell) or to the one who has cleared the land (a kind of exchange of land and labour).

Institutional arrangements ruling derived rights usually do not comprise any written agreement and are based upon a negotiation only involving the owner and the tenant. **One can differentiate between arrangements that are embedded in local relations of neighbourhood, kinship and trust and arrangements that are 'socially dis-embedded (but embedded in broader power relations), involving external actors**.

The importance of powerful urban people in land purchases and the unequal agreements linking land sales and loans show that **the boundaries between market transactions (the model of bargained-exchange system) and non-market transactions (linked to status and power relations, and also threat and corruption) are not easy to identify**. To put it differently, the functioning of land markets is inherently pervaded by power relations and violence.

Right transfer modalities	Non-commoditised	Commoditised
Institutional arrangement (use rights)	Loans (exchanges for labour to keep and clear land) Loan (loan against promise to sell land)	Leasing Sharecropping (Pawning)
Transfer rights (appropriation)	Land distribution by the local authorities and Krom Samaki Spontaneous 're-occupation' of former land property (sometimes negotiated with local authorities and monetary compensation) Inheritance Clearing (encroachment, grabbing, clearing on former property frequently leads to land disputes) Military development zone Land distribution by the local authorities to returnees	Purchase Purchase rice land in the national park of protecting natural eco-system

Land appropriation

In SHV, land appropriation has been following different modalities, as mentioned above: land distribution by the local authorities and solidarity groups, re-occupation of former properties, free access by land clearing, occupation of state private land, inheritance and sales/purchases. The forms of land appropriation have also varied according to historical changes, as shown in the following table.

Date/Year	Event and mode of appropriation
1979-1980	Land distribution by local authorities to the solidarity group, *krom samaki*,
1979-80	Re-occupation of former residential land
1982	Land distribution by solidarity group to farmers
1984	Land distribution to farmers in order to establish new villages in Steung Hav district
1989-1992	Land distribution by local authorities to returnees and immigrants
1982-2003	Movement of land clearing; around the villages (as far as 5-6 km from the village)
1990-1991	Applied for land possession right 'certificate of land possession' during state registration campaign
1992-1993	Sporadic land registration campaign, in particular for residential land and land in urban and industrial development districts: Mittapheap and Steung Hav
	Massive land sale/purchase in Mittapheap urban development district
1990-1993	Distribution of land to military families in Mittapheap and Prey Nup (Ream) districts, and distribution of land to the demobilized army in Mittapheap district (1992)
1993	Establishment of the National Park 'Ream' which overlaps rice land of farmers and urban land buyer in O'Oknha Heng commune, Prey Nup district
1993-1995	Beginning land sales/purchases (chamkar land in the foot hill areas and rice land)
	Rice land in the polders abandoned, forest/shrub grow back in three years
	Strong development of land market (land sales/purchases)
1998	Banning clearing land by the government declaration
	Dam (polders) reconstructed for preventing salt water intrusion
1996-2000	Farmers cleared the abandoned land of the powerful men in the polders for rice cultivation which led to land disputes in 2003 during systematic land registration (SLR)
2002-2005	SLR started of rice fields in the polders in Prey Nup district
2003	Granting state land for military development zones (1,389ha) in the national park of Ream
	In February, a serious dispute over 126 ha of rice land occurred during the public display of systematic land titling between 131 farm-households, as new owner since 1996 and 7 powerful men such as the former (old) owner who held 28 certificates of land possession and use issued in 1993-94 but later abandoned. All land was expropriated in 2003 by powerful men and managed by their land keepers. About 20% of farmers agreed to rent that land for rice cultivation at a cost of US$20 per ha and season
2004	Massive entries of local people /immigrants onto unused private and public land for settlement, 19 people were arrested, but they were released after a while at the request of LICAHDO
	Massive establishment of tree plantations after peri-urban dwellers took land back from farmers

2005	Establishment of SEZs in Steung Hav and Mittapheap districts
2006	April, 155 households complained to the municipal governor for preventing grabbing and conserving the river or lake of Taong, Ream commune, by putting up demarcation brick poles. If the lake can be conserved as public property they can sustain their livelihoods by fishing.
	On May 29, the Provincial Committee on Forest Clearance and Encroachment declared the expropriation of 9,444 ha of forested land (6,971 ha in Prey Nup district, 473 in Steung Hav), referring to a *botbanhchea* (regulation) no 01 and *deika* (decision) of the municipal authority. Most of the newly cleared land has titles which were issued in 2005. The military unit of the municipality has 2,700 ha through titles issued in 1996. Some land occupants have only letters of land right transfers. However, 20 to 30 ha of new land were cleared in O Tracheak Chet village, Cheung Ko commune, Prey Nup district. People were persuaded to clear land for sale to rich people a cost of US$600/ha
	On Sept 6, officials, including officials of the DLMUPC and local authorities (chief of Bit Trang commune) were accused of violations of private land and the municipal court ordered for them to be arrested. Three of them were arrested
	On Sept 18, the municipal authorities demolished 100 huts down which were built on private land in Smach Deng village, Ream commune, Prey Nup district

- **Land distribution**

Land distribution was conducted at different stages and followed different modes. In 1979, agricultural land was distributed to a solidarity group and then re-distributed between 1982 and 1986 to individual households as members of the group. The residential land was also distributed. However, in some areas people could re-possess the land property which they had before 1975. Up to 1989, the government officially recognised the distribution of solidarity group's land to their member's households. In village 6 (*Phom 6)* of Sangkat 4 (*commune 4)* of Mittapheap district, 60 households of immigrants (or demobilized armies), who arrived between 1989 and 1992 could receive land from the local authorities by giving ownership. After 1992, only five households whose members are relatives of the village chief still have land that is secured by the certificate of land possession issued in 1992, while the others sold all their land to urban dwellers.

In Prey Nup district, each person received 2,000-3,500 m^2 of agricultural land. There was recognition of the land they occupied for housing or/and of their rights to re-occupy their ex-residential lands for housing. In 1984, outside the studied area in Stoeung Hav district, the local authorities distributed both types of land (farm land and residential land) to people in order to create new villages.

- **Land clearing**

Since 1995-96, people have cleared forested land in the two areas (lowland and upland). They cleared either rice land in the polder which is private rice land, or forest land for cultivation. The tendency was that immigrants cleared rice land, while many villagers cleared forest land after they sold all, or nearly all their rice land to urban buyers. In Bit Trang commune, nearly all villagers sold all their land and they accessed chamkar land 'freely' by encroachment or by clearing forest land. In Prey Nup commune, 25% of the interviewed farmers cleared land, while another 7% of ALFs cleared also forest land. Land clearing thus appears as an exit strategy for people having sold their land, showing a **causal link between the two modes of appropriation (land sales and land clearing), which expresses at the same time strong asymmetries of power. This link is also a matter of dichotomy between the two areas (rice land and foothill areas) in terms of appropriation dynamics.**

To date, the clearing of land has led to two serious types of land dispute: (1) dispute between farmer's groups and military on chamkar land; and (2) land between immigrant groups (newcomers) as new owners and powerful men who have possession of certificates for rice land since the early 1990s, or villagers or former local authorities as former (old) owners.

A serious case of dispute on rice land in the polder in Prey Nup commune occurred between seven 'big men' or government officials and urban people, as the former (old) land owners and a group of villagers/farmers as new owners (new comers in the early 1990s) over the right to 126 ha (7 blocks) of rice land. For example:

Four cases of massive land disputes occurred during the public display of systematic land titling in February 2003 and after the rehabilitation of the salt water protecting-dam. One case is a case of dispute involving 126 ha of rice land.[41] *Land was registered as 'in dispute', and no land title will be released to any party unless it is resolved. Land under this dispute is between 131 farm-households living in seven villages of four communes: Koh Khyang village (O Chrov commune), Prey Nup Muoy, Prey Nup Pi and Beth Trang villages (Prey Nup commune), Boeung Taprum and Boeung Chum villages (Boeung Taprum commune), O Oknhaheng village (O Oknhaheng commune) and seven government officials and 'big men' from SHV town. Those powerful people hold 28 certificates of possession and use of land issued in 1992-93. However, they abandoned it and did not use or cultivate on the land until 2002-03. They have complained about salty water intrusion due to the broken dam. Thus, forest and shrub re-grew on the abandoned rice land. Then, newcomers without any other access to land have cleared this land for rice cultivation since 1996.*

All 126 ha of rice land were repossessed in 2003 by the powerful men and this land managed by their land keepers. About 20% of farmers agreed to rent their formerly-owned land for rice cultivation at a cost of US$20 per ha and season. It is reported that US$8 of this rental amount is paid to the commune office. In 2003, Mr. Aing Saroeun, a farmer living in Bek Krong village was told do not continue growing rice on the disputed land. Ten days later, he was requested to come to the municipal court of SHV where he was arrested and detained for 19 days and accused of abusing another person's property. Due to the intervention of ADHOC he was released, but not before he was forced to agree to withdraw his complaint with regard to the land dispute. Due to receiving threats, only 76 households among 131 affected households filed a complaint to the municipal court of SHV. ADHOC, a Cambodian NGO working on human rights, assisted people to file this complaint with the national cadastral commission (NCC) in Phnom Penh. To date, both parties are waiting for a decision from the NCC. People can continue rice cultivation on the disputed land, but they refuse to pay the water fee to the Polder Community unless they receive land titles. For example,

Mr. Meas Vith, a farmer living in Prey Nup 2 village, Prey Nop commune cleared 5 ha of land for rice cultivation since 1996. He holds a receipt of land possession issued by the former commune chief (Mr. Em Mean). He paid a contribution of 32,000 riels/ha (US$8) every year to the commune until the land was expropriated in 2003. Nevertheless, to be able to grow rice on the same plot he agrees to rent this land from the powerful persons at a cost of 8 Thang (Khmer unit) of paddy, equivalent to US$20 per ha.

In this case, the former owners can show legal documents (certificates of possession), and thus be recognised as the land owners, the officials say. However, farmers as new owners have requested the RGC to receive half of their land so that they can secure their livelihoods. This decision is still pending: the choice made will show whether equity principles and a concern for social stability and poverty alleviation are guiding the government.

According to article 76 of the 1992 land law, "any land that a possessor has abandoned for three consecutive years shall become the private domain of the state". However, officials say that the three-year abandonment rule does not apply to land to which a person has legal certificates. Article 70 of 1992 land law states: "The act to keep a low-yield soil in order to make it fertilized cannot be considered as abandonment". This manner in such a condition during that period is considered continuous possession. But, it was in-validated or repealed by the 2001 land law". In any case, there is enough ambiguity between the two land laws to give people room for diverging

[41] *From the case study we learnt the areas of 120 ha were under this massive dispute.*

interpretation, usually working at the expense of the poorest. NGOs working in the field of human rights and legal brokerage play here a key role in redressing the balance of power.

- **Inheritance**

Khmer kinship is flexible and changes over time. It can be described and analysed as bilateral or cognatic (see for instance, Ledgerwood 1995). So too are inheritance rules. New couples inherit land from their parents, who in many cases in SHV received land through internal distribution of solidarity groups' land in the early 1980s. In Prey Nup commune, over 14% of interviewed farm householders inherited land from their parents. Inheritance processes have of course, been deeply disrupted by the phases of civil war and the Khmer Rouge regime due to massive population displacement.

The inheritance rules and processes in the areas studied seem to be similar in SHV. Inheritance depends on the parent's decision and is always made without a written contract. Usually, if the parents have enough land to transfer it to all children, they alocate less land to the better-off children than to the poor children. If the parents die, the oldest child will be responsible for managing and distributing land to the younger children. For land poor households, parents give land to the youngest daughter, who will look after them until their death. Other ways of inheritance are:

- ▷ Allocation of land to all children if the parents have enough land;
- ▷ In cases where there is not enough land, the parents can decide to sell all the land and to share the money among their children;
- ▷ Transfer to the poorest child: the parents decide to allocate their limited land to the child who is considered to be the poorest;
- ▷ Transfer to the first child: the parents give all their limited rice lands received through distribution in the 1980s to the first child. In addition, they give chamkar land that they cleared to their other children. It could be explained that the first/elder child was born before time of land distribution, or received land commonly with his/her parents. This case is another modality of the dichotomy between rice land and chamkar land.

The parents allocate land to all children if they have a lot of land

Mr. Leng lives in Ream village, Ream commune, Prey Nub district, and has six children. He is also a land keeper for an urban dweller. He owns around 8 ha of rice land. Of that amount, 1.80 ha was given in 1982 by a solidarity group. For his family, only four members commonly received land from the solidarity group. Four of his children got married already, and he gave 1 ha of rice land per child. His other children will inherit less land than their elder brothers because they are studying and the parents pay for thier studies.

The parents sell land for sharing the money to children (link between sales and landlessness through inheritance)

Mrs. Sam Noeun, aged 30 years, has three children and lives in Ream village, Ream commune, Prey Nub district. She has six siblings. Her mother received 1.5 ha of rice land from a solidarity group in 1982. In 1986 her father died and the local authorities took 0.5 ha back. Her mother decided to sell land (1ha) in 1993 to an urban dweller from SHV for 30,000 Baht (US$762) due to two reasons: the land is too small to distribute to her children and lack of food. She gave 2,000 Baht (US$56) of all money from land selling to each child and bought another 1 ha of rice land in Prey Nub commune and 1 buffalo. In 2000, her mother sold land due to illness and then became an agricultural landless farmer.

Land allocation to the daughter, who would look after for parents if the parents only have a small amount of land

Mr. Chreang has four children and lives in Ream village, Ream commune, Prey Nub district. During the land distribution by the solidarity group, his parents received 0.70 ha.. Currently, all his siblings are married. They did not receive land from their parents because their parents have only a small amount of land. He decided to allocate his land to his youngest daughter, who looks after the parents. He thought that his daughter would secure her livelihood without resorting to out-migration. This distribution was made in form of an oral contract.

Land is distributed to the poorest child

Mrs. Heng Lorn has six children and lives in Pou Thoeang village, Bet Trang commune, Prey Nub district. She has five siblings. Her mother received rice land 1.1 ha in 1983 from the Krom Samaki (solidarity group). During the land distribution only two members of the family received commonly, land from Krom Samaki. Her other siblings were born after land distribution. They are still young. Her mother distributed 0.5 ha to Mrs. Heng Lorn in 1990 and another 0.6 ha to keep for her two younger sisters because they are not yet married. Her two elder brothers did not want to inherit the land from her mother because they are better-off. They are living in SHV town.

Distribute all land distributed by the solidarity group to the first child

One householder lives in Ou Oknaheng village, Ou Oknaheng commune, Prey Nub district. During land distribution by the solidarity group in 1982, he received only 0.70 ha of rice land. Due to the small amount of land, he has occupied and cleared forest land to extend his agricultural land. The total amount of land which he has cleared is around 5 ha. In 1998 he distributed 0.70 ha which he received from a solidarity group to his elder son. He will distribute newly cleared chamkar land to other children. He distributed land to his elder son without a written contract.

The above cases show that the origin of appropriation (of land rights) can exert an influence on inheritance rights between land distributed by the state (administrative transaction) and land cleared by individuals (investment in labour).

Institutional arrangements (derived rights)

- **Loans of land**

The term 'loan' conveys the idea of land rights temporarily ceded against no explicit or codified compensation or payment. In SHV, transferred rights usually cover annual cropping. Thus, it does not cover tree planting or the delegation of rights to a third party. Landowners (he/she are often the buyers as we will see) can take back his/her land whenever they wish. In this case, a loan is the means of securing land acquisition and avoiding having to pay tax on unused land. In Prey Nub district, there are three different groups of landowners: local villagers, urban private dwellers and companies. We have observed differences between these groups in terms of the compensation acquitted by the tenant. In general, plots are loaned by urban buyers or companies without any payment while the tenant often gives paddy or other farm products to the owner if he is a fellow villager. In some cases, he can even refuse money when the landowner buys him farm products.

These differences show that loans among villagers are land transactions that are embedded in localised social ties (of neighbourhood, kinship, friendship, trust, etc.). When the lender is foreign to the villager, there is a sort of social dis-embedding of the transaction, or/and, as seen below, a re-embedding in broader relations of power.

In SHV, urban dwellers and companies have persuaded villagers (through allied land brokers) to sell land against the promise they would lend the land back to them (or other villagers) for rice cultivation. Moreover, those villagers who did not want to sell were threatened by expropriation or buying first the land surrounding villager's land. However, after having bought all the land they wanted, some companies did not honour their promise. After a while, the loan was turned into leasing without any negotiation. For example,

This occurred for instance in O'Oknha Heng village with 624 ha of rice land to be bought by the Chinese Company 'Chin Yin Minh' in cooperation with a rich Khmer man, Mr. Lim Mean Sok. Consequently, the transformation of this loan into leasing provoked protest on the villagers' side, often under the leadership of their chief of village. In this case the leasing was reverted to loan. It was explained that at the time of purchasing land the company promised to loan it to farmers without taking anything until the company constructed a factory that would employ villagers. However, at the time of the study in 2005, the company had asked village chiefs to collect land rental because it feared that villagers would re-occupy the land or claim for ownership. In a way, the shift from loan to rent expresses a strategy of asserting land appropriation, in a context seen as insecure, despite the high differential of power and wealth between stakeholders.

Actually, land loans are generally practiced 2-3 years after purchases and without a written contract. Since 2000, we have seen an increasing trend towards written contracts and a formalisation of the recognition by the village chiefs in order to prevent land grabbing or disputes. Both interviewed farmer groups – land (poor) holding farmers (FHs) and agricultural landless farmers (ALFs) – have asked for loans of land from land buyers for cultivation. Nearly 46% of FHs and over 41% of ALFs could access land through a loan. With regard to rice land in the polders, a rice production zone benefiting from the dam to prevent salt water intrusion, farmers have had to pay the water fee since 2001 when they are landowners (the polders were a pilot area for SLR; see Kibler and Perroud 2003, Le Meur et al. 2005).

In the polders, over the last five years, rice land could be loaned from the landowners in exchange for farmer's labour to clear land: such a land rights transfer is thus located on the edge between loan and relation of exchange of land and labour. The loan expressing the initial need for land clearing has been gradually changed into a rental system as there has been a high rice land demand as the result of the banning of deforestation in 1999 (limiting land clearing opportunities). Loans of land have thus declined, replaced by renting, or the landowner has taken his land back to plants or fruit trees such as acacia, teakwood, *kreusna* (*Aquilaria crasna*) jack fruit, mango, etc. In the case of land appropriated by urban dwellers or companies, the initial oral loans have been changed to written contracts of loan or leasing, as the owners wanted to secure their land holding rights. For example:

Mrs. Long Chiev, farmer of Pou Thoeung village, Bet Trang commune, Prey Nup district, sold 0.6 ha of land at a cost of 50,000 Bath (US$1,250) in 1992 because she thought that after she sold that land, the company would loan the land to her for cultivation. However, in 1993, the company started to collect land rental at 480 kg of paddy (US$50) per ha and season. This land renting also resorts to a contractual paper witnessed by the chief of village.

The Lim Mean Sok Company bought 624 ha of land in O' Oknha Heng commune. Then, the company loaned that land to villagers to cultivate rice and settle without contract papers between 1992 and 1998. In 1999, the company took a land rental fee from the villagers. However, in 2000, the company stopped taking the land rental fee. This was due to the villagers' protests. Also, the company had promised to loan land to the villagers for rice cultivation. However, in this year (2005), the company asked the village chief to make contract letters of land renting at 10,000 riel /year (US$2.5) for residential land and 50 kg of paddy per ha for rice land.

A Chinese Company bought 40 ha of chamkar land in O' Tapang village, O'Oknha Heng commune in 1993. Nowadays, the company loans that land to the villagers without contract papers but the villagers are not allowed to plant fruit trees (e.g. mango and jack trees).

The Hou Sin Thean Company bought 400 ha of land of in Pou Thoeung village and other villages of Bet Trang commune. After this company bought land in 1992, they loaned that land to villagers for cultivation without contract papers. Mr. Pak Sin has six children and lives in Pou Thoeang village, Bet trang commune. He sold 1 ha of rice land to the company in 1993 because the broker promised that the company will give the land back to him for cultivation. He sold the land at a cost of 30,000 Baht (US$750). Since 1993 he has cultivated free (in the form of a loan) on that land without a written contract. However, since 2004, after the construction of the salt water preventing dam he has to pay the water fee to the Water User Community instead of to the land owner.

A loan of the land of an urban dweller

Mr. Keat Saroeun, a member of the water users' community, has six children and lives in Koki village, Betrang commune, Prey Nub district. In 2001, he borrowed a plot of land from Mrs Lok Cheng, an urban dweller in SHV. He asked the land owner directly when she came to collect the rental fee from the villagers. The size of the land is 0.30 ha (degraded land) so he had to clear the shrub forest. He was able to cultivate on that land only for 3 years without paying anything to the land owner (since the time preceding the polders rehabilitation). This agrarian contract was made without a written contract, through a simple verbal agreement. After 3 years of use, in 2004, the land owner took the land back and sold it to another urban dweller.

Borrowers can also play on the ambiguities of the 2001 land law. For instance, they have occupied land since the time before the issuance of the new 2001 land law. Thus, they claim that they can apply for ownership because of their continued occupation since before 2001 (according to article 30). They resort to the articles 30 and 38 which state *"if the possessor has land: Peaceful, in good faith, notorious to the public, unambiguous in 5 years continuously and free lands do not register and are not belong to someone. The possessor has to be the ownership by legitimating."* However, this interpretive device can only work if the loan was made under a merely verbal

agreement. Occupying land for over 5 years does not automatically mean ownership, for instance, if the borrowing was processed with written contracts. The final result of the dispute depends in such cases, on the power asymmetries between the different actors involved.

- **Renting**

Land renting is a delegation of rights, more precisely, the delegation of use right to farmer tenants. Land renting occurs on rice land. It is practiced by three groups of land owners: companies, urban dwellers, and local land owners.

There are different rental arrangements depending on the category of landowners. Local large landowners tend to rent land to farmers without an intermediary, while companies resort to (private) land brokers or local authority representatives, then they act as brokers. Renting is practiced by the local landowner without any written contract, while urban landowners and companies use it in most cases, with formal written contracts that are recognized by the village chief or in some cases, by the commune chief. This strategy is a response to increasing land dispute cases. However, renting rice land from a relative remains practiced without written contracts. This means we find here **the same distinction as for loans between transactions between villagers that are embedded in localised relations of trust and accountability and those transactions involving outsiders who 'compensate' their lack of social relations with formalising practices and search for alliances with brokers and local authorities**.

Rental contracts are mostly made for a rice growing season although people speak of a 1-year period. The companies as land owners share 20% of the total collected rental fee with the land broker who then becomes the land keeper or local authorities in charge of rental coordination. However, some companies distribute all rental fees to the local authorities (50%) acting as land keeper and the pagoda (50%) in order to build a good relationship with local people. This process might also be linked to a political act to gain the confidence of people.

Leasing represents an important mode of access to land for poor and landless farmers. Nearly 46% of FHs and 59% of ALFs have rented in land for rice cultivation. The rental fee varies depending on the land quality and distance from the settlement areas. Rice land is classified into three different types: type I) rice land with rich soil in the proximity to the village (*sre leu*); type II) rice land expanded from type I; and type III) shrub and bush land or re growth shrub land, close to the dam preventing salt-water intrusion. The rental varies between 20 and 30 thang[42] (equivalent to US$50 and US$75) of paddy per ha for type I, between 15 and 20 thang for type II, between 5 and 15 thang for type III, or 5 thang for shrub and bush land. With type III rice land, sometimes the landowners loaned land to farmers, but the farmers were requested to pay water fees (about US$7 per ha) to the 'Water User Community'. The rental of rice land increased 75% compared to the last 5 years (1998-99) due to a higher demand for rice land and good growing conditions after the dam reconstruction, resulting in an increase in rice yields and production.

Local rules apply in the polders in cases of crop damage:

- ▷ In the case of damage to 50% of the rice harvest, the tenant can keep all rice products without paying to either the landowner or for water fees (normally paid by the landowner).
- ▷ In cases of crop damage, the water fee can be reduced according to the reality of each situation. However, farmers are requested to inform the Water User Committee before the harvest time. The Committee collects the water fee in collaboration with the commune authorities. Five per cent of the total collected fee is shared with the commune authorities (see Le Meur et al. 2005 for a discussion on the nature of the water fee; its basis being land ownership, we include it in this section although it is not a land rent).

[42] *A thang is a Khmer unit, equal to 24 kg of paddy. A thang of paddy costs 10,000 riels or US$US2.5.*

Rentals are paid at the end of the season or during the harvest. If villagers did not pay for rentals, the land keeper or commune authority will take the land back in order to rent it out to other villagers.

As mentioned above, loans tend to be changed into leasing after a certain period of land use. The company that has bought land from the villager loans it back to the seller or other villagers. After a period of 2-3 years, there is a shift to rental under the facilitation of the commune authorities or land keepers working for the companies (he can also be representative of the local authorities; see examples below). For example:

Mrs. Heng Lorn, a farmer in Pou Thoueng village, Bet Trang commune. She has six children. In 1995 she sold 0.70 ha of rice land to the company but she does not remember the name. However, the company loaned land back to her for farming without paying. Since 1998 the company has changed this arrangement from a loan to renting at a cost of 20 thang (US$50) per hectare without a written contract. This leasing was processed through the land keeper who collects the rental after harvest. In 2003-04, she faced crop damage. Then she requested the land keeper to reduce the rental amount to 3 thang (US$7.5).

The company of Yos Sokunthearny bought 100 ha of land in Pou Thoeung village, Bit Trang commune, Prey Nup district. Then the company rented land to farmers at a cost of 20 thang of paddy (480 kg or equivalent to US$50) per ha with written contracts coordinated by the land keeper. This rental contract has been recognized by the village chief and re-negotiated every year.

Mrs. Hong Sokha, with seven family members, living in Pou Thoueng village, Bet Trang commune. Due to a lack of food because she owns only a small amount of land, she rented in rice land from the company after she had sold her land. She has rented land since 2000 for a rental fee of 20 thang per hectare. The size of the land which she rented is 0.8 ha. At the harvest time the land keeper (a commune authority) collects the rental fee (in paddy). However, since 2002 due to drought and animal disease, she was able to harvest only 12 thang. Then she asked the land keeper to pay only 5 thang, but the land keeper did not agree and charged her 10 thang. Regarding the water fee, the land keeper will pay for it.

Mrs Heng Sokha, a farmer in Pou Thoeung village. She rented in 0.7 ha of rice land from the company. Moreover, she also rented another 1 ha of rice land from her uncle who lives in SHV town. Land renting from her uncle was made in 2004 through a oral agreement. The rental fee is 30 tang per ha. Even though the crop was damaged her uncle still charged her for it. For this year (2005) she has stopped renting the land from her uncle because it is not profitable for her.

In Ream and Bet Trang communes, the Thai Bunrong Company has rented land out to the villagers but it does not collect the rental fee for itself. Renting is through a written contract for one rice growing season or 1 year. All collected rental fees have been allocated, one part to the commune authority and another part to the pagoda committee. Land renting is arranged by the intervention of land keepers who are village and commune chiefs.

The legal basis for the intervention of commune authorities in this domain of agrarian contracts remains questionable. Several examples below show that local authorities tend to endorse a function in the enforcement of agrarian contracts which is not defined by law and often expresses collusions with private interests.

- **Sharecropping**

Sharecropping arrangements have strongly declined in Prey Nup district over the last 10 years due to land sales to outsiders, urban dwellers and companies. It remains practiced between farmers and their close relatives or neighbours as land owners for rice cultivation. **This observation confirms, from a diachronic point of view, the distinction between socially/locally embedded transactions**

and the social dis-embedding of transactions involving outsiders, or their re-embedding in broader power fields.

Sometimes, the land owners are urban dwellers, but some are also farmer's relatives. Sharecropping in this area is made without a written contract, and for a growing season. However, it can be an open-ended arrangement of sharecropping or a close-ended sharecropping contract for a defined period of time with an option to renew every year before the next growing season. Two main types of sharecropping arrangements are observed, depending on the contribution of assets of the two parties (as summarised in the table below, at the end of this section on derived rights):

- If the landowner only contributes land (and pays the water fee), the product is shared at the rice harvest time according to a 2/3 or 1/3 rate: two thirds for the sharecropper, one third for the landowner.
- It is equally shared between the two parties if the land owners contribute to rice seed and pay for land preparation services. For example:

Mr. Uk Sam At, who lives in Prey Nub I village, Prey Nub commune, Prey Nub district owns around 5 ha of rice land which he received from a solidarity group, clearing and buying. In 2004, he made a sharecropping agreement with Mr. Tem Chun, a villager who has land nearby. He practiced sharecropping on 1 ha of rice land without a written contract for 1 season but spoke of 1 year. The landowner contributes rice seeds and expenses on ploughing costs, and the tenant, Mr Tem Chun, is responsible for other expenses such as transplanting, weeding, harvesting and water fees. Last year, he harvested 45 thang from the total paddy product of 90 thang, and the rest was for the landowner.

Mrs Ngoun Samet is 36 years old, has two children and lives in Prey Nub 3 village, Prey Nub commune, Prey Nub district. She migrated from Kampot province and does not own land. Since 1999 she has practiced sharecropping on 2 ha of rice land without a written contract for her aunt who lives in SHV town. At harvest time, she gave one third of total paddy products to her aunt. Her aunt is responsible for paying water fees to the water user community.

Mrs. Mak Kim, a farmer of O' Tasek village, O' Oknha Heng commune, Prey Nup district, has practiced sharecropping on 0.5 ha without a written contract with his relative, as land owner. In this sharecropping, the landowner provides land, contributes rice seed and land preparation with his draft animal. The tenant or farmer contributes only labor for other growing techniques. For expenses from other production costs such as harvesting and threshing are shared equally. The paddy harvested product is shared 50:50.

- **Land pawning**

Land pawning is still practiced in Prey Nup district, but this practice has declined. If somebody needs money urgently or faces serious problems, he can pawn the land to another villager, a money lender or to a relative. This form of land transfer usually does not entail any written contract. There are however, cases of written contracts made with the recognition of the village chief. The money lenders provide cash loans in exchange for access to a plot of land. Pawning is short term arrangement; usually covering 2-3 years depending on the agreement. If the money borrower cannot reimburse the debt, the money lender will continue to use this land. Nonetheless, the villager will not lose his or her land, and he/she can reclaim land anytime after reimbursement takes place. The plot of land thus acts as a guarantee for the loan, while the cultivation rights serve as a form of interest payment on the granted capital. In some cases, the land owner requested additional money from the money lender, re-conducting the credit and thus the pawning of land. If the borrower cannot reimburse, the pawning transaction will end as a land sale. For example:

Mrs. Meng Loam, a villager in Koki village, Bet Trang commune, Prey Nub district. In 2005, has pawned 0.50 ha of land for 3 chi of gold (about US$161) to her aunt living in the same village because she urgently needed money to cure the disease of her child. This arrangement was made without written contract because she said "her aunt cannot grab her land" (once again, the localised relations of trust/accountability). The duration is 3 years. After 3 years if she cannot reimburse the money, her aunt will continue to cultivate the plot of land as long as she has not paid back. The end of the story is still not known.

Mrs. Kong Kaom, a widow with three children, lives in Pou Thoeang village, Bet Trang commune, Prey Nub district. In 2002 she pawned 0.70 ha of rice land to a villager in the same village for the amount of 200,000 riels (around US$50) to cure an illness and buy food. This pawning arrangement was made without a written contract. She promised that she would reimburse the money after 2 years. After 2 years, if the debt is not paid the money lender would continue to cultivate on this land. Up to date, she has not received the land back.

- **Agrarian contracts and derived rights in Prey Nup district**

The diverse modalities of accessing land through agrarian contracts and institutional arrangements give shape to a wide array of derived rights in SHV. They are summarised in the following table with a mention of vernacular terms.

Agrarian contracts categories	Rights transferred	Other conditions
Open-ended loans (*kar oay dei theu sen*)	Cultivation rights (in particular rice Without written contract	Loan as measure to secure land and release from tax on unused land. Urban dwellers and companies loan (rice) the buying land to farmers or land sellers or land brokers, in most cases without written contracts. However, farmers or borrowers of rice land in the polders have to pay water fees. Loans, mostly in 2-3 years after land sale. Newcomers or immigrants borrow land from local villagers. For some cases, borrowing land from their sibling led to land dispute as the borrower thinks that he occupied land before the issuance of the 2001 land law. Loans of rice land of the big land buyers as urban people or companies have changed to written contract and are recognized by the chief of village as witness and broker. The company promised to loan the buying land to farmers for rice cultivation until the establishment of factories. Then villagers will be employed, as a process of persuading villagers to sell their land. Exchange of labour in order to keep and clear land, but some land keepers work for landowners when they are needed.
Loan for a definite period of time (*kar oay dei theu sen te mean kamnot pel*)	3 years usage for rice growing	Loans from urban dwellers in exchange for labour to clear rice land in the polders, without written contract. After 3 years when the agreement ended the owner took the land back. Many of them sold land to other urban dwellers.

Renting, access to land for a fixed fee of rental payment (*kar chuol dei)*	Cultivation rights. Verbal contracts or without written contracts. Renewable at start of each season.	Loans were changed to monetary transfers of leasing which required written contracts with the village chief as witness in order to secure land. Local big land owners have rented land out to farmers directly, while the companies have rented land out through land brokers or local authorities. Renting is practiced by local land owners without any written contract, while for urban land owners and companies, todate, most land has been rented with formal written contract and recognized by village and commune chiefs as witnesses as the consequence of increasing land dispute cases. Mostly, urban dwellers or companies bought land from villagers, and have derived use right back in form of loan to villagers or land sellers as promised. After a period of 2-3 years, loan arrangement has been changed to rental through the commune authorities or land keeper. Rental amount ranges from 20 to 30 thang of paddy or (US$50 to US$75) per ha and rice growing season. No right for plantation and the owner can take the land back whenever they want. In the polders, in case of rice damage in excess of 50%, the tenant can keep all rice products without paying either to land owner or for water fees.
Sharecropping (*kar thveu sre Chek phal khnea*)	Cultivation rights, shared paddy harvest depending on arrangement made. Sharecropping for a definite period of time with an option to renew every year before the growing season.	Strongly declined, it remains practiced between farmers and their close relatives or neighbours for rice growing. Payment after rice harvest, paddy is shared: - 2/3 shares for farmer and the remaining 1/3 for land owner. The owners pay for water fees. - 50:50 for each party if landowner contributes: 1) rice seed and pays for land preparation; or 2) rice seed, land preparation with his draft animal and 50% of costs for harvest and threshing. Arrangement without written contract.
Pawning *(kar banhcham dei)* (antichrèse)	No right to sell but the money owner can rent or transfer the use right to a third person. Land acts as a guarantee for the loan, while cultivation rights serve as a form of interest payment on the granted capital. The money lender gave land back after receiving money. In some cases, the land owner requested additional money from the money lender, and at the end of the process it will be changed from pawning to sale.	Still practiced in Prey Nup district, but not often. Between their relatives, between villagers and neighbors. Practiced without written contract. In some cases, with written contract and recognized by the chief of village as witness. Short term arrangement, usually covers 2-3 years depending on the negotiation. Money lenders continue to use land until the landowner pays the money back. Some money lenders decided to accept pawning of land located close to their land because of the optimization of cultivated land size and easier management. Pawning made by their relatives (intra-family) occurred without written contract, while pawing to neighbors was with written contract between both parties without informing the chief of village.

Land Sales/purchases

Land sales have been attractive in the industrial and tourism development zones. The price of land has varied according to locations and the presence of development projects. This started in 1990, shortly after the shift to the market economy, and land prices peaked in 1995-96 due to the increasing land sales and investments. At the national level, land sales peaked in 1996 when the country achieved maximum economic growth (see also Chan Sophal et al. 2002). In SHV, land prices have increased as a result of increasing demographic pressure due to intense immigration, of foreign investment on land for the establishment of a SEZ in O'Oknha Heng and of speculation. Many outsiders and urban dwellers from SHV, Phnom Penh, Kampot and Kampong Speu purchased both rice land and *chamkar land* in the foothill areas between 1993 and 1995. Most plots were loaned on an unconditional basis in exchange for labour to clear and keep land as well. However, rental arrangements have increasingly replaced loans, as an expression of the highly uneven distribution of bargaining power between buyers/owners and sellers/tenants (see above on the relations between land sales, loans and leasing).

In Prey Nup district, land speculators and brokers represent different categories of social actors. The former are generally urban dwellers, the latter often representatives of local authorities. Both however, are considered by local people as powerful men who could persuade – meaning all too often, by threat – to sell them their foothills land. The urban 'big men' and companies' tactic was to first buy the land surrounding the village before threatening local farmers in order to convince/force them to sell their land at lower prices. Between 1993 and 1995, the price varied between US$130 and US$280 per ha for newly cleared land in the foothills, and between US$260 and US$3,000 for rice land according to location and road proximity. The land value has increased between nearly 300% and 900 % in the last 10 years. The price of orchard land or tree plantation is up to US$8,000 per ha.

In Prey Nup, farmers sold all their *chamkar* land and parts of their rice fields between 1993 and 1995 to urban dwellers whose names remained mostly unknown to the villagers and village chiefs. Plots of land have changed hands without registration at the office of registration unit, usually through the action of third persons as land brokers. The sale contracts and letters of land right transfer are processed and registered at the commune level. However, land speculation sharply declined and disappeared in 2000. One reason for this is the overall decline of private investment in the area, added to the fact that a large amount of land was already in the hands of urban dwellers. This does not mean however, that there is no land selling (non speculative) between local farmers.

With regard to the formal land sale process, this land changes hand from the occupants to the land buyers. If the occupants have no legal land documents the land transfer occurs in two different ways depending on the land size[43]:

- For a plot of land under 1 ha, the land sale has to be registered at village and recognized by commune level and the contract of sale has to be formalised in writing.
- For a plot of land of more than 10 ha, the sale contract between land buyer and land occupant or owner has to be formally registered at the district office and cabinet of the municipal governor.

This classification of land size for transfers/sales does not refer to the 2001 land law.

[43] *Result obtained from the stakeholder workshop in SIHANOUKVILLE, Dec. 2004.*

Article 65 of the 2001 land law states that the transfer of ownership can be enforceable as against third parties only if the contract of sale of immovable property is made in writing in the authentic form drawn up by the competent authority and registered with the cadastral registry unit. The contract of sale itself is not a sufficient legal requirement for the transfer of the ownership of the subject matter.

Land conflicts

In Prey Nup district, the reasons for many cases of land conflicts relating to land transactions are:

- Land encroachment on private land.
- Grabbing public land.
- Encroachment on land claimed for ownership by military.
- Overlapping of the protected area of national park on village rice land.

In Prey Nup and other communes, four serious cases of disputes have occurred since 2003 during the systematic land registration (SLR), between a group of ex-land owners (local authorities, villagers and powerful men living in urban areas) and the new landowners (newcomers settled in the early 1990s) over rights to rice land in the polders. Those disputes remained unresolved even though they were brought to the NCC in Phnom Penh with ADHOC assistance. The four disputes are:[44]

1. Dispute between seven 'big men' (government officials and urban people), as former (old) land owners, and a group of villagers/farmers as new owners (new comers in the early 1990s) over 126 ha (seven blocks) of rice land in the polders (the case is described above in the section on 'land clearing').

2. Dispute between local authorities (former owners) and a group of villagers/farmers (new owners) over 48.6 ha of rice land in the polders.

3. Dispute between local authorities, including villagers as former owners, and a group of villagers/farmers as new owners, over 106 ha of rice land.

4. Dispute between a group of villagers and local authorities, including powerful men, over 50 ha of rice land.

These conflicts between former and new owners show that individuals can manipulate the legal ambiguities and gaps existing between the 1992 and 2001 land laws, which leave room for diverging interpretations. The result of such disputes depends on the uneven distribution of power and social capital among the actors involved.

Article 76 of the 1992 land law states that, "any land that a possessor has abandoned for three consecutive years shall become the private domain of the state." However, officials say that the 3-year abandonment rule does not apply to land to which a person has legal certificate. Article 70 of 1992 land law: "The act to keep a low-yield soil in order to make it fertilized cannot be considered as abandonment". This article was repealed by the 2001 land law.

[44] *Case study by LAND and RAND groups on 17 September 2003 and monthly meeting.*

Since July 2005, there have been three serious transaction-related land disputes in Prey Nup district:

1. A protest of 155 families of Thmor Thom village, Ream commune against the grabbing of a public lake (*Boeung Kang Kep*) or river (*Prek* Ta Ong) for ownership occurred in April, 2006. They urged the municipal governor to prevent land grabbing and to preserve the natural lake/river for community fishing, as the source of household income of a thousand families in two communes: Ream and Bet Trang (RK, 26 April, 2006 and field study).

2. A dispute between two commune councillors of Bet Trang and a group of villagers (more than 100 villagers) over the accusation of selling peoples' chamkar land.

3. A dispute between the military and a group of farmers of around 100 farm households in Bet Trang commune over rights to chamkar lands that have been cleared since 1996.

First case: what was at stake here was the conversion of public land/lake used for fishing by local communities into private ownership, causing people to lose their daily income from fishing. The content of the protest is interesting: local populations turned to the state – here, the municipal governor – to protect public land (the state estate) against grabbing and privatisation. As far as the law is concerned, **the 2001 land law creates three types of land classification: State Private, State Public and Private land. State Public Property (Art. 15 and 16) is land held by the state in public trust, which carries a public interest use. It includes the properties of a natural origin, such as the permanent forest reserve, floatable waterways, lakes, etc.** It is important to note that State Public Property may not be sold or transferred to other legal entities, though it may be subject to rights of occupancy or use that are strictly temporary in nature.

Second case: conflict between two commune councillors of Bet Trang and a group of villagers (more than 100 villagers) over the accusation of selling peoples' chamkar land

More than 100 people in Bet Trang commune, Prey Nup district filed a complaint (with thumb prints) to the court in relation to two Bet Trang commune councillors, namely Mr. Kuy Nen and Mr. Sam Pha. The people accused them of collusively and illegally selling the peoples' chamkar land which is located about 10 km away from NR 4. The people involved in the conflict said that this land was previously densely forested and populated by ferocious animals; they started to clear forest for cultivation in 1995 and have been farming up until now. Unfortunately, the land was measured (surveyed) and sold by the two councillors. Mr. Kuy Nen denied having done this. He would just have accompanied land owner to visit the land. He means that this land currently used by local farmers actually belonged to the man who holds a certificate of land possession and use. He added that the claimants are in fact only people who have been illegally occupying this land. (RK, 04 June 2005 and case study).

Regarding the violation of private land in this commune, the provincial court ordered to arrest five officials in September 2006, including officials of Prey Nup district office of land management and the chief of Bet Trang commune. Today, two accused are arrested, and are waiting for the court ruling (RK, 07 and 15-16, Oct. 2006).

Third case: conflict between soldiers and a group of farmers of around 100 farm households in Bet Trang commune over rights to chamkar lands that have been cleared since 1996

The conflict between a group of soldiers and 100 households on forest land in Phnom Roung located in Chrang Krahorm area occurred with gun and rifle (B 40) in order to sweep people out of the disputed land. On 29th March 2005, around 10 soldiers arrested three people (two men, one woman) and illegally and seriously punished them when they went to do chamkar (grow) on the disputed land. After that, three people were evicted from the chamkar land. The 100 families have cultivated on the chamkar land for 10 years (since 1996) and grow fruit trees such as coconuts, jack fruits and mangos but they had never met problems. On the same day (29th March), 10 soldiers entered the area and threatened people by saying that the land belonged to them. They

confirmed themselves that they liberated from the Khmer Rouge and they do not allow any person to grow anymore on this land. (RK on June 04, 2005). On July 8th 2005, the Bet Trang Commune chief, Mr. Sgnuon Chom, affirmed that land owners (he means the soldiers) will compensate people for land clearing and crop loss at US$50 per hectare. This resolution was made with only five families. The remainder has not been resolved yet. During the conciliation process, the commune councillors did not show up and later on, they received records (written papers) with the signature of both parties from the soldiers. People would have received compensation. The representative of the victim households said that the group of soldiers promised to give an addition of US$300 to the US$100 for medical treatment. However, until now people have not received any money. They received only 50,000 riels at the beginning. LICADHO's agent based in SHV confirmed that they hadn't received any complaint from either side, yet. (RK, June 04, 2005)

On July 18th, 2005, about 100 people in Bet Trang commune rented a taxi and travelled to the house of the Prime Minister Hun Sen to ask him to intervene in the conflicting land dispute. However, they were flanked by the police. (RK, 19 July 2005).

Another serious case of a land dispute in Prey Nup commune/district regards the illegal occupation of land in areas of natural eco-system conservation. It is suspected that delineation and demarcation of the national park of Ream have been done without a field survey or investigation on the ground. People would possess land for cultivation before the national park was created with the issuance of royal decree in 1993. To date, people are requesting their rights to land ownership, but this has been refused by the authorities. In any case, the latter cannot intervene as long as the government has not reviewed the boundary of the national park. We have learned that people living in village of Bot Koki, O Oknhaheng (O Oknhaheng commune), Boeung Taprum and Boeung Tasrei (Boeung Taprum commune) have been occupying 650 ha[45] of land in the national park for cultivation since 1980s via distribution by local authorities and clearing.

In the case of unresolved disputes in the polders, many land occupants do not agree to pay water use fees even though they have cultivated rice, unless they receive land titles, which cannot be done in those areas formally included in the national park.[46] According to the regulation, land owners have to pay water fees.

Experiences in other areas in Cambodia have shown that in cases of land conflicts between people and powerful men or government officials, the former generally lose unless the Prime Minister Hun Sen intervenes (Pel Sokha et al., 2004). During the national meeting on food security in 1999, he used to warn powerful individuals and rich people who illegally hold and fenced on land, and land grabbing: "If these cases could not be eliminated a farmer revolution will happen against the government." However, large areas of land are concentrated in the hands of 'big' /powerful men and land grabbing could not be prevented. In particular, in the new areas, land is still cleared even though the forestry law in 2002 banned the cutting of new forest trees. The government has obviously failed to deal with land disputes so far.

In 2004, in his speech, the Prime Minister Hun Sen urged rich and powerful persons to give up any land they had acquired illegally. On September 01, 2005, during the inauguration ceremony of a tree nursery in Svay Rieng, he made a statement about the confiscation of 220,000 ha of state-owned land that was illegally grabbed. Hun Sen's statement also supported the enforcement of the article 18 of the 2001 land law.

In the villages and communes we have investigated (Bet Trang, O'Oknha Heng and Prey Nub), there were other types and causes of land disputes which related to land transactions:

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[45] *Result of the workshop in Sihanoukville on March 2004. Data from Jean Marie Brun, coordinator of rehabilitation project of polders of Prey Nup (GRET).*

[46] *All owner of rice land in the polders have to pay 28,700 riel ($US 7.2) per ha and season to the Polder User Community. Water fee is not collected from the tenant.*

- Conflict between villagers and soldiers with regard to illegal land encroachment and land expropriation.
- Conflict between four parties: villagers (land owners), land borrowers, the first land buyer (military) and second land buyer (wealthy people) related to buying by instalment, sale of land with unclear right and loan.
- Conflict between villagers and a company (through land broker) over encroachment on the rice land of villagers (land size on certificate of land possession larger than the actual size).
- Conflict between land buyer and land owner over double sale of land (to two different buyers).
- Conflict between brother and young brother in-law over a loan of residential land.
- Conflicts between villager (occupant) and villager (former owner) over right claims on rice land.
- Conflicts between new land owner/occupant (new comers) and land buyers (owners) over land right outside and within the national park.

Conflict between four parties: land owners (villagers), land borrowers (villagers), the first land buyer (military) and the second land buyer (wealthy people) related buying in instalment, sale of land with unclear rights and loan since 1998

The chiefs of village reported that this conflict occurred in 2005 on 15 ha of Chamkar land in Pou Thoeung village, Bet Trang commune, Prey Nup district due to the illegal expropriation of land. He added that villagers of 13 families in Pou Thoeung and Chamnoat Ream villages (Party A) cleared forest land in Pou Thoeung village in 1989 and applied for a receipt of land possession in 1990. In 1995, the soldiers (Party B) threatened those families to sell that land to them at a price of US$200 /ha. After party A sold that land, they did not receive money, not even the deposit. They waited for a long time for the money from the selling of land but did not receive it. Thus, they went to ask chief of commune and made a letter with him indicating that they, party A, had not received any money yet. In 1998, there were 10 farm-families (Party C), living also in Pou Thoeung and Chamnoat Ream villages, who borrowed that land from the chief of village and party A to cultivate. Also, the process of borrowing was not written down. In March 2005, Mr. Thai Uy (Party D),claimed that he bought land from the military and told Mr. Nop Ven, his land keeper and as villager of Chamnoat Ream village, to file a complaint to the commune to get that land back because he (Party D) bought it from the military. Mr. Thai Uy claimed that land from those villagers. However, villagers of 13 families (Party A) did not agree. Moreover, villagers who asked for loan of that land to cultivate (Party C) also claimed that land for ownership and they committed to settle on it for ever, whatever happens. Until now, this case of conflict remains unresolved.

The land borrower claimed for ownership, relying on the fact that he occupied and used this land before the issuance of the 2001 land law (Art. 30). He uses article 30 which states, "*any person who, for no less than five years prior to the promulgation of this law, enjoyed peaceful, uncontested possession of immovable property that can lawfully be privately possessed, has the right to request a definitive title of ownership,*" and article 38, "*In order to transform into ownership of immovable property, the possession shall be unambiguous, non-violent, notorious of the public, continuous and in good faith.*" However, occupying land for over five years does not automatically mean ownership if borrowing was processed with a written contract.

Conflicts between the occupant and the former owner (both being local villagers) over right to rice land

Both conflict parties and people in O' Tapang reported that the conflict of rice land occupation occurred in 2000 in O' Tapang village, O' Oknha Heng commune, Prey Nup district during the SLR between Mr. Tith Noeun (Party A) and Mr. Prum Pha (Party B) who both live in O'Tapang village. Party A, who has cleared that land since 1987, reported that his 0.4 ha of rice land was grabbed by Party B in 2000. Thus, Party A filed a complaint to the chiefs of village and commune seeking their

intervention. However, there was no resolution to date. Consequently, Party A filed a complaint to an upper institution, the SHV municipal court. However, the court sentence ruled in favour of Party B. There after recognised as landowner. Party A re-asserts he has cleared shrub land in 1987 for rice cultivation since that time without any complaint from another person. While clearing land, Party B did not ban Party A from clearing. But in 2000, he applied for ownership of that land.

With regard to the dispute between the occupant and the former owner (both being local villagers), article 76 of the 1992 land law is the key text. The former owner received land through distribution in 1980s but abandoned it afterwards leaving it unexploited until the shrubs have re-grown. However, he had received a written document from the local authorities. The poor land villagers who became the new owners cleared land for rice cultivation since the end of 1980s (or 1996?) until 2000 (without any formal recognition at the village or commune levels). Thus, the judgement should refer to the 1992 land law, not the 2001 land law. **The article 76 of the 1992 land law states that any land abandoned by its possessor during three consecutive years shall become part of the private domain of the state. However, this measure was abolished by the 2001 land law, thus creating a legal gap, or at least allowing a strategic choice between both legal frames of reference.**

Similarly, conflict between villagers (who can be displaced people or occupants) and land buyers, the actual owners, over land right in the national park was a complicated matter. It involved three parties; farmer-occupants (displaced peoples), urban dwellers (the land buyers) and the National Park of Ream belonging to the state domain. Referring to the article 76 of 1992 land law, the land should belong to displaced people. However, the land buyers have land documents. For instance, the wealthy urban buyer has obtained a certificate of possession of immovable property after he bought the land from villagers. However, the national park, which was established by a Royal Decree in 1993, overlaps the plot and is the owner within these boundaries. In this case the 68 farm-households lost their ownership of land, but they have use rights for cultivation (see case below).

Conflict between new land owner/occupants (newcomers) and land buyers (actual owners) over land rights in the national park

The vice chief of village and O' Oknha Heng villager reported that this conflict occurred in 2005 in O' Tasek village (O' Oknha Heng commune, Prey Nup district) between land buyers and villagers because the land buyer had violated villagers' land. He added that between 1992 and 1998, there were farmers displaced from Kampong Trach district (Kampot province) to be resettled in O' Tasek village. They had cleared forest land for housing and rice cultivation. Some farmers asked the permission of the village chief and some had not. In 1998, the village chief told them that this land belonged to the Ream National Park. They stayed there notwithstanding. In 2005, urban dwellers hired labour to fence that land. This caused a dispute with 68 farm-households. Those farmers did not file complaints against the land owner/grabber because of the landowner's social and economic capital. That land was bought by an urban dweller in 1989-1992 but was unused and abandoned until 2005.

This case strikingly illustrates the multilayered nature of property relations in land, both in terms of discrepancies between successive legal texts and of the history of settlement, land clearing and occupancy. Conflicts arise out of discrepancies and contradictions between these layers of texts and of people.

Stakeholders' groups in land issues

As seen in the other provinces (see the approach and policy chapters for elaborations on the topic), brokerage and intermediary actors are a widespread phenomenon as far as land transactions are concerned. We can distinguish brokers involved in the transactions themselves, especially sales and purchases, and intermediary actors playing a role in the access to the regulatory framework: legal and administrative brokers helping actors access to legal information and public authorities. One must also analytically differentiate the brokerage as social function from the brokers as social actors. With regard to land transactions for instance, brokers can be private people or public authorities' representatives.

- **Brokers involved in land transactions**

As far as land sales and purchase are concerned, there are different profiles of land brokers: village chiefs, commune councillors, the military/police and villagers. **Land brokers can be private people or public authority representatives, they can also be more or less local people or outsiders to the local arena**.

The commune councillors play an important role in resolving land conflicts. Besides, they act as land brokers for economic reasons. The money they receive from land brokerage is reinvested in new purchases of land for speculative purposes. They buy land to sell to urban dwellers from SHV and Phnom Penh.

One can also observe **alliances between local and urban brokers** in order to gain a broader access to information on both potential buyers and sellers. Moreover, the representatives of local authorities have in-depth knowledge of the local land situation, which gives them a comparative advantage when they act as brokers.

The different categories of buyers have different strategies with regard to land brokers. Urban land buyers buy rural land through different brokers, while companies buy land through the intervention of local authorities because they can buy large tracts of land, especially through a mixture of persuasion and threat. The broker can receive 5% of the total land value. Brokerage fees can be higher for the companies. **When the loan is turned into a rental arrangement after two or three years (see above), brokers, in cases where they are village chiefs, commune chiefs or police, receive a part of the rental fee; up to 20% of the total amount**.

In the **brokerage process**, the local land brokers first go to meet land brokers in urban areas in the search for land buyers or land demands. After knowing the size, location and proposed price, they return to the village to persuade villagers to sell their land. Urban people or land buyers come to meet local brokers to make first contact, to seek villagers who want to sell land. Otherwise, the local brokers know the local situation well. The buyers also tell them about the size and location they need. When they have succeeded in convincing land owners to sell their land, in some cases, they arrange a meeting between both parties to negotiate the price. In most cases, the land sellers never meet the buyers from the beginning of negotiation until they receive the money. When both the sellers and buyers agree on the price, the land brokers prepare a contractual document of land sale. The village chief acts as a witness and the commune chief gives formal – if not legal – recognition to the sale. However, there is an objective alliance between land brokers and commune chiefs or councillors in land sales/purchases. Often, land brokers deposit some money to land sellers as a guarantee of land purchase. After making the contractual document of land sale, the local land brokers (villagers) take that document to meet the land brokers in urban areas and

bring the money to land owners. The land buyers' and brokers' strategy – persuading farmers/ landowners to sell their lands – leads them to purchase (often at a high price) the land surrounding a plot that the owner does not want to sell. In this case, the villagers have to sell land at a lower price because of the current barrier in accessing the plot. The costs of preparing the contractual document of land sales are borne by the land buyers. Then, after a few days, or one month later, they usually obtain the receipt of land possession with the change of name and the sale contract. The final payment is made at the time of receiving the receipt of land possession and sale contract.

Brokers operating at the village level build alliances with commune councillors to facilitate the process for a brokerage fee of 5%, excluding the cost of land transfer paid to the district registration unit.

Nowadays, it seems that the importance of land brokers has decreased. Land sales/purchases are more rarely processed through brokers because urban people tend to look for land sellers by themselves and they negotiate directly by phone with the landowner. **Another emerging trend is represented by land brokers who are directly hired by companies willing to buy land and acting both as brokers and then land keepers (collecting rental fees)**. For example:

Mr. Pho Chham, a policeman based in Tuol village, Teuk Laak commune. He has four children living in Chamnoat Ream village, Bet Trang commune, Prey Nup district. He is also a farmer. Besides his job as a policeman, he is also a land broker who buys land in Bet Trang commune for the Chinese Company, 'Ho Sin Thien'. Moreover, he is in charge of collecting the land rental fee for another company 'Yos Sokuntheary'. Thus, he earns 20% of total collected rental in-kind of paddy.

Mr. Pon Bun and Mr. Song Bo are commune councillors of Prey Nup commune. They play an important role in resolving land conflicts. Besides this, they act as land brokers to increase their income. The money they receive from land brokerage is reinvested in land purchase and speculation. They buy land and then they sell it back to urban dwellers from SHV and Phnom Penh.

These two examples show the key role of land brokerage in connecting both private entrepreneurship and public authorities, and rural and urban spheres.

- **Formal and informal politico-legal institutions**

The regulatory framework applied to land tenure in SHV is constituted by a multiplicity of stakeholders: the ministry of land management, human rights organizations: ADHOC, LICAHDO and CSP (Coalition Sangkros Phothochon), and GRET as a development NGO. This is a clear expression of the **institutional pluralism** already mentioned.

Ministry of land management (including the national cadastral commission-NCC)

Identifying the land registration process led us to understand the nature and the limits of government intervention in preventing and resolving land disputes and also preventing them from losing their land. LMAP is a project based in the Ministry of Land Management and responsible for the implementation of the SLR in the Commune *(Sangkat)* of Teuk Laak in Prey Nup district, while GRET funded the land registration in the polders in order to facilitate the collection of water fees. There are two modalities of land registration and titling: sporadic land registration and systematic land registration:

- Sporadic land registration: This was conducted following the land registration campaign in 1992-93, particularly for land in the urban area of Mittapheap district and for residential land in Prey Nup. Many powerful men or large land owners have benefited from this phase of sporadic land registration and they have held certificates of possession for rice land in the polders in Prey Nup district since 1992-1993.
- Systematic land registration (SLR): This was conducted first in 1999, in Prey Nup district, SLR (pre-LMAP) in the polder zones benefiting from the dam preventing salty water intrusion. A

land registration project was implemented by LMAP-staff[47], and funded by GRET in order to facilitate the collection of irrigated water fees. 22,458 plots or about 10,000 ha of rice land in the polders of nine communes of Prey Nup district were registered but only nearly 90%[48] were titled. Titles were released to people in 2003. The land titles were not issued for disputed plots and occupancy rights were not clear (also in the part of the polder 1 unfortunately included in the Ream National Park boundaries).

Since 2003, LMAP has conducted an SLR for land outside the polders in Sangkat (commune) Teuk Laak, and in 2005, the SLR team planned to register 28,200 plots in Prey Nup district. However, up to August 2005, only 33 % of the plan had been achieved[49]. The titling process was delayed due to two constraints:

1. The large areas of unexploited land bordering villagers' residential or rice lands and those belonging to high ranking officials or urban dwellers. In this case, the SLR team faced the problem of inviting such owners to come for thumb printing or signing to recognise the plot border.
2. The plots of land are in conflict. Many cases of land disputes remain unresolved even though they were referred to the NCC in Phnom Penh, particularly those disputes over land rights between the new owners (occupants) and the former (old) owners (see cases above).

Many cases of land dispute remain unresolved even though they were brought to the NCC in Phnom Penh. The NCC received a total of 4,000 cases of land disputes up to October 2006[50], with over 37% of the total cases involving government officials[51]. The NCC resolved 889 cases between 2003 and 2005, out of 3,257 cases (RGC, 2005). However, systematic land titling is time-consuming, and faces a lack of technical competence[52].

National Cadastral Commission (NCC)

The NCC received complaints of land dispute cases involving 'big men' during a public display of systematic land titling in 2003, but they have not been resolved so far. However, officials said the former (old) land owners have certificates of land possession and thus should be the land owners. However, maybe the NCC fails to resolve disputes involving high ranking government officials because of the political (and economic) pressure exerted on the commission.

Provincial Committee on Forest Clearance and Encroachment

On May 29, this committee declared an expropriation of 9,444 ha of forested land (6,971 ha in Prey Nup district), referring to *Botbanhchea* (Regulation) No 01, and Deika (decision) of the municipal authority. Most of the newly cleared land has a title issued in 2005. The military unit of the municipality has 2,700 ha with a title issued in 1996, and some of land occupants have only a letter attesting the land right transfer. In this case, the land owner can complain within 30 days.

ADHOC, LICAHDO and CSP (Coalition Sangkros Phothochon)

The three human rights NGOs have tried to assist people by organizing training on land law and workshops on land issues. They have helped people involved with land disputes over how to file complaints, and monitor complaints that have been referred to the court or the cadastral commissions (CC). Sometimes, they monitor the land dispute process and help people who have

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[47] *LMAP is the project the department of land management and administration of the Ministry of Land Management Administration Urban Planning and Cadastre.*

[48] *Samne Thmei, 03-16 Jan. 2005 (Municipal New Daily in Khmer).*

[49] *Data obtained from LLIN (currently LAND) meeting on 26 August 2005.*

[50] *Data obtained from LAND meeting on 19 Oct. 2006.*

[51] *Franz-Volker Müller, GTZ head of LMAP, reported during the meeting on 16.Sept.2005 with LAND.*

[52] *RK, 22 April, 2005 and report during LAND meeting on 28 Jan. 2005.*

been arrested. They negotiated with companies or land owners to compensate people who have had to move off the land. However, they also complain of a lack of cooperation from the CCs.

Land inequity

The analysis of land inequity helps us visualise the high degree of land concentration which seems to be the main characteristic of landholding distribution in Prey Nup district. 26% of interviewed FHs, who each have 1 ha or less, occupy about 5.5% of total land. Around 37% of FHs hold land more than 3 ha each and occupy around 66% of total land. However, a Gini-coefficient (0.44) confirms the conclusion that 20% of FHs investigated own around 5% of total land, while another 20% own around 50% of the total area. Some farmers have also sold land and become ALFs.

- **Agricultural landless farmers**

In our study, agricultural landless farmers (ALFs) are defined either as farmers who have never had farm land and/or as those who had to sell all their agricultural land to meet an immediate need for cash. Among the three communes studied (Bet Trang, O' Okha Heng, and Prey Nup), on average, nearly 52% of total households have no agricultural land. In Bet Trang commune, the number of ALFs is very high (74%) because there has been a high incidence of land sales, and the commune is crossed by NR 4 and located close to urban development areas.[53] The main reasons that farmers do not have farm land are: immigration from other provinces (73% of interviewed ALF), selling (under the pressure of strong persuasion and threat, 27%), crop damage (13%), illness (7%) and other reasons.

The first factor (immigration) shows that no inclusion mechanisms are available to allow outsiders to gain access to land property. The others show that, at least with regard to sales involving landless farmers, the notion of the market as conforming to the concept of bargaining process between formally equal partners is largely irrelevant. The social working of land markets is a rather crude expression of uneven power relations and pervasive violence (at least latent, in the form of threat).

The following criteria help to refine landlessness as a social category in terms of actual land rights. Although they have no land in ownership, farming remains ALF's main economic activity besides their other activities such as: fishing, collecting NTFP or charcoal production in order to sustain their livelihoods. They access land for rice cultivation through renting (53% of the interviewed ALFs) and loan (41%). Responding to questions about their near future – how they will make their living in the next two or three years – many ALFs (33%) show an interest in increasing their agricultural production, running business such as small-scale trading or groceries. Some ALFs (7%) planned to move to the new agricultural development area to seek farmland. Most of them (53%) want the government to distribute farmland to them, stressing again (from another point of view) the importance of administrative transactions in land property relations.

[53] *Our field study in 3 in 2005.*

Summary of the main findings

- **Modalities of access to land**

Land was distributed in the early 1980s but farmers cleared more land for cultivation than for selling. The economic development by the establishment of industry and special economic zones has entailed the **development of land markets (functioning through persuasion/threats with the active involvement of land brokers) and an increasing land concentration.** This has had an effect on the evolution of agrarian contracts. Moreover, there are different modalities of access to land such as loans of land, renting, sharecropping, pawning, purchasing and inheritance.

People have expanded their cultivated land by clearing degraded forestland for cultivation even though the government banned deforestation through a declaration (*sechkdei prakas*) in 1999 and the 2002 law on forestry. Land use planning without people's participation, and demarcation of protected areas without field survey led to the overlapping of residential and cultivated areas, and could cause people to lose their land.

Regarding the agrarian contract, we observe a **growing substitution of sharecropping by leasing**. However, sharecropping remains practiced between relatives without written contract, and the harvested product is shared depending on contribution of capital and labour by both land owners and tenants or farmers.

Loans of land are made by urban land buyers and companies for the 2-3 years following land purchase, without written contract. They are generally changed into written contracts or to leasing with a written contract witnessed by the village chief and recognized by the commune chief (with renegotiation at the beginning of the next cropping season). However, loans of land to relatives are still practiced without written contracts.

- **Land sales/purchases**

Land sales to companies and urban dwellers peaked in 1995-96 because of the effect of foreign investment and speculation, and involved an alliance of local and urban land brokers with local authorities. Then, the brokers become land keepers and rental fee collectors for the companies or urban dwellers. Some companies provided all collected rental fees to the local authorities and pagoda as a strategy to secure their land. However, sales/purchases have increasingly changed to involve direct contact between land sellers and land buyers through the telephone. **In many cases, farmers have sold land under the pressure of threats by potential buyers, brokers or local authorities, and this phenomenon expresses the strong institutional and legal insecurity experienced by villagers and farmers**.

Land sales and purchases were registered and recognized by the local authorities (village and commune chief). However, for sales and purchases of large-scale rice land, the land transfer was registered at the district office of land management, urban planning, construction and cadastre (OLMUPCC). However, most newly cleared land being bought by urban dwellers or rich people have recent certificates of land possession issued in 2005-206.

In the urban development zone, land prices increased more than 1,000% over the last 5 years. However, land prices have decreased in the industrial zones as the government banned land sales/purchases in order to generate a favourable climate for foreign investment.

Many farmers have sold part of their land or all of their land and have become landless and land poor farmers. In reaction, they try to gain access to land by clearing forest land for cultivation. Sometimes, land clearing leads to disputes with powerful people or the military, who claim the legal right to land. Moreover, those farmers who do not have large plots of rice land in the polder clear degraded forests illegally, hoping that the government will release it to them. Thus, we can see the **link between land sales, land clearing, conflicts and rural/urban uneven relations**.

- **Land disputes**

The reconstruction of dams/polders and other infrastructure projects have entailed an increase in land prices. Disputes around land grabbing issues have been frequent as land ownership rights were not clarified or remained unsecured when projects started.

Small rice farmers, who lack rice land, have been forced to rent their land back from powerful men who bought their plots. Due to legal gaps and unfair dispute-resolving mechanisms, farmers have often lost their land even though they occupied and used it over 5 years before the 2001 land law. However, the SLR in the polders has made water fee collection easier and helped local authorities to resolve land disputes rapidly.

In the SLR zones, land disputes have decreased due to land titles. However, disputes between the former owners as the powerful men and farmers remain un-resolved despite the intervention of different legal brokers such as the human rights NGOs, and although the complaints on land disputes are referred to the NCC in Phnom Penh. The land rights of farmers in the National Park remain unclear even though they occupied land for farming before the establishment and delimitation of this protected area. Farmers who cultivate on land under dispute refuse to pay water fees as long as they don't have land titles.

The number of ALFs would increase if the government wanted to repossess all land in the Ream national park and newly cultivated land which was cleared before the issuance of 2002 law on forestry. **Economic development and land market mechanisms have resulted in an increase of land inequity and concentration** (this is also due to ineffective tax collection on unused land and the absence of a land tax). Land inequity, the absence of a land tax and of legal instruments (law or article) in favour of the farmer tenants generate increasing rural poverty, opposing the poverty alleviation strategy formally supported by the government.

CHAPTER VI.

Rotanak Kiri

Pel Sokha, Laing Lon, Pel Setha and Im Sothy

Context

• Regional context

Rotanak Kiri province (RTNKR) is situated in the north-eastern part of Cambodia and has 16,758 households with a total population of 94,243 (NIS, 1998). The population in the province increased from 99,733 in 2000 to 124,403 in 2004, or by 27.7%, with an annual growth rate of 5.5% compared to the national rate of population growth of 1.83%.[54] In 2004, over 57% of the total population belonged to 11 ethnic minority groups[55] (Brao, Jorai, Kachac, Kraol, Kraveth, Kreung, Kuy, Lun, Phnong, Stieng and Tampuan). However, the exact number of new migrants is unknown. It is reported that there are approximately 1,000 new settlers every year, in particular, from the provinces of Kampong Cham and Kratie. Earlier, Rotanak Kiri was considered to be no more than an isolated province until the introduction of an eco-tourism development policy which requires the construction of roads and other infrastructure. This has led to a wave of immigration and land sales, occurring in most cases along the main roads.

The government plans to develop RTNKR as an Eco-Tourism zone as outlined in its Triangular Development Strategy. The three neighboring countries of Cambodia, Laos and Vietnam will work together to meet this plan. Moreover, in relation to promoting travel in the northeast, there is a concern that land rights for indigenous communities will buckle under the weight of tourism development and the development of cashew and rubber plantations.

There are different modalities by which ethnic minorities and Khmer settler's access land, including clearing with the permission or without the permission of community leaders, gifts, purchasing, renting and loans of land. These modes can be classified into two groups: non-monetary transactions (including administrative transactions, grants, land clearing, inheritance, gifts) and monetary transactions. Monetary transactions could be also classified into two groups: selling and agrarian contracts (renting, sharecropping, etc.). Moreover, people had no tradition of selling their land in the period before 1995 when land was easily exchanged for food or other goods such as motor cycles, etc. After gaining experience of land transactions over time, villagers have started to plant trees to identify the boundaries of their land. At present, the Khmer new settlers can gain access to land for cultivation by buying, leasing, borrowing from other villagers or snatching the forest land of a local community or villager (concessions, grants, access through corruption, etc.). Meanwhile, non-Khmer farmers can access land by clearing forests, sharing with their relatives, inheritance and buying from other villagers. Land rights transfer modalities are also arranged in both forms: land appropriation (alienation) and agrarian contracts.

• Local context

Regarding the local context, the situation of in-depth studied villages (Sek, La En and Lon) related to population, land areas, land use, settlement, development project or investment can be described as follows:

Sek village, Ta Ang commune, Koun Mom district is located along national road (NR) No. 78 about 20 km to the northwest of Banlung market. People in this village belong to the Kreung ethnic group which is one of the eleven ethnic minority groups living in RTNKR. In 2004, Sek village had 120

[54] *New data of population growth rate is 1.83 (NIS, 2004).*

[55] *But, the rate is 85% estimated by PDA in 2005.*

households and a total population of 523 people. Between 1998 and 2004 the village had an annual household growth rate of 22.5% with a population growth rate of 9.3% per year. Sek village has a total area of 481 ha, which includes 3 ha of residential area (0.6%), 30 ha of rice field, 250 ha of plantation land (52%), 50 ha of forest land (10.40%) and 1 ha of a burial ground (0.21%). Sek village has a population density of 109 people per km². It was formed in 1930, when it was called Labaing Sek village because it was established by an elderly man named Labaing and his son, Sek, who were living on the Kachagn rubber plantation. In 1965, the government used the area for planting rubber. Villagers were moved to the recent village because the government feared that villagers' livestock was destroying the rubber plants. The new location the people were moved to was called Seak village. Many years later, the name of the village was changed from Seak to Sek, because at that time, the father Labaing, passed away. One member of the commune in Banlung was already named Labansek. In 1970 during the coupe to overthrow King Norodom Sihanouk, villagers ran into the forest in O Charloy area, which is about 10 km from the current village to escape from the bombardment of the US military. Other villagers ran into the forest to join the revolutionary movement. Villagers lived in O Charloy for five years before moving out to the O Tateun dam which is about 6 km in the east of the recent village. During the Pol Pot regime, villagers were evacuated to work in the rice fields together. After 1979, villagers still lived and cultivated rice in the area until 1982. People moved into the current village since at that time the government wanted villagers to live near other villages in order to protect them from the Pol Pot's guerrillas and due to the desire of villagers to cultivate plantations. When they first moved into the area it was covered with forest. People living there were involved in shifting cultivation. Besides cultivating Chamkar rice, they also planted other crops such as soy beans, maize and cashew. The cultivation faced certain barriers such as: destruction of crops by wild animals such as wild pigs; heavy droughts, resulting in a shortage of water for irrigation and the death of livestock; and land encroachment by a number of powerful people.

Sek village consists of Khmer, Kreung ethnic people and Cham (Khmer Islamic). Khmer and Cham ethnic people came to live in the area along with their relatives or friends. The urban dwellers bought land within the village not for building houses and living in the village, but for keeping and selling at a higher price. Meanwhile, some urban dwellers moved to the area and cultivated cashew trees/plantations so that they can demonstrate their land ownership. However, to date, there is no land sale broker in the village. Khmer people who want to buy land meet the ethnic person who wants to sell land directly. Regarding land holdings, all households hold cultivated land, but the area of land can be small or large depending on the household. Thus far, most ethnic households only have around 2 ha of land per household. They are very concerned about the availability of cultivatable land for the younger generation. In Sek, DPA (CIDSE), an NGO, working on land issues has helped villagers to establish community forestry. From 1980 until 2002, the village was administered by a chief named Ta Chey. He was nominated as the village chief because of his Kreung ethnic origin through his ancestors in the area. Due to his illiteracy, he resigned from being the village chief in 2002 and Mr. Dorn Kamphorn was then nominated to be village chief. In 2003, Mr. Dorn Kamphorn was selected as the second deputy of commune chief. Then, the commune nominated Mr. Char Ving Kaduke, of the Kreung ethnic group to be the new village chief in 2004.

La En village, Toeun commune, Koun Mom district is located along NR No. 78 around 25 km to the northwest of Banlung center. La En is one of the two villages in which DPA started a pilot project of communal land registration. In 2004, La En village had a total population of 649 with 318 families in total. Between 1998 and 2004, the village had an annual family growth rate of 40.3%. Meanwhile, the population growth rate was 6.4% per year. The village has a total area of 558 ha with residential land of 2 ha (0.36%), 26.2% for rice fields, 51.6% Chamkar land and 21.9% forest land. The village's population density is 116 persons per km². Before the Pol Pot regime, the village was classified into two groups due to jealousy and a challenge to be the tribe chief. The location of this village was moved many times due to disease and war. Later on, when the elderly people died, the younger

people gathered and lived together in one village. During the Pol Pot regime, the village was located at O[56] Kves, O Prey (at present is La En) around 4 km in the northwest of the current village for collective rice cultivation. After 1979, villagers were still living there where they were farming for their living. However, some families were clearing forest land because they wanted to cultivate other crops on Chamkar land. Due to the widespread clearance of the forest, people established a village at the present location of Ta[57] Sreng's house (La En Chamkar). At first, there were no people living in the village besides the elderly people who came to pray to the forest spirit to establish a new village. In 1997, people moved out to live in their respective Chamkar because a lot of diseases spread through the village (2-3 people died every day). The village elderly decided to sell the village land to Ta Sreng in 1997, where each family received one head of cattle and the village elderly received a pair of buffalos from the sale of their residential land. The elder kept all the money from selling about 5 ha of Chamkar land around the residential land. In 1999, they moved to live on the current village land together by buying 2 ha of land from two village members at a price of 6 Chi of gold (about US$270). The money used to buy the village land came from the fines imposed on Dangkab villagers who illegally sold the land of La En village. The village was classified into two groups because during the Pol Pot regime one group of people was cultivating rain-fed lowland rice there; *La En Sre* (La En rice field). Later on, some people preferred to cultivate other crops on Chamkar land so they came to *La En Chamkar*. Those who did not like to cultivate Chamkar crops/plantations continue to live there until now.

In La En village, most of the villagers are Tumpoun ethnic minority people and others such as Khmer and Cham. The last two groups came to live in the village through their relatives or friends. Many people from Trapheang Chres commune (Koun Mom district, RTNKR) bought land in the village. These people did not stay permanently in the village. They only came in the rainy season for planting on that land. Regarding migration, Khmer people have moved into the village since 1991. Until now, La En village has around 40 Khmer families, but only 10 among those Khmer families became members of the community. The other 30 families came from Trapheang Chres commune and did not apply for community membership. As discussed earlier, they came to live in the village only in the rainy season where they grow soy beans and return to Trapheang Chres in the dry season in the same way as displaced people. Some Khmer men married ethnic girls and established their lives in this village. At present, there are six Islamic (Cham) families living in the village, of which one family has become a community village member because the family has resided in this village since 2001.

To date, La En village is classified into two parts; La En Sre village with around 40 families and La En Chamkar village. The classification was not made by the authorities but rather classified by villagers themselves according to the situation and natural factors. However, both parts of the village remain under the administration of one village chief. In La En village, people practiced shifting agriculture by planting rice, beans, corn and cashews. Agricultural activities have encountered a number of problems such as: wild animals (pigs etc) damaging crops, droughts leading to a shortage of water, cropping problems and the death of animals, and land encroachment by a number of powerful people violating villagers' land. One of the village members is working as the first deputy chief of commune and he is involved with land dispute resolutions. By understanding that the future of ethnic people is unstable and becoming worse, due to the gradual loss of their agricultural land, some NGOs have started providing them with training on land law, and facilitation to establish community and land management committees in an effort to prevent ethnic farmers from losing their land for various reasons. These reasons include selling and violation. In La En village, DPA conducted a collective land registration on May 15, 2005. A villager, Mr. Leung Bar was elected as a legal individual /representative to register the 'certificates of collective immovable property'. The election was carried out through an election with around 20

[56] *O means 'natural water river' or course.*

[57] *Ta means 'elder man'.*

participants. When the legal individual /representative was elected, the next step was to resolve land disputes, and then commence the registration process.

In order to ensure smooth and easy coordination and management, the commune and district authorities have nominated only Tumpuon ethnic people to be the village chief and deputy chief. However, the nomination shall be done through an election by the ethnic people within the village. From 1980 until 1988, the village was administered by a chief named Pri Kayuok, a Tumpuon ethnic person, with his home town in the village. In 1988, Mr. Pri Kayuok resigned from the village chief position because he is illiterate. Later, Mr. Ngue Lou, nephew of the former village chief was nominated to be the new chief. In 2004, Mr. Ngue Lou was nominated as the second deputy chief of the commune and Mr. Leung Bar was nominated by the commune chief as the new village chief. He has completed his education at primary level and can read and write. Also, he is the village chief and community organizer elected by villagers through the facilitation of DPA. Additionally, he works as the village veterinarian and is also a rice farmer.

Lon is one of the five villages of Yeak Loam commune of Banlung district. Lon village is located around 5 km to the north of Banlung center. The commune has an eco-tourism site called 'Beoung Yeak Loam Eco-tourism' at which income can be generated through visits by national and international tourists. In 2004, Lon village had a total of 107 families and a population of 546. Between 1998 and 2004, the village's annual population growth rate was 4.8% per year. Lon has a total area of 1,125 ha out of which there are 20 ha of residential land (1.8%), 0.44% of rice field, 88.9% Chamkar land, and 9% forest land. The village's population density is 49 persons per km².

Lon village was established a long time ago. Elderly village people and the village chief have unveiled the history of Lon village, in which La Po village chief bought around 100 ha from the elderly people in Lon village for residential land (La Po village chief and the elderly people in Lon village were relatives). Before *Sangkum Reasniyum (Society that people prefer)* time (1960s), the chief of Phnom village bought the land from chief of Pou Tang village in O Chum district for plantation and wildlife hunting. During the 1960s, Lon village was located in O Kraing which is about 2 km to the west of the present village. In 1970, during the time after the coup d'état, people ran into the forest in O Kantrang which is around 1 km to the east of the present village and some people ran into the forest to join the revolution movement. In 1974, people were evacuated to O Sal, located around 4 km to the south of the present village to cultivate rice together. In 1975, Pol Pot evacuated people to O Tateung and in 1976; people were evacuated to Sorya village, around 30 km to the south of the present village. In 1977, people were evacuated to O Chri which is around 30 km to the east of the present village, and O Tateung in 1979. In 1980, government officials ordered people to move back to their respective villages. People traveled back to their villages but stopped over at Chres village (which is now a new village) because it was a long way to travel. In 1985, they moved to the present location.

The government relocated Lon village to the present location because it wanted them to live together so they could be easily protected from Pol Pot's army. When they arrived at Lon village, people cleared forest for planting rice where the forest land belonged to the ancestors of Phnom village. At the time of forest clearance, the Phnom villagers did not say anything. It was only in 2004 that they had a serious dispute. Until 1997, people normally cleared Chamkar land in the forest and returned into the village at night. From 1997, due to security reasons (stealing rice after the harvest), people started to live on their respective Chamkar land and come back to the village during ceremonies such as meetings and village praying ceremonies.

From 1995, migration to the village began. Now, the village consists of eight Khmer families and one Islamic (Cham) family. They all came from Kampong Cham and Takeo provinces. At first in 1995, there were only two Khmer families, and by 2004 the number of Khmer families had rapidly increased. Lon village is situated in the centre plateau (zone 1)[58], with red volcanic soil (rhodic

[58] *Agro-eco system zones according to Hkum (1995) and PDA of RTNKR.*

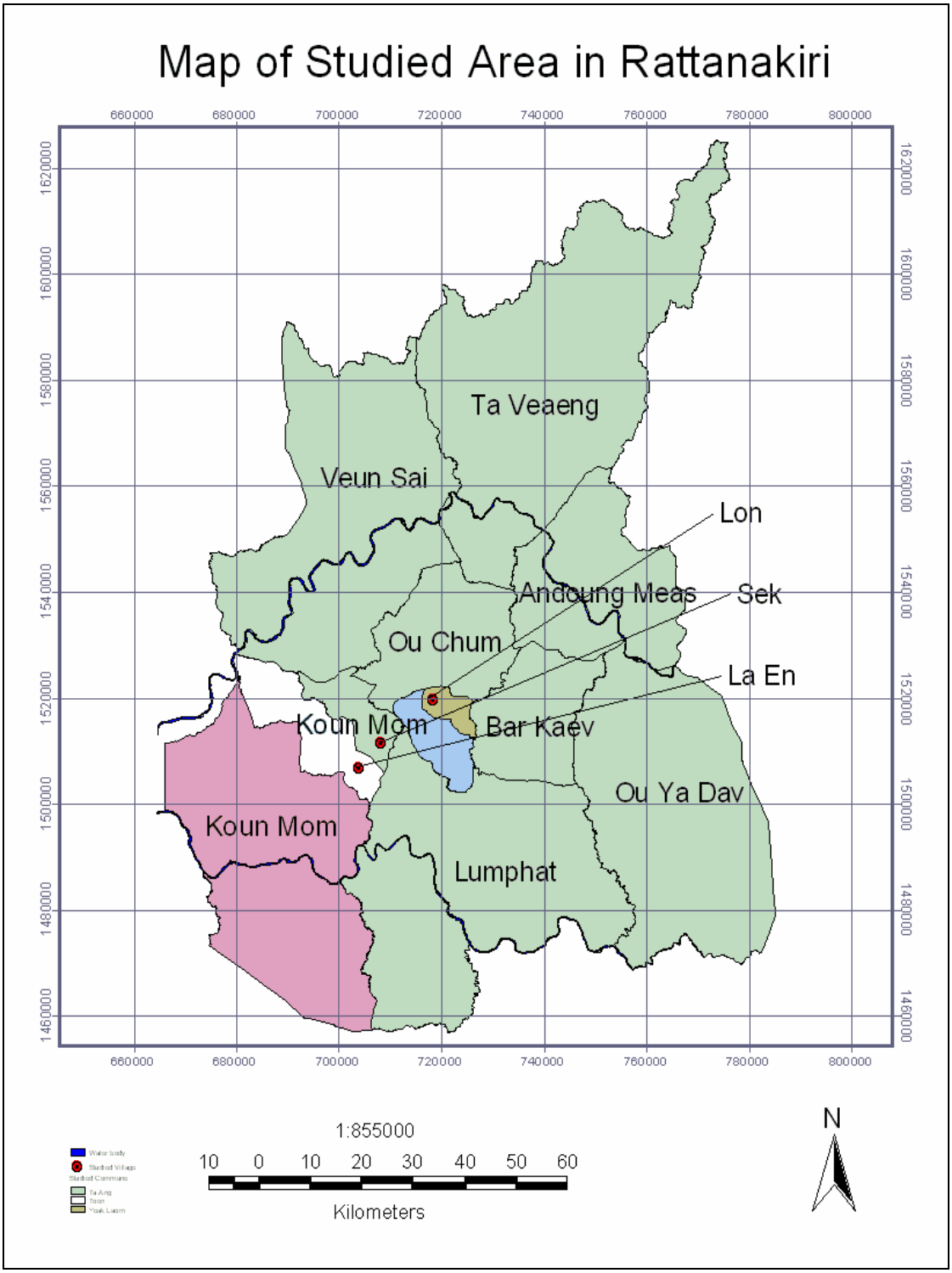
ferrosols) and rolling hills with gently sloped elevation forming the common characteristics of the district. The main agricultural practices in Banlung district are upland rice cultivation, cashew nut and rubber plantation. The ethnic minority people practice shifting agriculture by planting rice mixed with other annual crops. However, recently they have adopted the cultivation of cashew trees. According to topography and cropping, the village could be classified into sub-zones of: Chamkar and Chamkar chas (fallow land); Community forest land; and Environment conservation zone of '*Boeung* (lake) Yeak Loam that is currently under community-based management.

Since the practice of shifting agriculture with rotation of Chamkar land in 2002-03 stopped, and with the practice of permanent agriculture, many problems have occurred which have made rice yields decline rapidly. Rice yields have decreased twice and stand currently at about 750 kg per hectare. This is due to degradation of soil fertility that affects the soil erosion, drought and late rainfall. As a consequence, ethnic farmers have gradually planted cashew nut trees for cash income instead of rice and other annual crops.

Most people in Banlung city bought land in this village but not for living on. They speculated land for making a profit, while other people planned to cultivate strategic crops such as cashew nut trees and to secure their land. All land transactions with urban people were normally carried out through the intervention of land brokers such as such as commune councilors, village chiefs, policemen and villagers. Due to the eco-tourism site of Yeak Loam Lake in the village, people from Banlung or from other provinces have bought a lot of land in this village for speculation. One member of Lon village became the first deputy chief of commune. In addition, he works as a land broker and persuades people to sell land and is also involved in resolving land disputes. However, elderly people are also involved in resolving land disputes.

At the moment, Lon has no village chief since the death of the former village chief in 2004. All work in the village is carried out under the responsibility of Mr. Thang Man, the deputy village chief. He belongs to the Tumpoun ethnic group and has a very low level of education (he can read and write slightly). Besides his responsibility as deputy village chief, he also serves as a member of the aYeak Loam Lake conservation committee.

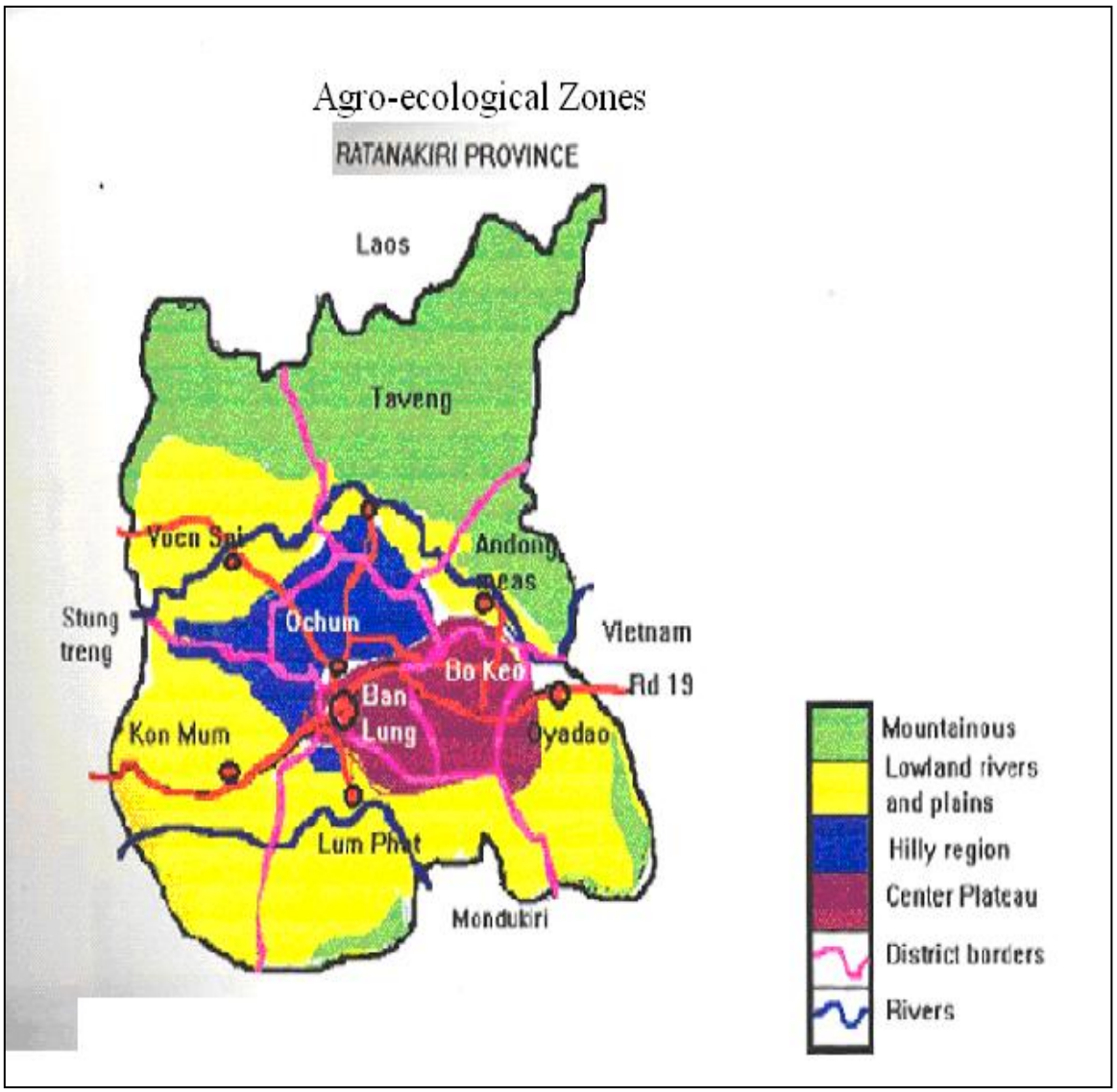
Figure 4: Map of Area Studied in Rotanak kiri



According to the agro-eco system, Rotanak Kiri has been classified into four agro-ecological zones:

1. Center plateau, with rich volcanic soil (rhodic ferrosols) and rolling hills with gentle slopes, elevation between 300-500 meters.
2. Mountainous region is the highest zone in the province and is covered in dense evergreen forests, the main soil type is orphic crosols, the soil is black and grey forest soils, sandy clay or clay.
3. Lowland plains and rivers zone consists of river plains. The average elevation is not more than 100 m. Main soil textures found are clay, sandy clay and salty.
4. Hilly region normally has stiff slopes with an average elevation of 300 m. Dominant soil is pellic vertisols, red and grey forest soils (Hkum, 1995).

Figure 5: Agro-ecological zones



Source: Hkum (1995) and PDA of RTNKR.

The agro ecological constraints seem to be different from zone to zone. However, the common constraints that the upland farmers face are soil fertility degradation due to erosion and drought. In the urban areas or areas straddling the main road and NR 78, land disputes have become a serious issue due to land encroachment by new settlers which has caused ethnic farmers to lose their land.

- **Land transfer modalities in the communes studied**

In RTNKR, most farmers from ethnic minorities gain access to land through allocation by the community elders or traditional leaders who are an advisory group to the chief of village for effective decision making. This includes the regular re-allocation of land plots among community members and the resolution of land conflicts among community members or between community members and outsiders. They gain access to clearing community land, loans of land and renting, while the new immigrants gain access to land through purchases, encroachment on the community land, renting, borrowing of land and sharecropping. In some cases, the new settlers have been allocated community land when they became community members. From now on, allocation and clearing the communal land are becoming more difficult due to population pressure and enforcement of forestry law. Increasingly, inheritance and sales have become a common practice.

Right transfer modalities in RTNKR	Non-commoditised	Commoditised
Use rights	- Loan (Exchange land/labor to keep the plantation and clear) - Economic land concession	- Leasing - Sharecropping
Transfer rights (appropriation)	- Re-occupation of ancestors' land - Occupation of land of other ethnic minority group with compensation in money and animals as fine - Inheritance - Clearing community forest - Encroachment - Allocation after becoming community members - Gifts	- Purchases - Purchases with the intention to encroach on surrounded land - Capital investment

Land appropriation

In RTNKR, land appropriation has been carried out by clearing community forest with or without the permission of the village elders, re-occupation of ancestors' land, occupation of ancestors' land of other ethnic minority people with monetary payment and giving rice wine for offering to ancestor's spirit, inheritance, and sales/purchases. The recent evolution of the modes of land appropriation is summarized below:

Date	Modes of appropriation
After 1979	Continued with free access to chamkar land by clearing, chamkar chas could be occupied by other ethnic minority people for shifting cultivation
End 1980s	Khmer people moved to RTNKR, access to land for cultivation remain free/easy
1992-93	Urban dwellers seek to occupy land along NR 78 to Steung Treng, while non-Khmer local people have no tradition of selling land
1994	Beginning the sale of residential land in the urban or provincial capital
1995	• First sales of land by ethnic minority members in 1995 • Granting a 20,000 ha land concession to a Malaysian Company, handing over to the *Mitapheap* (solidarity) Men Sarun and Rama Khmer Company in 1999, but the area reduced to 5,000 ha in 2004
1996	Immigration from the lowlands, e.g. from Kampong Cham, Kracheh, Takeo. In Barkeo district, 20% of people were Khmer settlers, they could access land through gifts from local people
1996-2000	• New settlers could access land through exchange with consumable assets such as motorbikes, TVs, video recorders or other • Allocation of land in the areas far from the provincial capital 'Banlung' is still possible • Buying chamkar land is still at a lower price • Starting a cashew plantation (1999)
2000	• Increasing sales/purchases of land straddling NR • Beginning land disputes
2001	• Mostly, land extended from NR 78 to residential land was sold. In most cases, the length of plot of land was not limited so that the buyers could encroach into forest land • Khmer settlers who married ethnic people could receive land through allocation by the village leaders/chiefs
2002-04	Clearing forest land straddling NR was a serious problem, and led in many cases to land disputes
	Participatory land use planning (PLUP) in La En (CIDSE) and La Enkraen (PLG)
2004	Sales/purchases of land peaked in the areas straddling the main roads
	Sales/purchases of 500 ha of land in Pate Commune, Oyadav district led to land dispute between ethnic people and an urban land buyer
2005	Revise PLUP referring to legal framework of the department of PLUP of the ministry in Phnom Penh A land dispute between members of an ethnic minority community (Tumpoun) and a powerful man in Toeun village was resolved by the PCC and assisted by CLEC

	In January, the government granted a 9,380 ha of ELC in Oyadav district to *Yo Thear* (military) Development Region 1 and GIALAI Company Limited, duration of contract is 70 years, for cultivation of rubber, cashew, crassna trees
2006	In June, the Provincial Committee on Forest Clearance and Encroachment expropriated nearly 400 ha of land in Banlung district, referring to *Botbanhchea* (Regulation) No 01, in May, 2006, and at the request of the National Authority for Land Dispute Resolution (NALDR). Unused, fenced land use is considered as state land but it was illegally occupied and mostly sold to the urban people
	Meeting between representatives of MLMUPC and more than 100 ethnic minority representatives from five provinces: Kratie, Mondolkiri, Preah Vihear, RTNKR and Steung Treng in Banlung town on Government's plan and pilot project of indigenous land registration

- **Land distribution (customary re-allocation of land)**

No land allocation had been made by a solidarity group or local authorities in the province of Rotanak Kiri after 1979, contrary to what happened in lowland provinces. Ethnic minority people were displaced or evacuated many times between 1970 and 1979. As they returned to their respective villages they occupied land by settling and cultivating crops on their ancestors' land or the land of ancestor of other ethnic minority groups/communities. Moreover, the occupation of the land of ancestors of other ethnic groups led to disputes later on, particularly since 2004 when the land market and prices peaked. The land belongs to the community according to customary law. The members of ethnic minorities also gain access to land through clearing but they have to ask for permission from the elders and village chief (administrative village chief). For some villages, those leaders also ask permission from the commune authorities. This is not a 'traditional system' but already a hybrid system with the intervention of local state representatives. Clearing the community land is still practiced in some villages but very far from the villages, because of population pressure, agrarian colonization and plantation development. Perhaps in the future the farmers will not be able to clear land anymore. They will access land through inheritance from their parents, borrowing from their community or through other institutional arrangements. However, the Khmer or Islamic (Cham) migrants have been allocated land when they became members of the community.

- **Economic land concession (ELC)**

In Oyadav district, a 20,000 ha land concession was granted to a Malaysian company in 1995 (but a Khmer company 'Mitapheap Men Sarun and Rama Khmer' took over in 1999). In 1996, a trial planting of oil palm trees on 20 ha was a complete failure and the already cleared land was left unused. Later on, a village chief asked the district authorities to allocate land along NR to assist ethnic people to establish their houses. Each family paid 3,000 riels for 0.5 ha and had to sign a contract with the company, stipulating that the company could take back the land in 3 years if the villager did not use the land (Jeremy Ironside, 2001)[59]. The company grew coffee on 200 ha of land. Because the price of coffee has dropped this plantation is likely to be a failure too.

The Seila Program assisted ethnic minorities to map the area they traditionally used[60]. In 1999, the company agreed not to expand beyond the 200 ha they had cleared in 1996. In 2000, the rest of the area was given back to the community. The concession area has been reduced to 5,000 ha in O Yadav district through an agreement signed by the provincial governor and company. However, recently, in cooperation with the Cambodian Yo Thear (military) Development Region 1, the Vietnamese firm 30/4 GIALAI Company Ltd. was offered the opportunity to establish a land

[59] *Jeremy Ironside-NTFP project and Sal Yuch , Options for Agricultural Development-A Case study from O'Yadao district, RTNKR in International Conference on Strengthening Partnerships in Community Natural Resources Management, Rotanak Kiri, 6-8 March 2001, volume two: conference papers, paper 31.*

[60] *NGO Forum on Cambodia reported in 2005.*

concession[61] of 9,380 ha along the Cambodian-Vietnamese border in O'Yadav district. The company wants to cut back the forest for the establishment of a rubber plantation. It reported that the firm recently gave Pak Nhai commune officials a car as a gift for communal use. Cases of land disputes occurring in these areas have been observed since August and communicated to ADHOC, a human rights organization. The duration of both ELCs is 70 years[62]. Moreover, many other foreign companies from Vietnam seek to get ELCs of up to 100,000 ha for rubber plantations in the northeastern provinces (RK, 2007 and key informants).

- **Land clearing**

Land clearing is the common practice of all ethnic minority groups, including Khmer people. The members of a community have the right to clear community land. They have been free to clear any part of land within the village for Chamkar[63] land/plantation, until recently, when the area became less fertile. They left it uncultivated for 3-5 years, which allowed forest re-growth and looked for other areas for new Chamkar land. Now villagers do not leave their Chamkar land as they did in the past but they keep that area for future plantations because they understand that land is becoming more expensive. To date, clearing land is limited only to their community areas. Clearing land for shifting cultivation is increasingly far from the village. However, ethnic people claim land within the community area after people have sold it. In many cases, Khmer land buyers bought land and encroached into the forest land, which led to many cases of land disputes. Some big land buyers took workers from other provinces for clearing land. Some workers did not return home and settled on land that they cleared illegally near to the land bought by the big land buyers. The area of new, illegally cleared land is unknown. However, the forest administration (FA) is conducting a survey on it. The FA can not ban people from illegally clearing land if there is no cooperation from the commune and district authorities[64].

Newly married couples of ethnic communities receive land from their parents from both sides. If chamkar land is not enough they gain access to clear forest land which is considered as community land through a request to village leaders/chief and village land management committees. Only the community members and new couples or newcomers (relatives of the spouse) are allowed to clear community forest. However, in many cases, the village leaders/chief has not been informed when community forest land was sold by villagers. They permitted newcomers to clear forest land for farming. However, some newcomers sold the cleared land secretly, which also led to land disputes. For example:

Case of selling land without informing the village leaders/chief: Mr. Suon Van, Kreung, living in Sek village, Ta Ang commune, Koun Mom district requested to the village chief to clear 1 ha of land for his Chamkar and his brother requested to clear another 1 ha because they had just moved into the village in 2004 (moved from their wife's village). Customarily, for Kreung people, men live in the wife's village for farming for a while following the marriage and then they move to live in husband's village. The village chief agreed with the request and showed the area to be cleared. After the land was cleared, a man named Sreng, a Khmer, interrupted and told Suon Van and his brother that he has bought the land extended untill O Cheng (name of stream in Ta Ang commune). When asking the seller to clarify, he said that the extent of land sold was within the boundary of old forest area only. Therefore, Suon Van sold the land he had cleared to Mr. Sreng to whom he paid 150,000 riels (about US$38) per ha for his labor in cleaingr the forest. Mr. Sreng admitted that if Mr. Suon Van did not agree to receive the money he would receive no compensation because the district and provincial levels had known that he (Sreng) was the owner of that land. Also, a Kreung villager sold land without informing the village chief and the Khmer land buyer has not yet used that land. For

[61] *Cambodian Daily, May 11, 2005)*
[62] *More News about MAFF, visit: http://www.maff.gov.kh/elc/lesign.html.*
[63] *Land which is used for growing crops other than rice; also in the upland areas it is used for growing upland rice.*
[64] *According to Mr. Toeum Sinath, Director of DLMUPC of RTNKR in RK, Sept 24, 2005 and Feb 8, 2006.*

Mr. Suon Van, he thought that land belong to the community, as he has cleared the area. He can claim only money for labor cost as conciliation of land dispute. In this case, the village chief agreed under pressure from the high level administration.

- **Access to community land by marriage**

New Khmer immigrants can clear community land if they become a member of the community. The process of community membership is: 1) live within the community in a period, then apply for community membership; 2) marry the son or daughter of a member of the local ethnic population. When the member of the local group clears the land they have to inform village elders and the chief of village as well. For example:

A Vietnamese man married an ethnic minority woman: Mr.Vo, a Vietnamese man, was working as a laborer to saw wood with the Khmer and staying with other people at Banlung market. One day, a Sek villager, a Kreung ethnic villager, named Mr. Dorn Kamphorn, built his house and hired this Vietnamese man to saw wood at his house. Later on Vo married an ethnic Kreung woman in 1993. Presently, he has three children. He grows soy beans on the land that he has cleared with the permission from the village chief. In addition he digs land for precious gems in Borkeo for his living.

A Khmer man married a Tumpoun woman: Uncle Lim, a Khmer person from Takeo province and his wife, Nou Man, a Tumpoun woman with her origin in La En village, Teoun commune, Koun Mom district. He has four children and was living in Takeo before 1982. In late 1984, he moved to Banlung district of RTNKR due to the intensive mobility of people to serve in the military. In 1987, the government recruited three students for further study in Vietnam but there were no applicants due to the student's lack of capacity to study. With the support of his relatives, he was selected for further study in Vietnam and returned from the study in 1993. Right after returning from Vietnam, he was living in Takeo. In late 1993, he moved back to RTNKR and lived within the rubber plantation of his brother due to the difficulties of living in Takeo.

While living in Rotanak Kiri, he married a rubber resin tapper in 1994, a woman of a local ethnic group. Then the new couple worked as rubber resin tappers. In 1997, he cleared 1 ha of land near the rubber plantation for growing soy beans and settled there. In early 2001, he requested 5 ha of land from the village chief for planting cashew and soy beans. The village chief agreed with the request, but included a restriction that the land could not be sold. In 2003, he moved into La En village to make his living with soy beans and cashew planting and running a small grocery shop.

A Khmer man who used to live in the urban area married a Tumpoun woman: Mr. Sin Sarak and his wife, Mrs.Thy Tep, Tumpoun, have four children. Before 1984, he lived in Phnom Penh. In 1984, he moved to Steung Treng due to difficulties of living in Phnom Penh. He joined the military in Steung Treng during the mobilization of people for the K 5 mission[65]. In 1988, he married a Tumpuon ethnic woman. According to tradition he continued to live with his parents-in-law in the village in La En village, Teoun commune, Koun Mom district. In 1993, he lived separately from his parents-in-law because it was difficult for him to adopt the Tumpoun traditional way. In 1992, he bought a plot of land from a local villager in the village for settlement before he left his parents-in-law. He transferred the land to his brother in 1998 to pay off the debt he had with his brother. In 2003, he requested 5 ha of land from the community for clearing because he had no land for cultivation but the community did not allow him to sell the land. Currently, he makes his living by cashew plantation and follows both traditions (Khmer and Tumpoun) but he does not pray much to the local spirits.

Otherwise, access to land could also be made through other modalities, e.g. investment which mainly happens in the urban area, so it is not related to rural land.

[65] *Mission of clearing forest close to the Cambodian-Thai border to protect guerrillas entering during the 1980s.*

- **Access to land through investment**

In some cases, the provincial authorities have shared state public land with private investors in exchange for infrastructure investment, for example, due to the lack of money where the public land is unused and unfenced. Thus, it was encroached upon by people. Also, the provincial department of education shared one third of a piece of land with the Try Peap Company in exchange for nearly US$ 400,000 for the construction of a stadium that will be handed over to the department within the next 18 months[66].

- **Inheritance**

Land heritance from parents is one of the appropriation rights. The process of inheritance in Rotanak Kiri is quite different from that in lowland areas, but it has been increasingly changed to become similar to lowland areas. Customarily, families retain ownership over the fields they farm, as well as access to the perennial crops remaining on their old fields which lie in fallow. New couples have to live with parents from both sides for at least 8 to 10 years. When they want to separate from their parents they are able to get land either by asking the village elders or chief of village to clear forest land. However, from now on, land to be cleared for cultivation is located very far from the village. Otherwise, they inherit fallow land from their parents. Since the land market has increased and enforcement of the 2002 forestry law by the FA, clearing forest land is becoming more difficult. Land is mostly occupied or reserved as collective land decided by the community land management committee, including the village elders. In 2002, in La En village, participatory land use planning (PLUP) was conducted, supported by the DPA, after the creation of a Land Management Committee. This committee is composed of seven community representatives who were elected by community members as a local body with a mandate to prevent illegal use and grabbing of community land. The committee can resolve land disputes among community members or with outsiders. As a consequence, inheritance from parents is becoming an important modality of land appropriation. Some new couples inherited land from their parents but we do not have quantitative data on new couples who receive land through inheritance. For example:

Mr. Chea Sokunthy, 28 years of age, and his wife are a new couple living in Trang Chong village, O Chum commune. This new couple separated from his parents in 2004 and inherited 60m x 140 m of fallow land from them. He said that the inherited land is not enough but he has many siblings. Also, he has to generate additional income by selling labor for working on the plantations of the Khmer. During the time of clearing land and growing in 2005, he was able to secure his family livelihood by selling labor to others for clearing land and weeding.

[66] According to Mr Nab Bunheng, chief of provincial cabinet and Mr. Phan Phirun director provincial department of education, reported by RK, Dec 11-12, 2005.

Agrarian contract (institutional arrangement)

An agrarian contract is a temporary delegation of use rights to the tenant or borrower as defined in our study, including commoditized (leasing, sharecropping) and non- commoditized (loan/borrowing, gift) delegation. The rising land market causes the customary law on communal land right and use for shifting cultivation to gradually change to private ownership. Thus, agrarian contracts as derived rights have been increasingly practiced among ethnic minorities themselves. To date, agrarian contracts have been developed in three modalities: loans, renting and sharecropping. Loans have gradually changed to commoditized transfers of sharecropping and leasing. Types of institutional arrangement (agrarian contracts) in RTNKR are summarized in the table below:

Institutional arrangement (agrarian contracts)	Rights transferred	Other conditions
Open-ended loans (but not transfer to the next generation)	Cultivation rights, and sometimes plantation right (on graveyard land) No written contract or as an oral agreement The land will be returned to the community at the end when the borrowers stop using land	Ethnic minority farmers loan their land to other ethnic farmers Ethnic minority villagers loan their fallow land, *chamkar chas or bos chas* to immigrants (Khmer from the lowland areas) The community and/ or village leader loan the community land to members, and ban them from selling it. However, many land borrowers secretly sell that borrowed land, which leads to disputes between community and land buyers, in particular, when land buyers (Khmer) encroached on community land or forest Indigenous community through the Land Use and Management Committee or village leader loan communal land to Khmer teacher
Fixed term loans (exchange land/labor)	Cultivation right but sometimes plantation right (on community land) No written contract. As promise, the land will be returned to community at the end of the process. From now on, it is with written contract in the community where the community land management committee	Ethnic community represented by the Land Use and Management Committee[67] has loaned the communal land to its member with a written contract for 1 year, re-negotiated before starting the next season and with a written contract Land owners loan their land to ethnic people in exchange for labour to clear land and to plant cashew nuts, to weed for them (the term is fixed according to the growth of cashew nut trees) First immigrants (or new settlers) who arrived/settled in RTNKR before others, loaned young cashew plantation to new immigrants for annual cropping in exchange for labour to clear and weed. The owners, (first

[67] *In villages, in which CIDSE has been working, this Committee was set up with its mandate to manage the communal land, including preventing land encroachment. For example, in La En village, Teun commune, this Committee was set up in 2003 with recognizing of the commune councils and district governor.*

	was established with the assistance of NGOs	immigrants) will take plantation back or new immigrants can continue collecting fruit for land/plantation owners Urban dwellers or immigrants (without or with written contract) loan new cashew plantation to ethnic people or immigrants Overall, loans have increasingly changed from oral agreements to written contracts in order to prevent illegal land sales and grabbing Loans have gradually changed to renting due to the increasing land demand for plantation
Access to land for a fixed fee of rental payment (leasing)	Cultivation rights Contracts renewable at start of each growing season	Increasing between the Khmers as first comers and Khmers as newcomers, (oral agreements) Khmer newcomers rent cashew plantation from ethnic minority villagers with written contracts and a witness Between ethnic farmers and displaced ethnic farmers from the villages of his wife's parents or the village of himself
Sharecropping (crop share contracts)	Cultivation rights Sharing input costs and the harvest depends on arrangements made	Between Khmer land owners and Khmer newcomers as tenants without written contracts. Land owners provided bean seed and 50% of bean harvest costs or land preparation. Sharecroppers pay 50% of the costs in bean product at the time of harvest
Contracts with access to land against provision of labour	Cultivation rights	Exchange land or new plantation for labour to clear land and weed. Tenants need land for bean or rice cultivation
Pawning, Mortgaging/pledging		These arrangements have not yet happened. However, poor Khmer farmers or ethnic people sell their product before cultivation to middlemen at a fixed price of 50% lower than direct sale at the time of harvest

Most of the sellers always give some money in advance to the farmers, and this money is used as the capital for bean production. The provision of money in advance is preventing farmers from selling their land. In this case it is about the selling of product not selling about land. On the other hand, however, harvesting in advance allows farmers to terminate their cropping season. It is a sort of credit repaid on the product of land. Some Khmer rich men and big land owners lend money to tenants without interest, so that they can buy food and pay back at the harvest season. In this case, land owners want to keep good relationships with those farmers who rent their large areas of land and tractors for land preparation. Successive cultivation on the land would make land tenure more secure than for un-used land.

Loan of community land to ethnic minority farmers often leads to disputes when the borrower secretly sells land to outsiders or Khmer urban dwellers. Disputes have happened not only between borrowers and communities but also between communities and land buyers, in particular, when the land buyers have encroached on community land or forest. In most cases, the community lost land to the land buyers. If there is assistance from human right organization such as CLEC in cooperation with the PCC, the community may receive some monetary payment and goods such as wine and pork for offering to the spirits of their ancestors and to repossess the encroaching land. In the villages where the DPA is working, a Land Use and Management Committee (LUMC) is set up with a mandate to manage the communal land, including preventing land encroachment. For example, in La En village, Teun commune, a Committee was set up in 2003 with the recognition of the commune councils and district governor.

- **Loans of land**

Loans involve the temporary ceding of land rights with no explicit payment. Rights usually cover annual cropping. In some cases, communal land has been loaned to community members along with the right to plant trees, but the users can not delegate that right to a third party. The community can take the land back whenever it wants but needs to inform to borrower before the next growing season. For borrowing the communal /collective land, both parties, community members and LUMC, can change the time or terminate the agreement by informing each other. At the time of its return, the land must be cleared for cultivation use. There are two types of loan: open-ended loans and fixed-term loans. However, the process and parties involving loans are different. They include:

- Loan of land to members of ethnic minorities made by the LUMC.
- Loan of land to Khmer people made by non-Khmer (ethnic) people.
- Loan of land to new immigrants made by the first immigrants (both Khmer).
- Loan of land within the local community.
- Loan of land to ethnic minority people from another village made by village leaders (this occurs between members of the same ethnic group).

Open-ended loans occurr when the farmers loan their fallow land to other community members or new settlers, while fixed term loans involve loaning land for a period, such as in the loan of a cashew plantation. On the other hand, the community loans the communal land to its members with written contracts. The first (old) immigrants give the young cashew plantation to new immigrants for weeding. The urban dwellers establish cashew plantations after buying land but they allow farmers to grow annual crops between the rows of trees. In several cases, a Khmer land owner has loaned a plantation to local villagers for planting rice and mung beans. Sometimes, they have paid seed and land preparation costs in exchange for labor to weed and maintain the plantation.

Loans of land were made mostly without written contracts, and the process was made without a fixed period, and without the intervention of a broker. This can be re-negotiated (renewable) before the next growing season. Sometimes, land borrowers have to provide labor, for example to assist in rice planting, land clearing, maintaining the plantation or assisting in other social work, such as organizing ceremonies. Loans of land among members of ethnic minorities are still made by oral agreement. However, in the villages which are assisted by the NGOs in community mobilizing, loans with written contracts are made due to bad experiences in informal selling of the communal land, which led to land encroachment and disputes. However, the content of contracts is still not all correct. Experience shows that many indigenous farmers have sold land without informing the village chief or village elders, as they borrowed the communal land for cultivation. For example:

Mr. Si Thung, 39 years of age, a farmer of La En village, Ta Ang commune, Koun Mom district has borrowed 100m x 100m (1 ha) of collective land from the community for one year of cultivation, dated from Feb.19, 2005 to Feb.19, 2006. However, the size of the land was not correctly written on the contract (e.g. it was written 5,000 m² but written of 1 ha). Borrowing contract was signed by the borrower, chief of the LUMC, and the chief of village with a request of two witnesses.

A case of selling borrowing land in La En village without permission

This dispute happened in La En village, Toeun commune, Koun Mom district in 2004 when a family borrowed a plot of land from the community for cultivation. Then this family sold the borrowed land to other people without asking for the permission of the community. Ta[68] Preut, a Tumpoun ethnic villager, living in La En village, asked for 2 ha of land from the community to plant rice in 2003. Until 2004, Ta Preut asked permission from the community organizers to sell the land to Mr. Oeun, but the community organizers did not agree with the request. Later on, Ta Preut asked

[68] *Ta means 'elder man'.*

another community organizer in charge of development to sign on the deal of selling land to Mr. Oeun by offering him 50,000 riels (US$12.5). In that year, Mr. Oeun owed (borrowed) Ta Kang 400,000 riels and he wanted Ta Kang to buy that land. However, Ta Kang did not agree with the offer (someone told him not to buy the land because it belonged to the community). Therefore, Ta Oeun sold the land to people from Phnom Penh for US$200. The land selling letter was signed by a community organizer and the village chief, and each of them received 10 dollars. The community organizer agreed with Ta Oeun to sell the land to people from Phnom Penh because he understood that once the land is in the hands of people from Phnom Penh, it will not be sold again. If he refused this time, Ta Oeun would still sell the land to other people later on.

However, loans without a written contract between farmers belonging to ethnic minorities have gradually changed to loans from communities to their members with a written contract or to land renting. The first (old) immigrants loan their young plantation to new immigrants. The land owner as first (old) (Khmer) immigrant has delegated the cultivation right to the new immigrant in exchange for labor to maintain the young plantation. In some cases, the land owners pay the seed and land preparation costs.

Villagers from other villages requesting (borrowing) Chamkar land: 10 families from Dangkab village cleared around 10 ha of land in La En village in 2005. Four of the 10 families requested to pay in advance the amount of 40,000 riels per ha to the community. However, the other six families came into the village to clear the forest land without asking permission from the village chief, LUMC or land community organizers. Those families were fined 100,000 riels per family by the land community organizers and the fine was kept in the community cash box. After this fine, the community asked those families to request a loan of land with the condition that it cannot be planted with strategic crops (trees). The six families agreed to print their thumbs on the agreement but the land loan document was changed afterward into a land leasing document.

Loan which was written as leasing should be an example of a resolving mechanism of land dispute for ethnic minority villagers. It should be a modification of customary law which is for infringement, as a deterrent and keeps villagers aware of their obligations to the ancestors or the power of the spirits. The fear/deterrent consists not only of the cost of fine but also a cost in a spiritual sense (White, 1996).

Borrowing collective village land: Mr. Pou Klas is a Tumpoun man living in La En village, Teoun commune, Koun Mom district. From 1979 untill 2003, he had been living in La En Srer by cultivating rice. In 2000, he cleared 1 ha of Chamkar land in La En Chamkar village. His older brother was living on the land for 1 year, and then his son had a serious sickness. Since they had no money to cure his son, he requested to the village to sell the land to buy buffalo for praying to the spirits. In 2002, when all of his cattle and buffalo had died, he abandoned rice cultivation and turned to cultivate Chamkar land where he asked for the land from the village elderly people, village chief and village LUMC. He was given 0.80 ha for planting rice and beans. The village chief and village LUMC gave him the land without making any contract, but he was banned from selling that land and planting the long-term strategic crops on that land. If he tries to sell that land secretly, the community will confiscate the land from him and the buyer.

Loans of young plantation to immigrants lead in some cases to land encroachment when the trees are tall/big enough: the owner of young cashew plantation, an urban dweller, brought immigrants of 28 Cham households to look after his cashew plantation in Teun commune. The 28 Cham households lived on a cashew plantation, growing soy beans and groundnuts between rows for three years up to the time when cashew trees are tall/ big enough. Besides, they cleared the community forestry land to continue their cropping activities even though they did not have permission from the community or local authorities. They requested to be members of the community in order to access communal land free but the request was rejected by the commune council. At the time of the study, The 28 Cham households had been informed that they would be

evicted. They asked local authorities where they could live and do need help from outsider in resolving disputes. For example:

Mr. Sle Man (31) and his wife, Ms Te Var (28), a Cham migrant family from Kampong Cham province. His family lived in Roka Roung village, Thma Pich commune, Tboung Khmom district, Kampong Cham. They owned only 0.1 ha of rice land to feed four family members. Rice production was insufficient for the family consumption. Increasingly, fishing products have declined. Also, they had food shortage every year. They migrated in to Rotanak Kiri in 1999 with other Cham families because they were informed that it is easy to earn money and there is a lot of land available for free occupation. Two members of the migrant families are brothers of Mrs. Te Var. In 1999, the year of migration, they had two children and sold labor at the rubber plantation. They could earn between 7,000 and 8,000 riels per day. In 2002 they moved to settle on the cashew plantation of Mr Moul Samvang in Teun commune because they thought that their income would be increased by cropping activities. They accepted a loan from the owner of the cashew plantation. However, to sustain their livelihood they need to clear community forest land and for the cultivation of soy beans and ground nuts. However, the Cham families have been accused by the villagers as community land grabbers. In 2005, they could not grow between the rows of cashew trees anymore as the trees were tall/big enough already. They can not grow on the newly cleared land 'frozen' by the dispute. However, they borrowed money from the soy bean and ground nut collector to buy a motor bike under condition of selling the product at the price of 500 riels per kg. This selling price is 50% lower than the selling price at the time of harvest. Currently, the credit has not been all reimbursed. In 2005, the local authorities banned the practice of growing on disputed land and want to evict them from the community, although this family has to feed five children. They complained that they cleared only state forest land and further asked where they can live if they are evicted from the community.

Also, there are differences in understanding what forest land is between lowland people or Khmer immigrant and ethnic people. The immigrants consider forest as state land, according to the 2001 land law (Art. 15) while the ethnic people claim that forest within homestead areas and chamkar land, including fallow land, belongs to their community. ***Article 25 of the 2001 land law states that the lands of indigenous communities are those where the said communities have established their residences and where they carry out traditional agriculture. The lands of indigenous communities include not only lands cultivated but also includes reserved necessary for the shifting of cultivation which is required by the agricultural methods they currently practice and which are recognized by the administrative authorities.....Also, article 28 states that no authority outside the community may acquire any rights to immovable properties belonging to an indigenous community.***

In some cases, the sale of borrowing land has led to disputes among ethnic minority people as relatives. Land owners lost their land when the local authorities resolved disputes based on documents of land sale contracts by providing land to the land buyers. For example:

A dispute occurred in 2004 in Sil village, Yeak Loam commune, Banlung district when a man secretly sold land that he borrowed from his cousin. A Tumpoun ethnic man, Mr. Yos Phlek, living in Sil village, Yeak Loam commune, and Banlung district loaned 1.50 ha of land to his cousin in 2001, without preparing any written agreement. In 2004, his cousin sold the land secretly to Mr. Thy, a Khmer, living in Banlung market by preparing a land sale transfer letter at the village and commune levels. Also, Mr. Yos Phlek filed a complaint against his cousin to the commune chief. The commune chief requested the village chief to help resolving the dispute. They decided the land buyer wins this dispute because he has appropriate documents. For this resolution, land owner did not file the complaint or appeal to the district level because he does not have money and does not know any person at the district.

Borrowing Chamkar land for cultivation caused by land selling: In some villages close to urban areas, all indigenous families land to the urban dwellers and expected to earn an income by selling

labor in Khmer cashew plantations. However, selling labor became difficult due to a labor surplus. To sustain their livelihood, they had to borrow land back from the Khmer to plant upland rice or other crops such as soy beans. For example:

In Phnom village, Banlung district, all Tompuon families sold land to people living in Banlung, provincial capital. After the sale of the land, since 2003, the practice of traditional swidden agriculture has changed to permanent agriculture on small plots of land remain in the possession of the ethnic farmers. Lack of cultivated land and declining soil fertility have enforced farmers to borrow chamkar land from urban dwellers for cultivation of annual crops. In Phnom village, 10 households borrowed land from urban dwellers for planting rice under condition that the farmer has to grow cashew trees and take care of the plantation for them. Three farmers (Mr. Yan Mil, 64, Mr. Khov Phoeung and Vo Tov), are borrowing 1 ha of land each in exchange for labor to maintain the young plantation and for rice planting for Mr. That Sophea, a provincial accountant.

Recently, loans have evolved into renting, caused by a wave of immigrants and land market development for the establishment of plantations.

- **Renting**

Land renting is the delegation of use rights to a tenant in exchange for money. For cases in RTNKR to date, the main feature is the fixed amount of the rent, in contrast to sharecropping. Tenants have temporary use rights to grow annual crops but no right for plantation. Before 2000, no leasing system was practiced by the indigenous villagers. The poor immigrants seek to gain access to land through loans and sharecropping. However, both modalities have been gradually changed to a leasing system as mentioned above. Rich/well off Khmer immigrants, sought to rent young plantations from the ethnic minority villagers for growing beans because the land was already cleared. Some indigenous farmers have rented land from others because they are internally displaced people (IDP). However, the big land Khmer owners refused to rent their land out to the ethnic farmers arguing about the lack of growing technique and laziness. Also, land renting mostly happened:

- Between land owner belonging to an ethnic minority and others as newcomers;
- Between land owner belonging to ethnic minorities and new Khmer immigrants;
- Between first (old) immigrants (as land buyers) and new immigrants (both Khmer).

However, most ethnic minority farmers do not rent land in for cultivation because they can borrow land from their relatives, their community or from urban dwellers for annual cultivation in exchange for labor to protect the land from risks such as. fire. In some cases, ethnic minority people who are IDP have to rent land from other minority people as well. For example:

Mr Suon Van, a Kreung, lives in Sek village, Ta Ang commune, Koun Mom district. At present, he has no land for cultivation because he has just moved from Dangkab village (the village of his wife). He has rented 1.50 ha of land from Mr. Vi, another Kreung at a cost of 90,000 riels (around US$22) for 1 year for cultivating beans. He has rented since 2004 without a written rental contract because they are relatives, and agreed with each other based on their verbal negotiation.

Also, renting is processed mostly without written contracts for a period of 1 year, and leads sometimes to land disputes over grabbing. However, renting the new plantation is made with written contract between both parties with a witness. Normally, a relative (or a friend or a neighbor) is chosen as the witness with the recognition of the village chief. Land renting is arranged without the intervention of a broker. In most cases, new immigrants rent Chamkar land either from first (old) immigrants or from the local community. The rental fee ranges between 90,000-150,000 riels (US$22 - US$37) per ha depending on type of land (forest or degraded forest). The rental fee is paid at the soy bean harvest time. In cases of crop damage, the land owner reduces the rental fee. Recently, leasing has increased because of land demand, and changed from verbal agreements to written

contracts; this process is assisted by NGOs in order to prevent disputes and illegal land sales. For example:

Mr. Sout Mab, a Khmer person, lives in Thmei village close to the urban, Labanseak commune. Since Dec. 2004, he has rented 2 ha of cashew plantation from Mr. Sach Vong, a Kreung living in Toeun village, Toeun commune, Kuon Mom district, at a cost of 1,105,000 riel (US$273). The agreement was written down between both parties with a witness, but the period was not noted. The tenant also promised not to slash animals that enter the plantation.

Cases showing a link between land renting, loan and free access to land by clearing with permission

Mr. In Thhin, aged 37, a father of one child, originally from Krouch Chmar district of Kampong Cham province. Since the rice cultivation in Krouch Chmar district was hampered by natural disasters (flood), the rice was damaged. In the meantime, he heard that large areas of land were still available, business activities are good and his brother is already living in Rotanak Kiri, so he travelled all the way from Kampong Cham. When he first arrived, he rented 3 ha of land from Mr. In Keat (Ta[69] Keeat), a first (old) Khmer immigrant in 2004 from Kampong Cham and living in La En village, at a cost of 100,000 riels (US$25) per ha for planting soy beans. There was no document required for the renting but it needed to be renegotiated for the next growing season. It was a lease for an indefinite period of time. He hired Ta Keat's tractor to plough the land by paying 80,000 riels (US$20) per ha. If villagers have a shortage of food, they can borrow money from Ta Keat to buy rice by paying back after the harvest season. There is no interest in borrowing money from him. During the latest harvest season (2004), he earned 3,000,000 riels of income from his soy beans.

Since he made no profit from selling soy beans, he decided to stop renting the land. This year (2005), he grew soy beans on land that he cleared in K 60 village, Trapheang Chres commune, Koun Mom district. He cleared 3 ha of land at the recommendation of his brother and with the permission of the village chief who allocated a plot of land to him with an area of 100 m in width and unlimited length depending on his ability to clear land. Since he often helps Ta Keat in taking care of his cashew plantation, Ta Keat additionally loans him 2 ha of land by plowing for him. When he first moved into the village, he faced many problems due to his poor living conditions; he had to exchange labour for weeding in the Chamkars of other people and seek other work in addition to growing his own soy beans.

In this case, Mr. In Thhin could access to the community forest easier since his entry in K 60 village because his brother is a first (old) immigrant, and maybe has good relationship with the chief of village, or he pays informally to the chief for access to land through his brother as a broker. Also, he has a good opportunity to have cultivated land instead of leasing.

A farmer, Mrs. Phi Neun, Khmer, came from Tboung Khmom district, Kampong Cham province. She moved to and has lived in O Phleng village, Trar Pheang Chres commune, Koun Mom district, Rotanak Kiri since 1998. Due to her lonely life after her husband died, her first (elder) sister asked her to move to Rotanak Kiri. Upon her arrival in the village, her sister gave her 1 ha of land to build a house and 2 ha for cultivating rice. In 2003, she stopped cultivating rice on that land (2 ha) but she still cultivates rice on the homestead land (1 ha). In 2003, when she saw other villagers making a good harvest of soy beans, she asked to borrow free, 2 ha of land from Mr. Phat who is also living in La En village. When she had cultivated it for one year, the land owner changed his mind to rent her the land at a cost of 100,000 riels (US$25) per ha.

The land owner changed from a loan to renting because he knew there would be a good harvest. However, market opportunities encourage many Khmer newcomers/farmers to seek leasing land for soy bean cultivation.

[69] *Ta means 'elder man'.*

- **Sharecropping**

Land owners transfer the temporary use rights to the villager but they can take the land back whenever they want before land preparation. This has been practiced between first (old) immigrants and new immigrants for mung or soy bean cultivation. Land owners also provide seed to the sharecropper, who has to cover all expenses and clear the land. In some cases, the big land owners plow or prepare land for tenants. The agreement is made without written contracts for a growing season and needs to be re-negotiated before the next growing season starts. The share of product is 50:50. On the other hand, a labor exchange system of helping each other is the common practice within local communities for clearing Chamkar land and weeding.

Sharecropping before encroachment into forest land: Uncle Sat is Khmer with his home town in Chamkar Leur district, Kampong Cham province. Because the land in Chamkar Leur was too small for him to cultivate, he moved to live in La En village, Teoun commune, Koun Mom district in 2000 through the help of his relatives. He sold his land in Chamkar Leur for 2 Damleung of gold (around US$1,070) for 2 ha. He re-bought 5 ha of land in Teoun village, RTNKR for only 1 Damleung and 2 Chi (around US$642). He bought the land from a Tumpoun through Ta[70] Sreng (Ta Sreng knows a lot of people) with the land sale contract being made at the village level only. Then, he cleared the land further and his land has expanded to 8 ha. When he first arrived, he had a very small amount of land so he had to practice sharecropping, by exchanging his labour with Mr. In Keat, a Khmer person (owns more land than other people in the village), to get land for cultivation. At that time, he received 1 ha of land for planting soy beans. In the exchange, the land owner paid him for the seeds and 50% for labor to harvest beans. After the harvest, he shared 50% of the product with the sharecropper or grower.

- **Land pawning/mortgaging**

Pawning/mortgaging has not yet existed in the areas studied but soy bean producers who are poor Khmer farmers/new settlers and members of local communities sell their product in advance or before cultivation to (Khmer) middlemen or traders with a price approximately 50% lower than that of direct selling at the harvest time.

[70] *Ta* means “elder man” but sometimes it is also used for “rich man”.

Land sales/purchases

There has been a change in the modalities of access to land for cultivation compared to the time before 1995 when people did not have a 'tradition' of selling their land. After gaining experience of land transactions, ethnic villagers have started to plant trees to identify their right to their fallow land. Presently, new Khmer settlers can access land for cultivation, in most cases, by buying. ***However, Article 28 of the 2001 land law states, "No authority outside the community may acquire any rights to immovable properties belonging to an indigenous community".***

Land sales/purchases in RTNKR started in 1995, but only in a small scale and for land straddling the national road. Before 1995, ethnic people used to practice an exchange system; land was exchanged for consumable materials and goods such as food, motorbikes, TVs, video players. However, the system has changed to the sale of land, and this increased gradually from year to year due to a wave of migration from the lowland areas, development projects and commercial plantation. Land sales peaked in 2004. However, in the districts close to the urban areas such as Banlung and Koun Mom, land sales became less active in mid-2005 because local people did not have any more land to sell. Some Khmer people have sold land or plantations in lowland areas at a high price in order to invest in cheaper land in Rotanak Kiri. For example:

Mr. Kim Kheng, an official of Kang Meas district office of education and owner of a rubber and cashew plantation on red soil in the upland areas in Chamkar Leu district, Kampong Cham province sold a plantation in Kampong Cham at a higher cost (US$2,800 per ha) and re-bought land at a lower cost in RTNKR province (US$300 per ha) for a rubber and cashew plantation. This area is situated at the triangle zone of three districts: Kon Mom, Banlung and Lumphat, RTNKR. Within the total 400 ha of land that he bought, 50% have certificates of possession right and another 50% of land is degraded forest and chamkar cheu (forest), fallow land or old chamkar without certificate. He bought the land through a land broker, Mr. Chheng Lok, the Chheng Lok Hotel owner. He was mediated to get contact with the hotel owner by an immigrant from Chamkar Leu district, Kampong Cham. However, one hectare of land costs US$200/ha but the other $US 100 is for other costs (brokerage, protection and document of land right transfer). At the time of the study, the land buyer is seeking ethnic minority labor to clear the land. Normally, the cost of clearing land is 250,000 riels/ha (US$60 per ha).

Within villages in which the community has been mobilized, sales of land have happened secretly between both sellers and buyers because the village and commune chiefs did not recognize sale contracts. On the contrary, in other villages, they recognized sale of land which has been mostly carried out with the land sale contract or land transfer. Sometimes, the deal is easier if the commune chief is also working as land broker. Then the transfer contract can be quickly signed by the commune chief (in the case of Yeak Loam and Ta Ang communes). Due to the education on the importance of land issues conducted by NGOs and the network of highlander associations, some people have become aware of the issues and stopped selling their land. Most ethnic minority families have sold land but they were reluctant to tell their community or outsiders because they were frightened of being fined as determined by the community roles. According to the study's in-depth interview, only 37% of interviewed FHs admitted that they sold land. The main reasons that they sold land were: a lack of food, degraded soil fertility, indebtedness, buying a motorbike and acquiring other assets.

With regard to land prices, in 1995, the selling price of chamkar land close to the NR was 50,000 riel/ha (US$20). For land which is far from urban areas (over 30 km), but close to NR the price increased 300% or from US$120 in 2002 to 500 per ha in 2005. With regard to land right transfers, deals

among villagers mostly happened between buyers and sellers based on verbal agreements. Recently, land sales among urban people or people from Phnom Penh have changed from sale contracts recognized by the village and commune authorities to the district level in order to avoid land disputes in the future. According to the in-depth survey, land right transfers are mostly carried out at the village level (44% of total selling plots) and commune level (25%). They have to spend money for recognizing the land sale right transfer. However, in some cases the village and commune chiefs have not agreed with land sales/purchases. In Yeak Loam commune, most land was sold with sale contracts recognized by the commune chief because he is also working as a land broker. In addition, he is a person who is authorized to sign the land right transfer. Due to the high cost, people did not legally transfer the land rights at district level. In exceptional cases, rich Khmer land buyers applied to receive a certificate of possession right, refering to article 69 of the 2001 land law; "***The transfer of ownership shall be considered valid upon the registration of the contract of sale with the Cadastral Registry Unit, and a contract of sale of immovable property shall be registered only when all parties have proven by evidence that all taxes on the subject property have been paid".*** For example:

Mr.Kim Reth, a Khmer living in Ta Ang 2, Ta Ang commune, Koun Mom district admitted that he has 20 ha of land and he has certificates of possession on 10 ha of land which was provided by the district office of land management, urban planning, construction and cadastral. To get these certificates, he had to spend US$300 per ha for the document clearance and other related costs.

Rich and cunning people bought land using three methods,[71] threatening, cheating and persuading, which has often caused land disputes. Even though ethnic minority villagers were reluctant to sell their land they were threatened to do so at a very low price. The buyers used fake information showing that the land would be expropriated without compensation. Also, there has been cheating over land size by local authorities selling community land to outsiders/urban people. In many cases, land brokers have organized parties which were good occasions in which to persuade villagers to sell their land. Also, there are have been many problems with recent land sales such as:[72]

- Forested areas are either being illegally cleared to claim possession or money is given to a villager who may allow this clearing.
- Old chamkar land areas, fallow land, are sold and forestland around the chamkar land is illegally cleared.
- Old chamkar areas continue to be sold at an increasing rate. People who have not sold land are often jealous of people who have sold some land or they feel pressure to sell before the land is taken or lost without any compensation. Some village leaders sell land illegally or approve the land sales, which sets an example for others to follow.
- Land is sold either without a written contract or a contract that contains improper parties, approval and terms, or that is even backdated to before 2001.
- Land is being borrowed or rented without written contracts with the intention of keeping the land.
- Land of a neighboring village or commune is sold by the wrong village/commune with the excuse that they are not sure of the exact boundary, or the villagers selling the land wrongfully claims that the land is traditionally theirs.
- Village and commune authorities are selling land without informing the community or against a village statute banning the sale of land.

[71] *According to Mr. Tep Bunrith and Mr. Grame Brown, trainer and advisor of the project of 'RCNRMN-Ratana Kiri Community Natural Resource Management Network'.*

[72] *J. Ironside and G. Brown (July 2004), Illegal land selling practices in RTNKR.*

- There are many possibly illegal old 'sales' *chamkar* lands where the buyers from the urban areas have not been in possession but are now trying to re-establish their rights to the land and are seeking to legitimize their old claims.

Local leaders who recognized land sale contracts have also been accused of being involved in land sales. PDA (CIDSE), an NGO, has attempted to assist non-Khmer groups to prevent illegal land sales and encroachment by implementing a pilot project for collective land registration and titling. However, this project also had an effect on land sales because people think that they cannot sell their land once it is registered. Most families sold land for buying motor bikes before the project stated because everybody was informed they could not sell their land if land was registered as communal land. Many cases of land conflict caused by illegal sales remain un-resolved. For example:

Case of dispute among ethnic minority people (Kreung and Tumpoun) over the sale of land in La En village to an outsider without permission

There is another case of land selling without permission by villagers which happened on May 13, 2005. It happened when six families of Kreung people living in Sek village, Ta Ang commune ominously and secretly sold 10 ha of land to a Muslim family living on the land of Mr. Moul Samvang in Toeun village, Toeun commune, Koun Mom district. In 2001, the six families firstly cleared their Chamkar land within the territory of Toeun village of Tumpoun people (there was no clear village boundary) with no request to the village elders or village chief. In 2003, after conducting the boundary demarcation, regulation on community land use and management, the land management committee and village chief informed the six families that they could continue living on the land but that they cannot sell that land. In 2005, they sold the land secretly to the Muslim people. At the time of this study, villagers had not filed a complaint about this case yet, they planned to complain when the case of another land dispute with Mr. Moul Samvang, a forestry official, is resolved. The provincial cadastral commission (PCC) is working to resolve the dispute in cooperation with CLEC (PILAP).

Another secret sale of community land led to a dispute with the community and the district authorities intervened in this case to confiscate land to give it back the community:

A case of land selling happened in Toeun village in 2001 by which,a Khmer Islamic person (Mr. Vich) came and cleared forest land in Toeun village without asking for permission from the village chief and elderly people. The area of land that Mr Vich cleared was 3 ha. In 2004, Vich exchanged that land for his debt of US$2,000 with Mr. Thy. The new owner continued to clear land as far as 10 ha. According to the community organizers in Toeun commune, Mr Vich sold 10 ha of land to Mr Thy in 2004. The community filed a complaint to the district authorities for intervention. On April 28, 2005, the district authorities came to resolve this dispute. Mr Vich was reprimanded by the district officials and the officials promised to confiscate the land to it give back to the community. On May 2, 2005, the community issued a letter to the land buyers to inform them not to plant fruit trees on that land.

In many cases, Khmer people bought land, as mentioned, and then encroached on forest land surrounded by or near it. They always thought they cleared the state forest land, not community land. However, the ethnic community claimed their land. Despite the ethnic community filing complaints against the Khmer encroachers, the dispute remained un-resolved. Refering to the forestry law (2002), it does not clearly classify the difference between forest land and fallow land of shifting agriculture (forest regrowth areas). In the shifting cultivation system, both land and forest are linked together. ***Art 37 of law on forestry states, "Local communities that traditionally practice shifting may conduct such practices on land property of indigenous community which registered with the state…. Forestlands reserved for shifting cultivation shall be identified by Anu-kret (Sub-decree).*** However, to date no single sb-decree has recognized the community land. For example:

In 1995, Ta Mao, a Khmer person from Kampong Cham province bought 6 ha of land from Tumpoun ethnic minority people in La En village by bartering (exchange) for two cattle with the

signature of village chief on the land contract. In 2003, he continued his further clearance by hiring workers from lowland areas to cut the forest and expand his land. As a result, he expanded 20 ha of land. In 2003, the community filed a complaint to the district authorities but there was no resolution. However, the ethnic community filed complaints against the other seven people who were accused of encroachment on the communal land as well.

Land conflicts

Since the influx of immigrants from the central lowland areas, the province has faced many cases of land dispute. The main causes of land disputes are: illegal land sales, land encroachment by immigrants, powerful men snatching the land of the villagers, unclear plot boundaries, claims of ancestral land and fake land documents. Chamkar chas or *bos chas*[73] (fallow land) has been sold to Khmer immigrants without clear measurement, and sometimes land sellers have shown trees as being the plot boundaries without asking the villagers. The latter were not aware of the land size unit in hectare that the Khmer use. The plot of land on the sale contract was mentioned in hectares but with incorrect length and width. Also, the interpretation of land laws relating to issues such as the unclear definition of forest land and community forest land, different understandings of administrative and traditional village boundaries, and ignoring the traditional right of fallow land or *bos chas* have led to land confiscation and land disputes.

Most disputes related to land transactions are:

- Between ethnic villagers over ancestral land (or between new land owners since 1979 and others introducing themselves as grant children of their ancestors as the former (old) land owner), and over sales of community land.
- Between indigenous people and land buyers on claims for land re-possession;
- Between ethnic minority people and powerful people who have encroached community forested land.
- Between ethnic people and land buyers (Khmer immigrants, urban people) over plot boundaries or encroachment, issuance of land certificates violating people's land.
- Between ethnic minority villagers and poor immigrants (Cham) who are accused of land encroachment on community forest land.
- Between ethnic minority villagers and rubber investment companies or government officials on boundaries or land encroachment. The villagers, in this case, were accused of land grabbing.
- Between ethnic villagers and urban dwellers (with the involvement of commune and village chiefs) over ignoring the right of fallow land of villagers. In this case, the chiefs gave the fallow land to urban dwellers without informing their villagers, and were accused of land grabbing or secretly selling the community land.
- Between a villager and his community (or dispute among ethnic minority people) over the secret sale of loaned land (e.g. burial ground).

[73] *Short- or long-term fallow land.*

The cases of land disputes among villagers belonging to ethnic minorities were resolved by the village elders and village chief based on their customary law, but several cases of disputes remain unresolved, in particular, disputes involving powerful or rich people with regard to encroachment on community forest or villagers' fallow land. However, many brokers have intervened in assisting ethnic people from losing their land through selling and disputes. Also, not all conflicts are about land transactions. However, there have been cases of land conflict related to the area of 'land transactions' that started from land encroachment and different understandings of land rights. In many cases, disputes among ethnic minority people occurred on the village boundaries because they have a different way of thinking of traditional boundaries and/or administrative boundaries. For example:

Between ethnic villagers over ancestral land

A serious land conflict occurred in 1993 between three households of Phnom village and households in Lon village. They cleared land under administrative boundaries of Lon village. After 2-3 years planting, they sold land to urban dwellers. In this case, the villager in Lon village did not agree and complained to the commune chief. However, the Phnom villagers claimed their ancestor land. This dispute was resolved by local chiefs and village elders of both villages with a request to villagers of Phnom to stop clearing land in Lon village. However, the same thing happened again in 2004 between 20 households of Phnom village and 35 households of Lon village when Phnom villagers cleared land for selling to urban dwellers. Again, it was resolved through the conciliation of the commune chief, both village chiefs and village elders of both villages. The conciliation was that a villager of Lon had to pay between 30,000 and 50,000 riels and a jar of rice wine to the villagers of Phnom for offering their ancestors in exchange for gaining access to the land and to stop clearing land in Lon village. To avoid future land disputes, the commune chief issued receipts of land possession to Lon villagers for a payment of 20,000 riels (US$5) per plot. Usually, land changes hand only at the commune office with an unofficial payment between 20,000 and 40,000 riles per ha for village chief and 100,000 riels for commune chief.

Nowadays, he local authorities try to prevent land disputes by the issuance of formal documents instead of the customary tool of planting trees. The process has been rapidly adopted in the areas where the Khmer were nominated as local chiefs.

In some cases, there are possibly illegal old 'sales' (mostly community Chamkar lands often covering large areas) where the buyers from urban areas have not been in possession but they are now trying to re-establish their rights to the land and are seeking to legitimise their old claims. For example:

Between indigenous people and land buyer on the claim for land re-possession

Mrs Phan Saran, her husband is the director of provincial department of planning. In 1990, they bought from six local farmers about 20 ha of Chamkar land along national road 78 in La En village. There were six written contracts of land sale which were approved by the village and commune chiefs and village elders. Due to insecurity at the time she could not use that land. After a while about 15 ha of land was re-occupied by the ethnic farmers who sold land to them for growing rice and soy beans. As she returned to the land in the early 2000 she was able to access only free occupied land which was located in the middle of their land. She tried to negotiate with ethnic farmers to get the land back but a group of farmers agreed to give land back but ask for a payment of labour costs for clearing at 100,000 riels (US$25) per ha, while another group did not agree because the land is fertile and flat which is suitable for soy bean growing. In this case, she lost part of her land. After getting the land back, she has cultivated cashew trees and soy beans and she will apply for registration and certificates of possession right at the DLMUPC.

The ethnic minority villagers took the land back as the owner did not use it. Even though the sale was with written contracts of land sale recognized by the village and commune chiefs and village elders, the buyer lost part of her land. She did not want to file a complaint against the ethnic

minority villagers or she fears that she may lose more of her land because it is not fully secure. Also, article 28 of the 2001 land law states: "no authority outside the community may acquire any rights to immovable properties belonging to an indigenous community". On the other hand, the land seller tried to get land back when the price of land increased. For example:

Dispute occurring in 2004 when a land owner wanted to get back the land he sold

In 1995, Mr. Maon Teng, Tumpoun ethnic villager, living in Lon village, Yeak Loam commune, sold 1,50 ha of his Chamkar land for 120,000 riels (US$40) to Mr. Cheus, living in the same village. They did not prepare any written document as evidence for the sale and purchase of the land. This was because they trusted each other and they were not aware how to prepare the written contract. In 2004 when the price of land increased, the seller demanded the land back but Mr. Chreus, the buyer, refused this demand. In 2005, Mr. Chreus requested the commune chief to issue him the land tenure transfer letter because he fears that the seller tries to claim that land back. He spent 20,000 riels (US$5) as the service fee to the commune chief for preparing the land transfer letter. In this case, the parties in dispute did not file a complaint to the village and commune chiefs.

In many cases, the outsider or Khmer people are accused of buying or borrowing land with the intention of encroaching on fallow land or community forest land surrounding it. Encroachments were by either the land buyer or their hired labor. Some ethnic minority farmers also lost their land or plantations because they were afraid to complain or they did not know how to complain. In some cases, the community received land back if there was intervention from a human rights organization and the PCC to resolve a land dispute. For example:

Dispute between community/ethnic minority people and government official over buying land in Teun village with the intention of encroaching on surrounding forest land

Mr. Moul Samvang (a forest administrative official) from the provincial capital of Banlung bought 20 ha of land from ethnic community villagers in 2000. He cleared forest land with the intention of expanding up to 200 ha. His encroachment into the community forest land led to a serious dispute with community villagers. Firstly, with the assistance of ADHOC and NTFP the community complained this case to the provincial governor. It was passed to the provincial land dispute resettlement commission. This commission worked on the complaint in January 2001, and decided in favour the community. Mr. Moul Samvang could receive/keep 20 ha of land and had to return the other 180 ha of land to the ethnic minority people of Teun village or the Teun community with an additional payment of 1,000,000 riels, 6 jars of rice wine and 5 pigs, equivalent to a total amount 1,100,000 riels to three villages (of Teun commune). However, a dispute occurred again in 2002 when he expanded his land over the ethnic villagers' land. This dispute happened before the establishment of the Provincial Cadastral Commission (PCC). The ethnic villagers complained this case to the human rights organizations, ADHOC and CLEC. After the establishment of the PCC, CLEC urged the PCC to work on this complaint. The PCC conciliated this dispute and nominated Mr Toem Monirath, the vice director of DLMUPC and chief of PCC secretariat to conduct measurement and delineation of land in order to distribute land to Mr. Moul Samvang and the Teun community on 12 May 2005. The conciliation and measurement was also assisted by the OCC, CLEC from Phnom Penh and observed by the NGOs and agencies working in Rotanak Kiri such as the DPA, PLG.

Another case was related to encroachment on ethnic villager's plantations after clearing. The ethnic minority villager lost his cashew plantation because he feared the powerful man and was not aware of how to make a complaint. The ethnic farmer lost land has no hope to get it back.

The dispute occurred in 2000 in Sek village in Ta Ang commune, Koun Mom district when a policeman received a certificate that violated another villager's land. A party involved in the dispute who is the ethnic villager said that (Mr) Ta Khorn, chief of Koun Mom district police, cleared forest land along NR 78 within the boundary of Sek village, Ta Ang commune in Koun Mom district in 1990 for planting cashew trees over an area of 5 ha. In 1994, he built a fence around his land and other 6 ha of land of a Kreung villager who is also living in Sek village (which is also land for cashew

plantation). The policeman (violator) told the Kreung villager that he built the fence around the land to prevent animals from entering the Chamkar. In 1998, Ta Khorn (the policeman asked the Land Management Office to issue a land certificate for his land, including the land of the Kreung villager. At that time, the Kreung villager was not aware of what he had done. However, a dispute happened in 2000 when he (the Kreung villager) asked his children to pick cashew fruits from his Chamkar. The policeman told the Kreung villager not to pick the cashew fruits because he was the owner of the cashew plantation. The Kreung villager did not make any complaint because he was afraid of the policeman and he did not know where to file a complaint.

Stakeholders' groups in land issues

- **Brokers involved in land transactions**

Land brokers play an important role in land sales/purchases. Since 2004, many cases of land sales/purchases involved the intervention of a broker. There are many actors who practice brokerage occasionally or are part-time brokers, such as relatives, villagers, school teachers, urban dwellers, hotel owners, policemen, chiefs of village and commune or commune councillors. There are also links between local brokers and urban brokers or alliances between commune councillors and others involved in brokerage. In some cases, people come from different lowland provinces to buy land through the assistance of their relatives/friends living in the province or relying on social (kin) networks as a sort of strategy for buying land.

A farm household in Tahok village, Prek Tahok commune, Chhloung district, Kracheh province. He is preparing (March 2005) to resettle in RTNKR where it is not his home village but is waiting for the authorization. A broker/mediator has coordinated this resettlement affair but, he has to pay 500,000 riels (about US$125) for the registration and a plot of land[74]. Fifty per cent of the total households in the village of Tahok migrated to Rotanak Kiri or Mundul Kiri due to declining rice production and fishing yields. They were forced to displace because rice production in areas along the Mekong River have often been damaged either by drought or flood.

It is not only rich men who want to establish plantations. Also those people who face crop damage or a lack of agricultural land in the lowland provinces try to gain access to large amounts of marginal land through land brokers or relatives who have previously migrated to an area. Villager brokers are able to mediate in buying small amounts of land, while the chiefs of village and commune mediate in sales of large amounts of land. Some policemen acting as brokers have used the money made from brokerage to buy land for speculation. In most cases involving land sales/purchases to outsiders/urban people, the buyers never meet sellers so that the land broker is able to get a higher price than that which the seller has agreed upon. Land brokers are responsible for preparing land transfer contracts[75]. When these documents are made, the buyers give money to the land brokers to pass on to the sellers. However, in the land sale where the buyer and seller met each other, when the buyer asked about the price the seller asked him to negotiate with the land broker. As promised, the land seller did not claim more than the price which he had already agreed

[74] *Reported by RK, 30.03.2005.*

[75] *Land transfer contract or land sale contract.*

upon with the broker, even though the broker was able to sell the land at a higher price. In this case, the broker gained money from both the brokerage fee and land sale profit. For example:

Mr. Kvev Tuk, a Tumpoun farmer, living in Lon village, Yeak Loam commune, Banlung district, sold a plot of land of 20 m x 70 m in 2004 at a cost of US$700. He sold the land through the 'facilitation' of a broker. The land broker negotiated the price with the seller and agreed to sell at a cost of US$700. The urban buyer paid US$950. The buyer said he also asked the seller about the price when he first came to see the land, but the seller told him to negotiate with the land broker. From this transaction, the land broker made a profit of US$250.

In one case, a village broker overheard a conversation between villagers who wanted to sell their land. He, informed another urban land broker in Banlung to seek out people who wanted to buy land. The price of the land was negotiated with a surplus in order for the brokers to make a commission. The land buyers believed that they could trust the land brokers because of their knowledge of the land history and their ability to avoid land disputes in the future. For example:

A son of Mr Nan Chrong, aged 23, half-Tumpoun and Kreung, lives in La En village, Toeun commune overheard other villagers discussing that they wanted to sell their land. Then, he confirmed with the villager about this option of land sale. He informed the urban broker in Banlung (they used to have a walk together) about the villager who wanted to sell his land. He asked the urban broker to keep US$300 for him as the commission for informing. When the deal was made and the money was paid, the young man went to the urban land broker again to get the commission. Besides cultivation, the young man sometimes involves himself in land brokerage, but he works as a land broker within his village and neighboring villages only.

The hotel owner acted as a broker for the rich Khmer immigrant or for those living in lowland provinces such as Kampong Cham looking for large land for commercial plantation. He also made an alliance with the authorities involved in land management, in order to get access to land titles certifying formal land rights for large land buyers. The brokerage fee being allocated to all authorities involved is 1/3 (33%) of the land's sale price. In many cases, commune councillor brokers can gain up to 1/3 of the land price. For example:

The sale of 100 ha of forest land in Lung Khun village, Borkeo district involved a number of land brokers such as the commune chief, the first deputy chief of the commune and a teacher at Yeak Loam Primary School (Mr. Meas Ton). At first, people in Phnom Penh communicated with Mr. Meas Ton to find out about land sales. Then, Mr. Meas Ton met with the chief and first deputy chief of the commune. The three of them traveled to Borkeo district in the car of the first deputy chief of commune to seek people who wanted to sell land. They found land of 100 ha at a cost of US$100 per ha. However, they told the buyers that the cost was US$150 per ha. Then the land brokers brought the buyers to see the land. The buyers agreed with the price and asked the brokers to prepare a land transfer contract. When the documents had been prepared, the buyers gave US$15,000 to the land brokers. Then the land brokers gave the money the land sellers. From this deal, the brokers made US$5,000 profits.

For village brokers, the land buyer covers the expenses of changing the name at the village and commune level, These formal written contracts are not legal according to article 65 of the 2001 land law, ***"The transfer of ownership can be enforceable as against third parties only if the contract of sale of immovable property is made in writing in the authentic form drawn up by the competent authority and registered with the Cadastral Registry Unit. However, no authority outside the community may acquire any rights to immovable properties belonging to an indigenous community" (Art. 28).*** However, in practice community land is sold to outsiders. Brokers bring buyers to see the land first but try to avoid them meeting with the sellers. Sometimes, the buyers do not come and see the land because they trust the brokers. On the transaction, the brokers prepare documents of land transfer and the land buyer pays for them. The cost for signing on the land transfer contract is US$10 for the village chief and US$30 - US$50 for the commune chief. In some cases, the land brokers sign documents as witnesses if the village chief refuses to sign. The signature

of the village chief is easier to obtain if the document has already been signed by the commune chief. Some villagers act as broker in the commune, while the commune chief acts as a broker are not only in his own commune but also in other districts.

Before 1995, in many cases, the chiefs of villages and communes were asked by the urban dwellers or Khmer immigrants to seek land for plantation development. The act of giving land as indigenous commodity to the Khmer immigrants or urban dwellers leads to land disputes. For example:

A dispute case of 50 ha of land in Tus village, Ta Ang commune, Koun Mom district between 82 indigenous families, Kroeung, represented by seven families and 10 urban dwellers from Phnom Penh and Kampong Cham province. They accused that both local authorities sold their land to the 10 urban dwellers without informing the villagers. At that time, people felt fear but they referred this complaint to ADHOC in Jan, 2005 to claim their land back.

Beside the above case in Tus village, local authorities were also frequently accused of selling community land secretly in Barkeo and O Yadav districts which are located far from the urban area. NGOs have tried to assist people to keep their land by different approaches.

• 6.2. Formal and informal politico-legal institutions

In Rotanak Kiri, there are many stakeholder groups working on land disputes, such as the provincial department of land management, urban planning and construction (DLMUPC), provincial cadastral commission (PCC), human rights organizations: ADHOC, CLEC, DPA (CIDSE), CFAC, the Rotanak Kiri Community Natural Resource Management Network, NTFP, CBNRM, the Highlanders Association, UNDP, LICAHDO, LAC, village chiefs and village elders.

DLMUPC and PCC: The DLMUPC has not much to do with legal brokerage, but it is involved in implementing land policy, and the PCC is formally involved in resolving disputes over land without titles. Our inquiry into the land registration process led us to understand the intervention of the government in preventing and resolving land disputes and the loss of collective land. To date, some districts have an office of land management and administration but no chief has been nominated. People applying for sporadic registration of their land have to make a request at the provincial level. They face constraints in terms of both time and costs. Ninety-nine[76] of occupied rural land does not have legal documentation. The transfer of land right by sales/purchases is (informally) recognized at the village and commune level. The DLMUPC certifies the non forested land and old chamkar land of cashew plantation, and recently has been asked to collaborate with the FA to identify forest land. The issuance of a certificate of possession rights of land has been mostly for plots of residential land in the provincial capital and for some plots in the downtown area[77]. Local leaders who recognized land sales were accused of also being involved with them. There have been some big land buyers who took workers from other provinces for clearing land. Some workers did not return home, and settled on land that they cleared illegally. The new illegally cleared land is unknown but the FA is conducting the survey of it. The FA can not ban people from illegally clearing land if there is no cooperation from the commune and district authorities[78]. Also, the DLMUPC has acted as an intermediary institution between claimants and authorities – through the provision of information and legal assistance in cases of land dispute. Up to June 2005, the DLMUPC had issued 30 certificates of possession right in O Chum district. Ten of the certificates were issued for Khmer land buyers who own large amount of land. On average, each person owns land 50 ha. In Banlung district, the DLMUPC issued on average 3-4 certificates per month for residential land in urban areas. The recognition of land rights by the commune officers costs US$30 per ha of chamkar land. Some plots changed hands legally at the OLMUPCC but the cost may be higher. For example:

[76] *Reported by Mr Toeum Sinath, Director of DLMUPC of RTNKR.*

[77] *Mr. Toeum Sinath, director of DLMUPC of RTNKR in RK, Feb.8, 2006.*

[78] *According to Mr. Toeum Sinath, Director of DLMUPC of RTNKR in RK, Sept, 24, 2005 and Feb, 08, 2006.*

Mr. Kim Reth, a Khmer person living in Ta Ang 2 village, Ta Ang commune, Koun Mom district admitted that presently, he has 20 ha of land. He made a definitive sale[79] issued by the OLMUPCC and received certificates of possession of 10 ha of land. To get this certificate, he had to spend US$300 per ha for document clearance and other related costs.

In 2002, participatory land use planning (PLUP) was conducted after the creation of a Land Use Planning Committee through election by community members. PLUP aims to assist local ethnic minorities by preventing land disputes and promoting the sustainable use of natural resources. The Communal Land Titling Committee is the community representative and structured with five members, including village elders (2), village chief (1), and representatives of another committee. One of them will be elected by the villagers to be the community representative as a legal entity for titling of collective land. In La En village, DPA (CIDSE) in cooperation with LMAP, is conducting the registration and titling of collective land. A villager belonging to a local ethnic minority has the possession right, *Sith Poukkak*, but, he will have no right to sell land. However, land can be transferred to his children or relatives as possessors, and a villager can sell his land if all parties are in agreement. If a farmer goes to another village outside the community, the community distributes part of his possessed land for sale depending on the community's decision. However, he cannot get the land back again when he returns to the village.

Steps and pilot activities of community/collective land registration are:

1. *Selecting the target villages*
2. *Provincial task force formation*
3. *Extension on land law*
4. *Community applies for communal land title*
5. *Review PLUP by the district cadastral administration*
6. *Training of adjudication and demarcation team*
7. *Formation of legal entity of community*
8. *Measurement, demarcation adjudication, survey*
9. *Public display*
10. *Conflict resolution*
11. *Endorsement of agreement*
12. *Issue of titles.*

This process is intended to be harmonized with the newly formed commune councils' responsibilities in budgeting and planning. PLUP can explicitly include an opportunity for the council or community to identify potential Social Land Concession (SLC) sites. However, there will be no sustained poverty alleviation benefit if SLCs become a tool for deforestation, and a subsequent degradation of the natural resources upon which the livelihoods of indigenous people gathering non-timber forest products (NTFP) are based. The Ministry of Land Management established a Task Force which aimed to develop a policy strategy on indigenous land rights and to draft the sub-decree on collective land title.

ADHOC, LICAHDO: The two human rights NGOs have tried to assist people by organizing training on land law. They have helped people involved with land disputes on how to file complaints, and monitor the complaints that have been referred to the court or cadastral commissions. Sometimes, they monitor the land dispute process and help those people who have been arrested. They also negotiate with land owners to return land or parts of land back to villagers.

CIDSE (changed to DPA): has been involved with community resource management activities since 2001. CIDSE assists indigenous people to keep their land by implementing PLUP and supporting

[79] *Legally, with transfer tax of 4%.*

the systematic land titling of the communal land. Its first pilot project began with land use mapping and community forestry activities in Teun commune, Kon Mom district. In 2002, PLUP activities were carried out in La En village because the village straddles NR 78, there have been high incidences of land sales and land disputes since the end of the 1990s.

CLEC: In Rotanak Kiri, CLEC provides training on land rights and advocates at the national level for the protection of indigenous land rights. CLEC has also launched the Public Interest Legal Advocacy Project (PILAP) which aims to use the legal system to assert and protect citizens' rights. PILAP selected a case of land dispute between 12 Jarai villagers and a provincial forest administration official from Teun village. It is alleged that the official illegally seized communal land. PILAP has prepared its legal case, and resolved this case in collaboration with the PCC, and through a mixture of publicity, negotiation and conciliation. The goal was to set an example by forcing persons who illegally grab indigenous land to respect the land law. To date (Feb 2007), CLEC has assisted the villagers to file a complaint to the provincial court seeking legal action against the land buyer from Phnom Penh, the former Kang Yu village chief, O Yadav district governor and three Pate commune councilors demanding the return of 270 ha of land.

Community meeting organized by the chief of village and adjudicated by the elders, intervention from the commune chief: There is customary law which governs social behavior. This is related to the power of ancestors who, if angered, may punish through misfortune, sickness and even death. The mechanism by which this is enforced is standard if a recognized customary law has been infringed, it is usual for a meeting to be called and village elders will decide upon an appropriate fine.

In cases of disputes between community villagers, the elders must adjudicate. The two parties agree on a mediator to 'manage' the case and work towards a solution. There are arrangements set up by the community meeting organized by the chief of village, which aim to prevent land sales and encroachments. The arrangements state that the community fines those villagers who sell land to outsiders through the payment of collective cash. If the villagers sold land at a cost lower than infringement they have to find money for an additional payment. The land seller has to pay the community box, or both land buyer and seller have to be evicted from the community/village or the community confiscates their cows for sale instead of taking the payment. However, land disputes caused by land sales between local people in two neighboring villages need intervention from the commune chief as well. For example,

A dispute happened in 2004 between 20 households of Phnom and 35 households in Lon village when the villagers of Phnom cleared land in Lon village for sale to urban dwellers. The dispute was conciliated by the commune chief, both village chiefs and village elders of both villages; the Lon villagers had to pay between 30,000 and 50,000 riels and a jar of rice wine to the villagers of Phnom for offering to their ancestors in exchange for stopping the clearing of land in Lon village. It is like buying land from the ancestors of the Phnom villagers. In order to prevent land disputes in the future, the commune chief issued receipts of land possession to the Lon villagers; the payment for the receipt was 20,000 riels (US$5) per plot which is lower than recognizing the land sale contract.

National Authority for Land Dispute Resolution (NALDR) and the Provincial Committee on Forest Clearance and Encroachment*:* This Committee expropriated nearly 400 ha of land in Banlung district referring to *Botbanhchea* (Regulation) No 01, in May, 2006, and at the request of the NALDR. Land with fencing without use is considered as state land but it was illegally occupied and mostly sold to urban people without legal documents.

Land inequity

Analysis of land inequity shows a trend toward land concentration. In RTNKR, even though ethnic people have sold land they still have land for their own by using fallow land or by clearing. However, most of them now have smaller amounts of land in comparison with former times. Thirteen per cent of interviewed FHs, who had land equal to or less than 1 ha per FH, occupied over 2% of total land. Forty-seven per cent of FHs hold more than 4 ha of land each and occupied nearly 74% of the total land. However, a Gini-coefficient (0.39) confirms the conclusion that 20% of investigated FHs own around 5% of the total land while another 20% of FHs own around 45% of the total area. There were some indigenous farmers who do not have land for farming due to displacement but they are able to survive on land borrowed from their relatives or community.

Those having land holdings of 1 hectare or less than can be classified as 'near landless or poor land farmers'. In terms of income, this group, in particular youths, depend on selling labour for weeding the cashew plantations and for clearing land of the Khmer, while the elders collect NTFP. Land sales began in 1995 and peaked in 1999-2001 because 36% of interviewed FHs sold land.

With regard to the level of land right transfer by sale/purchase, selling plots were registered at village level (44% of total selling plots) and commune level (25%). Fewer cases of land sale/purchase were registered at the commune level because those were deals made among ethnic people. Only 36% of interviewed FHs made a land right transfer letter at the commune level. They have to spend money for land right transfer, but in some cases the village and commune chiefs did not agree with the land transfer. In Yeak Loam commune, most of the land was sold with the sale contracts being recognized by the commune chief, who also works as a land broker. He is a person who is authorized to sign on the land right transfer. They did not transfer the land right at the district level because of the higher cost. In exceptional cases, rich Khmer land buyers have applied for and received certificates of possession right. For example:

Mr. Kim Reth, a Khmer person living in Ta Ang 2 village, Ta Ang commune, Koun Mom district admitted that he has 20 ha of land at present. He has certificates (two) of possession right on 10 ha of land which is appropriately issued by the OLMUPCC. To get this certificate, he had to spend US$300 per ha for the document clearance and other related costs.

Future Trends

- Ethnic minority people will face a lack of agricultural land that will cause food instability. This problem will occur because of many factors including the sale of land to urban people, demarcation of state forest land and the banning of land encroachment, land concentration and population growth/pressure. The shortage of agriculture land for ethnic minority farmers will happen in the places where large areas of land are still available.
- The majority of land in the rich soil areas is no longer owned by the indigenous or ethnic minority communities. As a consequence, they will be prevented by the issuance of a consistent statute and regulations to protect the act of illegal sales of chamkar land.
- Land right transfers will increase because there is a great need for land for plantation (cashew, rubber, acacia...). Distress land sale will lead to land disputes due to ignoring the ethnic people's traditional right to c*hamkar chas and bos chas* (fallow land).
- The tradition of ethnic minority people will be changed in the same way as they have often changed their village location and farm land for shifting agriculture before because all land will be privatized or occupied.
- Ethnic minority farmers will face the problem of food shortages because their livelihoods are mainly based on shifting cultivation. Even though the province is seeing development projects for tourism and trade, the capacity of ethnic minority people to gain employment from such development is very limited, and requires a lot of external support.

Cases of land dispute will increase between indigenous people and migrating people if the boundaries of community land are not clearly demarcated. Increasingly, indigenous families are becoming land poor families, and will probably go on to become landlessness. Thus, there is a need to formally recognize the community's land ownership before tourism and other development projects are further promoted in these areas.

Summary of the main findings

- **Modalities of access to land**

- There are different modalities by which ethnic communities and new Khmer settlers access land such as clearing with or without the permission of village chiefs and elders; gifts, purchases, loans, sharecropping and renting. Ethnic minority people did not sell their land before 1995. After gaining experience with land sales/purchases, the villagers started to plant trees to identify the boundaries of their land.
- Since 2000, exchange systems of land with other consumable assets such as motorbikes have changed to a selling system. For indigenous people, exchanges of land do not mean selling land. They have asked for additional money as the land price has increased. From now on, land sales such as sales of ownership practiced by Khmer people are confronted with fines and punished by the village elders or land use and management committee. They have sold chamkar land close to their village and straddling the main road to Khmer immigrants/urban people and then cleared their fallow land or community land, which is located far from the village, for cultivation.
- Presently, rich Khmer settlers can access land for cultivation by buying and leasing, while the poor access it by borrowing and snatching the forest land or fallow land of ethnic minority communities. They have been permitted to clear land when they become community members (e.g. through marriage). For ethnic farmers, access to land by clearing is becoming difficult; they confront the administrative boundaries and the forestry administration's bans. Also, borrowing communal land and inheritance are increasingly practiced.
- Land institutional arrangements are very dynamic; previously, ethnic villagers loaned land to Khmer settlers, but now they borrow either young plantations from the Khmer or communal land from the community land use management committee for cultivation. The loan process has changed from verbal to written contracts. In many cases, loans have changed to renting. The communal land title will be issued in order to prevent land sales, but the situation of local communities is fragile or uncertain when they all agree to sell their communal land. Moreover, land sale processes are easier if the commune chief mediates as a land broker.
- Rental and loan of land for cultivation for 1 year occurred in the villages without any written contract. The process has been changed to the rental and loaning of land where a written contract is prepared due to the existence of land encroachment. Land loans between ethnic minority people are carried out without requiring any written agreement, while loans of communal land require written agreements which are mostly facilitated and prepared with the help of NGO staff (DPA).
- The majority of fertile land in the area is no longer owned by indigenous communities. Land sales/encroachments still have occurred despite the 2001 Land Law (Art. 28) which prohibits further encroachment.

- **Land sales/purchases**

- In some cases, Khmer immigrants bought *chamkar chas* (fallow land) from ethnic people with intention of illegally clearing the forest land surrounding *chamkar chas to* expand their land, and then applied for the ownership rights. Ethnic people lose their land under the rules on land

disputes if they are not mobilized. However, there hae been many possible illegal old 'sales' of community *chamkar land* where the buyers from urban areas have not been in possession of the land. They are trying to re-establish their rights to the land and are seeking to legitimize their old claims.

- Land sales between urban people/Khmer and ethnic villagers are processed with written documents of land right transfer that are recognized by the village and commune authorities, while land sales among ethnic minority people within the same village are conducted in which buyers and sellers make letters of land sales or land right transfer among themselves, or with verbal agreements. However, Khmer land buyers have increasingly applied for certificates of possession (refer to article 69 of the 2001 land law).
- Between 2000 and 2004, land sales/purchases peaked for land close to urban areas but declined in 2005 because people did not have any more land to sell,and because of the establishment of community land use management. Land sales in other areas far from urban centres have risen. Also, the triangle development plan, NR 78 development project and commercial plantation are all reasons for land sales/purchases, while ignoring the rights of ethnic villages on *chamkar chas* and not having demarcation between state forest land and ethnic community forest land are 'main reasons' for land encroachment and disputes.
- Traditionally, Kreung or Tampuon used to practice shifting cultivation by clearing forest land. The traditional way of shifting cultivation has been forgotten under the pressure of migratory flows and land market development. Rapid tree planting has increased in an effort to secure land. In several cases, ethnic minority villagers were accused of clearing and selling land which belonged to the ancestors of other ethnic minority groups, and they had to share the money from selling land to them. Sometimes, ethnic minority people who sold land required land buyers to pay additional money to them.
- Within the villages of established communities, land sales have happened secretly between both sellers and buyers. Sometimes, land sales have been recognized by the village chief or community organizer. This transaction is easier if the commune chief also works as a land broker. Sales of borrowed land belonging to the communities of ethnic minority villagers have led to land disputes with land buyers from outside the communities. The communities have often lost land even though land buyers paid money and other goods (wine and pork) to offer to their ancestors' spirits.
- Cropping systems rapidly changed from shifting cultivation to plantation. Cashew trees and soy beans have been increasingly integrated into the traditional upland cropping system. Even though they have transferred the new cash crops and growing techniques from the Khmer immigrants they have not been able to grow crops as well as the Khmer due to a lack of skills and mechanical equipment. Cash crops would help local communities to generate cash income rapidly, but sustainability requires appropriate techniques for upland farming. However, plantations and cash crop production have increased at the expense of forest areas. This includes encroachment which has significantly correlated to an increase of soil erosion and pests. This could also be a determining factor in destroying the natural eco-system.

- **Land disputes**

- The interpretation of land laws such as the unclear definition of state forest land and community forest, different understandings between administrative and traditional village boundaries, ignoring the traditional right of *chamkar chas and bos chas* (fallow land) have led to land confiscation and land disputes. Disputes over land have frequently happened, caused by the lack of clear land rights before selling and buying. Khmer immigrants have bought land with the intention of encroaching on forest land surrounding it. Disputes related to the claim of ancestral land have been resolved in cases where there has been mediation by elderly

people, and village chiefs from both sides. However, disputes can be ended/prevented when the commune chief issues receipts of land right for ethnic minority villagers who are considered as owners. But such recognition by the commune authorities might conflict FA claims over state forest land.

- Loans of land tend to be fragile, except in ethnic communities organized by NGOs, which ensure that they are made using written contracts. Loans among members of ethnic minorities by oral agreement have caused the secret sale of borrowed land. This has led to forest land encroachment, while Khmer immigrants have also borrowed land with the intention of encroaching on community land. Mostly, ethnic villagers or communities have lost land despite being able to claim back the encroached land.
- Several cases of land disputes among ethnic people have been resolved by local authorities, but those disputes between ethnic people and urban/powerful people or new immigrants have not been resolved where there has been no intervention from outsiders, such as the PCC, and the participation of other government agencies and NGOs. However, mediation of disputes still requires the involvement of villagers and elderly people in the traditional way, in order to be more effective. Land disputes and land sales have been reduced since the establishment of LUMC.

CHAPTER VII.

General synthesis of findings

Pel Sokha

Describing Land Transfer Modalities

- **Trends in land transfer modalities**

In the areas studied, **non commoditised forms of transactions on land rights have been playing a major role in regional land tenure dynamics.** These transactions occur through administrative modalities such as land distribution, grants to the military, resettlement of returnees and landless farmers, and include land clearing after a period of occupation or customary ways such as inheritance, loans and the clearing of ethnic community forests with the permission of village elders and village chiefs. **Land re-distribution was not limited to the post-Khmer Rouge in the 1980s, but continued in the 1990s**. In SR and KPT in the uplands, degraded forest lands have been distributed to ALFs and land poor farmers with the formal recognition of local or provincial authorities and sometimes with the establishment of new settlements. In KPT, the provincial committee for land allocation distributed degraded forest land to local villagers as to resolve the protest against the granting of ELCs. The lack of cultivated land enforced farmers to occupy land for clearing in the following year. In RTNKR, ethnic minority people occupied their former ancestral land. They could clear community forests with the permission of village elders and village chiefs.

Nevertheless, we observe a **clear trend toward the commoditisation of land right transfers**. This is partly due to the development of tourism, plantations and SEZs, which have favoured speculative behaviour with regard to land. Farmers leave their home areas to clear remote forest lands after having sold their own plots of land under the pressure of developing land markets, threat organised by land brokers, or poverty (distress sales).

The **peak of land sales/purchases occurred in 1998/2004 in SR, KPT and RTNKR**, somewhat later than in SHV. In this respect, in SR the **APSARA authority** has been playing a key role since 2004, when its regulatory power was strengthened by the government in freezing large tracks of land as protected areas, thus removing it from speculation. Conversely, the Triangle Development Zones, plantations and SEZs caused an increase in land speculation. The development of recession rice (RR) in the flooded areas also caused encroachment on flooded shrub and forest land.

- **Links between different land transfer modalities**

There are also mutual links resulting from the development of land sales. They include:

A strong link between land sales and land clearing: Smallholders leave in the agricultural areas surrounding the city of SR and in Prey Nup of SHV and RTNKR, selling their land under pressure (very often under threat) from land brokers and buyers, or anticipating a risk of complete land loss and then move to peripheral areas to buy land at a lower price or, more often, to clear land at the risk of being evicted by forest agents or the military (concessionaires). In the upland areas, there is a tendency towards the commoditisation of land and the individualisation of property rights in former areas of shifting cultivation, particularly in KPT, where landowners have sold land close to the NR 6 at high prices and re-bought land which was far from the road at lower prices, or encroached on forest or degraded forest land.

A link between land clearing and loans: In SR, there is a link between the military development zone and the reproduction of shifting cultivation through short-term loans. In SHV, SR and KPT the rich people/urban dwellers have been accused of illegally snatching forest land by persuading people to clear it in exchange for clearing costs and short term loans of land. In SHV, the owners of rice land

with regenerated forest loaned it to farmers in exchange for labor to clear land. However, in RTNKR, Khmer immigrants have borrowed land from ethnic minority people with the intention of encroaching on forest land surrounding the borrowed land.

A link between land sales and derived rights: Land sellers, generally smallholders and poor farmers, have borrowed the same plot they have sold. Very often, the loan is changed into a rental contract without any negotiation, expressing a *highly uneven power balance.* In cases where the plot is used for planting cashew nut trees, the loan duration is limited to 4 to 5 years according to the growth of the trees. We observe also, a trend toward the commoditisation of derived rights with the development of rental contracts and, to a lesser extent; sharecropping at the expense of loans; leasing instead of sharecropping.

A link between capital investment and sharecropping: Another trend that is specific to the Tonle Sap flooded area is the access to land through capital investment in water reservoirs on borrowed land and on state concession land for cultivation of RR or dry season rice and fast growing trees (acacias, with the active participation of local authorities as brokers). Then, the investors or concessionaires derive land for temporary cultivation rights of RR through sharecropping arrangements. However, sharecropping would change to leasing for easier management. Also, importantly, sharecropping is a resolving mechanism for disputes on former and abandoned deep water and floating rice (DW-FR) land.

Describing Land appropriations

Each of the case studies identified at least five, and sometimes more than 10 different appropriations, including: 1) distribution by the local authorities and solidarity groups; 2) re-occupation of former land owned prior to 1975 or of former properties; 2) clearing of (or formally clearing) forest land; 3) re-distribution of land; 4) settlement; 5) providing land as social land concession (SLC) to ALFs or vulnerable women; 6) clearing ethnic community land with or without permission; 7) purchasing; 8) inheritance; 9) borrowing the land 5 years before the issuance of the 2001 land law; 10) occupation of the abandoned land of the former owners; 11) occupation of public land (village or ethnic community land), state land and private land. Overall, land appropriation has been carried out initially, with land distribution by local authorities and the re-occupation of former properties, free access by clearing, or clearing ancestral forest land. Such diversity can also be classified as distribution, clearing, purchasing, and inheritance.

- **Land distribution**

Cultivated land was distributed by the local authorities to the solidarity group, *krom samaki* in 1979. Later, it was redistributed several times between 1982 and 1986 to the members of *krom samaki or* individual households due to conflicts around land allocation in which they were accused of not being equal in terms of land quality. In some villages, there was a need to allocate land to newcomers. In some villages local authorities distributed residential land to households equally, while in other villages people re-occupied the land they owned prior to 1975. In the new villages created during the Pol Pot regime, villagers continued to settle and occupy residential plots which were allocated during the Pol Pot time. Overall, the distribution of land was mostly restricted to the areas controlled by the government in Phnom Penh.

Moreover, up to 1989, the government officially recognised the distribution of solidarity groups' lands to their member households. However, land distribution continued in the 1990s and 2000s, to returnees in 1992, to ALFs between 1996 and 1997 and in 2002. In some villages, households of immigrants (or demobilized armies) who arrived between 1989 and 1994, could receive land from the local authorities by giving ownership, by **sharing land from villagers who had large amounts of land or by establishing of new settlements in the degraded forest areas,** which caused disputes on land rights between former (old) owners and new owners and between farmers and the military. The military claims ownership of newly cleared land as their former defending zone during the war, or that land inside the military development zone.

However, in RTNKR, ethnic minority people returned to their respective villages although they were displaced or evacuated many times between 1970 and 1979. They **occupied land by settling and cultivating crops on their ancestoral land** or the land of *ancestors of other ethnic minority groups* but within the new administrative boundaries. The occupation of the ancestral land of other ethnic minority groups or clearing land in the new administrative commune has led to disputes, particularly since 2004, when land market values increased. According to customary law, the land belongs to the ethnic communities. Currently, land tends to be privatized. The LUMC was set up to prevent the sale of communal land. However, ethnic villagers have sold or borrowed land from the community in secret.

- **Land clearing**

After the redistribution of agricultural land, farmers in the lowland zone toward the Tonle Sap Lake also encroached in the flooded forest for the cultivation of dry season rice due to the lack of rice land, while those farmers in the upland zone encroached into the forest to expand their *chamkar land,* or for selling. **Many of them sold their newly cleared land due to urgent need (distress sales) or under the pressure – the usual mix of threats and persuasion – of brokers, buyers and/or local authorities because the newly cleared land is insecure**. Furthermore, rich and powerful people bought newly cleared land, *chamkar chas* (fallow land) or *chamkar land* for tree plantations or loan it to farmers in the short term. Often, the FA has accused rich and powerful people of snatching state land. Also, there **is a link between clearing, sales and loans of land.**

People have cleared forested land in the two areas (lowland and upland) since 1986-87. They cleared either rice land already possessed by other owners or forest land for cultivation, while many villagers cleared forest land after they sold all, or nearly all of their rice land to urban buyers. Land clearing appears thus, to be an exit strategy for people who have sold their land, which shows a **causal link between the two modes of appropriation (land sales and land clearing),** or **they have sold their labour, clearing land for urban people or the military, or cleared land for a short-term loan or to earn money. This link relates to to the land size, its distance from a settlement and seasonal cropping work.**

To date, land clearing has led to two serious types of land dispute: between farmer groups and the military on *chamkar land*, and between immigrant groups (newcomers) as new owners and powerful men who hold possession certificates for rice land since the early 1990s, or villagers or former local authorities as former (old) owners. Despite this, since 1986-87, people have occupied degraded forest land in the upland areas for clearing; they have experienced disputes with the military in some areas. Since the issuance of the government's *Botbanhchea* (regulation) No 01 2004, forest land clearance has become more difficult. In the upland areas, the FA has complained of illegal grabbing of state forest land, while clearing flooded shrub and regenerated shrub was subject to the complaint of the Fishery Administration (FiA). Article 29 of 2001 Land Law states, "Any beginning of occupation for possession shall cease when this law comes into effect**."** However, in practice, it is **difficult to know which occupants cleared land after 2001 and claimed it for ownership if local authorities have registered, witnessed and recognized the terms, even dating back to before 2001**. However, since 2006, the government has spoken about a change from *warning against* to *suppressionn* of the encroachment into forest land. Big land owners have been accused of illegally snatching forest land by persuading people to clear it, by providing clearing costs and a short term loan of land. They have bought newly cleared land from local people, and then requested the witnessing and recognition of local authorities.

Land clearing is the common practice of all ethnic minority villagers for shifting cultivation. They lay land fallow after 2 -3 years of cultivation. Now, villagers do not leave their *Chamkar land* as they did in the past, but they keep that area for future plantation since land is becoming more expensive. To date, clearing land occurs increasingly further from the village, but ethnic villagers claim that land is located within their community area though they are supposed to have 'sold' it to outsiders. In many cases, the Khmer land buyers bought land and then encroached into the forest land surrounding it. Some big land buyers took workers from other provinces to clear land. Some workers did not return home, and settled on land that they cleared illegally. Also, **clearing has a connection with in-migration labor**. Newly married couples of ethnic communities receive land from their parents from both sides. If *chamkar land* is not enough they are allowed to clear community land with the permission of village leaders/chiefs and the CLMC. In many cases, the village leaders/chiefs have not known when community forest land was secretly sold by the ethnic minority villagers. The forestry law (2002) does **not clearly classify the difference between forest land and fallow land of shifting agriculture, on which the forest re-generates/grows. In the shifting cultivation system, both land and forest are linked together. Article 37 of the Forestry Law states that: "Local**

communities that traditionally practice shifting may conduct such practices on the land property of indigenous communities which registered with the state… Forestlands reserved for shifting cultivation shall be identified by Anu-kret" (Sub-decree). However, to date not a single sub-decree has recognized community land.

- **Inheritance**

New couples inherit land from their parents. The inheritance process can be different depending on a parent's decision and negotiations among the family's members, and always occurs without written contracts or informing the local authorities. Transfers by registering the names of successors were made during SLRs. Inheritance is strictly an intra-family (domestic/private) affair. For those households without parents, the inheritance process is strongly decided by the elder brother.

There are different processes of inheritance such as: 1) allocation of land to all children, but the elder child will receive more land than the younger children because the elder child helps the parents more than the others in farm work; 2) giving land to those children who got a share of landholding in common with their parents during land distribution in 1980s and giving bought land or cleared land to the other children; and 3) giving residential land to the youngest child. The parents will keep the residential land and house for the youngest child, in particular, for the youngest daughter who will look after them in their old age. If the parents do not have enough, they keep it for themselves and will give it to the child who looks after them in old age.

Usually, if the parents have enough land to transfer it to all their children, they allocate less land to the better-off children than to the poorer children.

The process of inheritance in RTNKR used to be quite different from the lowland areas, but it tends to resemble it since most of land has been occupied and reserved. Customarily, families retain ownership over the fields they farm, as well as access to the perennial crops remaining on their old fields which lie in fallow. New couples live with parents at for least 8-10 years on each side. When they want to separate from their parents they could **receive land either by clearing forest land with permission from the village elders or administrative chief of village or inheriting fallow land from their parents**. Since the land market has increased and the enforcement of the 2002 forestry law by the FA, clearing forest land has become more difficult. Land is mostly occupied or reserved as collective land. To date, inheritance is becoming an important mode of land access.

- **Social land concession**

Through social land concessions (SLCs), people have rights to cultivate land, but they would only be able to get land ownership after a consecutive period of 5-year's exploitation (Art. 18 of sub decree No 19 on SLC, 2003). Despite vulnerable farmers/women receiving land and other support such as housing, training on growing techniques, land preparation, subsidies on health care, children's education and marketing, some of the vulnerable women left the settlement and abandoned the land because they have never been farmers before.

On the other hand, despite that article 4 of the sub decree No 146 on ELC, 2005, states that evaluating economic land concession (ELC) proposals shall be based on seven criteria, in which any link and mutual support between SLC and ELC shall be considered, the local land poor farmers have never received land unless they have protested. The Prime Minister ordered to return new Chamkar land as SLCs to the farmers and military families in SR: there is a **clear link with SLC**.

- **Land access through capital investment**

In the flooded areas of KPT, as in SR, toward the great lake of Tonle Sap, **local private investors seek to invest in reservoirs on former and abandoned DW-FR lands in exchange for parts of that land. This way of accessing land must be differentiated from purchases.** A common point between

these two modalities of land appropriation is, however, the role of brokers (often commune authorities) in the process, at the interface between local communities and external investors. Capital investment can be differentiated from the grant of ELCs, as a way of providing state private land to concessionaires. For capital investment, investors borrowed the former and abandoned DW-FR lands from the former commune militants or former farmers in exchange for sharing water and sharecropping as mechanisms to resolve disputes over land rights with former land owners (farmers or former militants): there is thus a **link between access to land through investments in capital and derived rights (sharecropping)**. The provincial authorities intend to preserve that land as state property referring to **article 76 of 1992 land law** although it was repealed by the 2001 land law, making these lands available for granting to investors as ELC. However, the former owners try to claim 'possession rights' over their DW-FR lands because they were obliged to abandon it by various factors such as insecurity, kidnapping and natural disasters. However, officials claim that the 3-year abandonment rule does not apply to that land for which a person has legal documents/certificates. Cases of abandonment of DW-FR lands in KPT could be differentiated from those in SHV. In KPT, local farmers abandoned DW-FR lands, while in SHV, rich/urban people abandoned rice lands, but they have legal possession rights.

Also, **some groups of farmers living in different communes or investors were granted ex-DW-FR land that had remained state property by the provincial authorities. This did not cause conflicts**. Farmers have the right to practice temporary cultivation of RR through group investment in reservoirs (e.g. in Sralau commune of KPT). In some cases, however, the granting of that land did not lead to disputes about land rights **but about community boundaries (between communes), as people are aware of the utility of a good harvest of RR.**

In KPT, in the flooded areas toward the Tonle Sap, modalities of access to former DW-FR lands are different, including distribution by solidarity groups (1985-86), clearing, granting of ELCs of flooded shrub and grass lands remaining as state property to concessionaires or farmer groups, buying of former DW-FR land from farmers and borrowing land from farmers or commune militants who own the land in form of sharecropping. The concessionaires also gained access to DW-FR land through two modalities: (1) ELCs granted for state land; and (2) buying while investors gained access to that land by borrowing or renting in exchange for irrigated water and borrowing in relation to sharecropping arrangements (please see the section below on agrarian contracts). However, **some of them play two roles; acting as concessionaires and investors**. Rich people have bought former DW-FR land before submitting a proposal of ELC to the provincial authorities. Then, the investors practiced sharecropping, while the concessionaires practiced sharecropping or leased land to local farmers: This shows **the link between investment in capital and sharecropping and between investment in capital, sharecropping and leasing, expressing the agreement between investors and local farmers and between concessionaires and local farmers**. However, sharecropping could be changed to leasing for easier management.

In SR, a resevoir project funded by a private investor aimed to convert former and abandoned DW-FR areas into RR fields. Before beginning to build the dam, the commune chief and other commune councillors mobilized farmers in a Dry Season Rice Farmer Community. The number of members increases if farmers are aware of and understand the process of capital investment, how to share and pay the costs and how to consolidate land. Capital investment appears as a tool for redistribution of former DW-FR land between investors and farmers because potential farmers can gain access to larger plots of land. The local leaders named this process *deysampatein* (Economic Land Concession). By law it is the 'temporary transfer' of state private land to the private sector. The farmers who did not agree with the project accused the local authorities of land grabbing because they had abandoned it since 2000 due to a natural disaster. However, the local authorities intend to keep the land by referring to article 76 of the 1992 land law.

In some cases, groups of farmers mobilized themselves in a farmer community as a strategy aimed at securing their former DW-FR land rights by investing in the reservoir for RR growing. In this case, this **investment is a way to get access to formal rights on the way toward legal ownership**.

Reservoirs provide good potential for increasing RR production instead of the declining DW-FR. However, reservoir dams have impeded the natural water flow from the upper land and resulted in conflicts between reservoir owners and farmers over rice crop damage in upper land areas. Farmers/fishery communities have complained of a lack of water for cattle and a loss of fishing areas because the natural lakes were enclosed by the dams.

Nowadays, accessing the former DW-FR land through ELCs that will be directly granted by the provincial governor is becoming difficult due to the confrontation with people's claims with regard to their former land. Moreover, the rehabilitation of long term unused DW-FR land, flooded shrub/forest often confronts the fishery administration (FiA) due to differing interpretations of 'flooded forest' and 'former DW-FR land with re-generating shrub/forest'. Providing land possession rights or ownership under the fishery management areas (floodplains during the flooding season....) can be processed if there is an impact assessment by MAFF (**Art. 13 of 2006 Fishery Law**).

Since 2005, those investors who want to invest in reservoirs and RR production have to buy former DW-FR lands, as purchase of use rights before submitting the proposal for receiving ELC. The land will be repossessed as state land when contracts terminate. As the provincial authorities intend to preserve that land as state property, referring to the 1992 land law, this intention may encounter the complaints of those (bigger) farmers who have consecutively possessed land since the end of 1980. Thus, it could be a model of peaceful repossession of state land from illegal occupants through economic expropriation and thanks to the private sector.

Describing Agrarian Contracts (derived rights)

Each of the case studies identified different arrangements (agrarian contracts). Such diversity could be classified in different categories such as: loans, sharecropping, leasing and pawing). Pawning has been practiced by farmers in urgent need of money for immediate purposes. However, **many urban land buyers prefer loaning the land they have bought to the local farmers (very often the seller himself) for temporary cultivation.** Loans are a means for securing land acquisition, preventing shrub or forest re-growth and avoiding taxation of unused land.

- **Loans of land**

The differentiation between both the allocation of a right to clear and a loan of degraded forest land should be noted. In the first case, farmers, particularly ALFs or ethnic minority farmers, obtain the right to clear, carry out actions which transform the bush or degraded forest into farmland and obtain a right of appropriation through a form of re-distribution; in the second case, the right of cultivation on degraded forest land or farm land already exists and/or it is this right which is transferred on a provisory (temporary) basis.

There are different land owner groups that have loaned land to farmers, ALFs and inmmigrants: land poor farmers, relatives, commune councillors, government officials, urban land buyers, companies, the military, land buyers living abroad, ethnic minority farmers, ethnic communities and first (older) Khmer immigrants. They have loaned plots of land, in many cases in exchange for labour, to keep and clear land. **One can distinguish different strategies of loans practiced by the different categories of actors**:

1. Urban land buyers, companies or buyers living abroad buy land for speculation, and as they generally do not need the land immediately, they loan it to farmers: this shows the **link between land sales and loans**. In such cases, **brokers often act as land keepers/managers for the owner, collecting the rental fee.**
2. Farmers who lack land and draft animals have loaned land to their neighbours or relatives, and have left their villages to seek new *chamkar* land elsewhere for cultivation. This is a sort of reverse tenancy (the landowner is the poorest in the relationship) showing a **link between loans, mobility and land clearing**.
3. The military loan land to shifting cultivation farmers for the reproduction of shifting cultivation or to ALFs in exchange for labour to clear the land in the short term, and rich people hire labour (farmers) to clear land for them in exchange for clearing costs and a short-term loan**: this shows** a **link between appropriation (offering by the government link, encroachment) and loan**.
4. The chief of village borrows public (village) land for temporary cultivation during his mandate instead of paying low incentives, and later on he claims for ownership: this shows a **link between loan and appropriation**.
5. Former owners, as farmers, or former militants loan abandoned DW-FR land to private investors in water reservoirs. Both groups agree to practice sharecropping: this shows a **link between loans and sharecropping**.

6. Urban (rich) people reimburse loans to credit institutions or private money lenders on behalf of farmers under the condition that the farmers agree to sell the mortgaged land to them. Then, farmers borrow the land for growing rice: this shows a **link between mortgaging, sale and loan.**
7. Urban people loan their young plantations of cashew trees to farmers. When the trees are big enough they sell the harvesting rights to farmers: this shows a **link between loans and harvesting rights**.
8. Urban dwellers and companies persuade villagers (through allied land brokers) to sell land against the promise they would lend the land back to them (or to other villagers) for rice cultivation. However, after having bought all the land they want, after a while, the loan is turned into a lease (managed by land keepers): this shows a **link between loans and leasing**, land keepers collect rental fee.
9. Borrowing or informal occupation of abandoned land over 5 years before the issuance of the 2001 land law has led to land disputes: the borrowers or occupants became land owners thanks to SLR procedure although the former owners received compensation; this shows the **link between loan/borrowing or informal occupation and access to ownership**.

Borrowers can also play on the ambiguities of the 2001 land law, if for instance they have occupied the land since before the issuance of the new land law. They thus claim that they can apply for ownership because of this continued occupation since before 2001 (according to article 30). They resort to articles 30 and 38 which state, *"if the possessor has land: Peaceful, in good faith, notorious to the public, unambiguous in 5 years continuously and free lands do not register and are not belong to someone. The possessor has to be the ownership by legitimating."* However, this interpretive device can only work if the loan was made under a verbal agreement. Occupying land for over 5 years does not automatically mean ownership, for instance, when the borrowing was processed with a written contract. The final result of the dispute depends in such cases on power asymmetries between the actors involved.

10. The village elders/village chief loan community forest to ethnic minority villagers to clear for shifting cultivation, but many ethnic farmers have secretly sold land to Khmer immigrants or urban people: this shows a **link between loan and sale**.
11. The land use management committee loans community land to ethnic minority farmers or members of the community through a written contract: this shows a **link between sale and loan.**
12. Ethnic minority villagers/leaders loan land to Khmer immigrants after they build relationships, or Khmer immigrants borrow land with the intention of encroaching on the surrounding community forest land. Also, urban people, as the owners of young plantations of cashew nut trees, bring labor to maintain the plantations by loaning the young plantations for annual cropping between rows of trees for 3 - 4 years, or according to when the cashew trees are big enough. Later on laborers clear land in the community forestry for doing their own cropping activities; this shows a **link between loans and encroachment**.

Regarding agrarian contracts, loans can follow two procedures: **through written contracts and without written contracts depending on trust/accountability relations between local actors and the development of land markets**. However, learning from past experience of land disputes, the land owner can request land with written contracts witnessed and recognized by the chief of village or by the chief of commune. Similarly, for rice lands in, or close to the urban development zone and the newly cleared lands in the upland areas that have good market opportunities, loans without contracts have been increasingly replaced by loans which rely on written contracts (issued by the land management committee of indigenous communities).

In some cases, loans have been processed when the large land owner lacked rice seedlings or had no agricultural equipment. According to the farmer's habits if they have no more rice seedling

to transplant, they prefer to loan other unused land to their neighbours. In thiscase, **the loan is a form of land adjustment to the farmer's production means**.

Otherwise, shifting cultivation farmers borrow land from other villagers or their relatives or from the military when they have lost all their fallow land by expropriation or banning from the government authorities. In the following year, the loan is changed to sharecropping even though they still use the term for 'borrowing' (*som dei thveu sre sen).*

However, some loans practiced between villagers or between relatives without written contracts have changed to renta arrangementsl, where landowners receive a sort of rent in-kind (paddy). Interestingly, **this rent is not considered as such, but rather as symbolising a kind of mutual help or gratitude**.

Both interviewed farmer groups: landholding farmers (LHFs) and agricultural landless farmers (ALFs) have borrowed land, mostly from urban land buyers for annual cultivation (see table below). They have been able to access land through loans, and some ALFs have also borrowed land from the land buyers who bought land from them. **Loaning is thus an important means of gaining access to land for landless and poor farmers**.

Modalities of access to land (in % of interviewed LHFs and ALFs)

Modalities of access to land		SR	KPT	SHV	RTNKR
Appropriation					
Clearing	FH/LHF	45	40	40	100
	ALF				
Buying	LHF	20	58	67	
	ALF				
Inheritance	LHF	75	48	33	
Institutional arrangement					
Loan	FH/LHF	13		46	
	ALF	35	15	41	
Leasing	LHF	5	8	46	
	ALF	15	8	59	
Pawning	LHF		5	7	

Source: in-depth survey (April-June, 2005)

- **Renting**

Leasing has increasingly replaced loans and sharecropping as a result of the growth in the land market, and because it is easier to manage, And in some cases owners have lost their trust in sharecroppers. Other reasons for renting land out are the lack of labour, large cultivated land and labour competition between farming and non-farming activities. The lack of labour, in some cases, could be linked to elderly headed households. If children live separately from them, the elders have to rent land or practice sharecropping to sustain their livelihoods. In some cases, **renting of rice land for cultivation has led to distress land sale** as the tenant was not able to pay the rental due to bad harvests and declining rice prices.

Some farmers have large amounts of land that they cannot completely cultivate, while others are too busy running other non-agricultural economic activities. Local landowners can be classified

into two groups: small land farmers who lack the means and family labour capacity, and big land owners. Sometimes, both groups rent land out because they are busy with non-agricultural activities. **In these cases, the adjustment through rental functions at another level, between farm and non-farm activities.**

In some cases, land poor farmers rent land for increasing rice production to meet their family food needs. Even though the agreement is not written down, both the owner and the tenant make a verbal agreement in which both parties agree that rental should vary depending on the harvest results. Tenants stop renting land as the soil fertility declines after 5-6 years cultivation. Even in the processes between farmers of different villages the agreement is not written down.

In some cases, farmers have sold their rice land but they have rented other plots for rice cultivation. Rental of rice land is often paid in-kind by paddy which could be diminished if the harvest is bad or lower than estimated. The process of renting does not resort to any written document but on mutual relations of trust and accountability.

However, in the case of a 10-year investment in weaving handicraft, the renting of land was made with a written contract, witnessed and recognized by the chiefs of villages and communes.

- **Sharecropping**

Sharecropping in rice production was often used and practiced 10 years ago among villagers. Sharecropping arrangements were generally open-ended and re-negotiated before the next growing season. **Sharecropping has rapidly declined and changed to leasing arrangements (*kar chuol dei*) for two main reasons that are both related to the issue of the embedding of property relations in social relations warranting trust and accountability**:

- Landowners say they have lost trust in the farmers/sharecroppers. However, sharecropping remains practiced between close relatives or neighbours. Landowners accuse the tenants of cheating them by refusing to tell the real harvest results, and accuse them of being lazy.
- The change is also related to the change of land ownership from local people to urban people/dwellers who mainly work outside, on off-farm business activities. They have no time to follow up on the process.

There is thus a **link, though not lineal, between the commoditisation of land relations and the diminishing role of localised social relations**.

Landowners want tenants to pay part of the rent before starting cultivation and do not further consider the harvest conditions. However, the contract is not written down. Moreover, villagers seem to confuse renting and sharecropping. During the interviews, they talked of sharecropping by using the Khmer word for renting (*kar chuol dei)*, probably because both arrangements are similarly paid in-kind (paddy), and the amount could be similarly diminished according to negotiation.

Regarding arrangements, harvested products are shared according to the respective contributions of the tenants and the landowners. In other cases, the landowner only receives 1/3 or 50% of the harvest paddy depending on negotiations. Sometimes, the landowner provides the tenant with seed because farmers lacked rice seed or owners do not want to leave land unused. **The range of arrangements is broad and interpersonal relationships play a key role**.

For close relatives such as brothers or parents, the product share is not fixed before the cropping season: this is an intermediary case between loan and sharecropping involving relatives. In some cases, the loan of land seems to have been changed to unfixed sharecropping, if the landowner contributes to the cost of land ploughing. Land owners want farmers to keep land cleared. Farmers can give the land owner any amount of the harvested product depending on the farmer's decision and result of the harvest, because they are intra-family. In some cases, loans of land were changed to sharecropping, but sharecrops were not fixed before the landowner contributed to production

costs such as land ploughing. This arrangement changes if the owner wants the farmer to keep land and clear it or if the tenant is poor and does not have draft cattle or capital to start farming.

Moreover, urban people have settled in rural villages for land brokerage and speculation. They loan land to practice sharecropping with farmers and aim to make close relationships with local villagers. **Urban people try to re-embed property relations into social relations.**

- **Pawning land for credit**

Villagers pawn their land for a loan from their relatives, people in the same village, and people from a neighbouring village. Villagers will not lose their land if they are not able to reimburse the debt. Some money lenders decided to become involved in the **pawning of land which is located close to their land for optimizing cultivated land size and making management easier**.

Moreover, land owners (particularly those living in peri-urban areas) pawn land for a loan from their relatives at times of urgent need because they do not want to sell their land immediately, preferring to wait for a higher price resulting from urban growth. This demonstrated **a mutual help mechanism within families or between relatives to avoid distress sales of land, debt with high interest rates, and an attempt to re-embed profit** between relations.

Land pawning can be written down or not, depending on the relationship between the land owners and money owners. Land pawning practiced by close relatives does not require a written contract, while pawning land to other people such as villagers in the same village, or villagers or rich people in the neighbouring village is written down, witnessed and recognized by the village chief. The duration of pawning for credit depends on the type of land or plantation. Money lenders request a **fixed term pawning for three years because of the profit** gained from plantations. In some cases, land owners have requested a further amount of money from a pawnbroker. Also, at the end of the process, if the land owners do not have enough money, they have to sell the plots of land to the pawnbrokers. In this case, the **pawning becomes a sale**. In some cases, pawnbrokers ask **for a supplementary amount of money to compensate currency devaluation compared to the price of gold.**

One case led to conflict as the landowner requested more money. At the second time of payment, the money lender made a written contract, which was actually a sale contract. It was rejected at the time of reimbursement and the landowner accused the money lender of having cheated him in terms of the contract.

In some cases, villagers have pawned their land for money to be released from other debt, while others villagers buy new land. These cases show that pawning can pertain to diverging strategies: pawning land for repaying a debt is close to distress sale (and sometimes actually results in sale) whereas pawning land to buying another plot is rather an accumulative strategy.

In the previous case, we see that **pawning (as leasing or sharecropping; see above) can be part of a strategy of rationalising and optimising land use according to accessibility and the availabitily of assets for cultivation**.

- **Mortgaging**

In SR, land mortgaging has been practiced, but has declined in Angkor zones I and II (in the archaeological zone, all kinds of settlement and construction are prohibited), contributing to decreasing land prices since the reinforcement of APSARA authority at the end of 2004. Mortgaging land for the credit of a large amount of money from the ACLEDA bank or from private money lenders has been replaced by *village group mobilization* (a guarantee group of five members) to gain access to a group loan of a limited amount.

In some cases of mortgaging, farmers who were not able to pay back the credit have asked the creditor to sell the mortgaged land, and share the additional money so that they can be released from the debt. Many farmers can not pay back the credit due to illness, which has caused their farm business to fail. In KPT, in many cases, the bank complained to the court for the right to sell the mortgaged land. The borrowers have sold their land due to losing in their lawsuit to the ACLEDA bank. Some have then left the village with the remaining money to live elsewhere or to clear new land where land prices are less expensive. This shows a **link between mortgaging and sales.** Mortgaging was one of the reasons for out-migration; there is a **link between mortgaging and mobility.**

However, mortgaging land to the bank is more favourable compared to the past practice of borrowing money with a daily payment of interest (Luy Rab) of 4 to 7%, and borrowing from private money lenders at an interest rate of 12% per month.

Land Sales/Purchases

Overall, in SR as in SHV, land sales began in 1992/93 for land close to urban areas and main roads. Urban dwellers and rich local people bought land close to the main roads for speculation while they bought new clearing lands in the upland zones and the lowland zone toward the Tonle Sap Lake for tree plantation and for RR production. In RTNKR, there has been a change in the modalities of access to land for cultivation in comparisson to the time before 1995 when people did not have a 'tradition' of selling their land. After a period of experience with land transactions, villagers started to plant trees to identify their rights on their fallow land. Now, new Khmer settlers can access land for cultivation, in most cases by buying, initially urban land and land straddling NR 78. However, **Article 28 of the 2001** land law states, "No authority outside the community may acquire any rights to immovable properties belonging to an indigenous community".

Also, sales/purchases decreases when there is the enforcement of authority in order to protect natural resort sites, historic heritage monuments and claims to state forest land. To date in those areas, land sales/purchases have decreased, but land prices outside the resort sites have increased. However, land prices of newly cleared land in the upland areas have tended to be stagnant since the FA filed a complaint against the land occupants/owners to the provincial court over illegal grabbing of state forest land. Also, the increase in the land market may cause land encroachment on degraded and flooded forest. **The mutual relationship between land market development in peri-urban areas and land clearing/encroachment in peripheral areas is at work here**. Land sales have risen in (peri)-urban communes but outside the protect areas. Land has changed hands mostly at the local level and the process is different in rural and urban communes. In urban areas, most land has undergone a name change and is registered at the district office of Land Management, Urban Planning, Construction and Cadastral (OLMUPCC). In comparisson, rural land sales far from the provincial capital involve name changes and registrtion mostly at the commune level.

In RTNKR, within villages with established communities, sales of land have occurred secretly between both sellers and buyers. This is because the village and commune chiefs have not recognized the sale contracts. In comparisson, in other villages, they have recognized land sales which have been mostly carried out with land sale contracts or with a letter of land right transfer. Sometimes, the deal is made easier if the commune chief is involved with as the land broker.

Most buyers are urban dwellers who buy land for speculation, while some others buy land for growing crops or tree plantations. Mostly, land to be purchased is degraded forested land and *chamkar chas*, fallow land (upland areas) or land straddling the national road or other main roads. However, unclear land rights before selling have led to some serious cases of land dispute. For example, a chief of commune **sold abandoned rice land** to an outsider without informing the former owners; a returnee as new owner **sold the re-distributed land** that was confiscated from big landholding households; a new owner as **occupant sold rice land that he had occupied** since 1987.

In RTNKR, in relation to land sales, many disputed cases have occurred over the **secret sale of community land** and **secret sale of borrowed land** among ethnic minority people, or between ethnic communities and Khmer land buyers or new immigrants. The land of a neighboring village or commune may be sold by the wrong village/commune with the excuse that they are not sure of the exact boundaries, or the villagers selling the land may wrongfully claim that the land is traditionally theirs or *their ancestral land.* Sometimes, the land sellers as ethnic minority villagers want to get the land back after selling when the price of land rises or ethnic minority villagers take the sold land back as the owner /Khmer land buyer has not used it. Often, urban people, government

officials and Khmer immigrants have bought land with the intention of encroaching on fallow land or community forest land surrounding it.

Since 2004, the investment in former DW-FR land for RR cultivation through reservoirs in the dry season has tended to increase rapidly. Investors gain access to that land through two modalities: an investor[80] may seek a joint-investment with a farming community, to borrow abandoned DW-FR land under the condition of sharing water or practicing sharecropping with the former owners through the mediation of the commune councillors. Other other better-off families may buy ex-DW-FR land by themselves or through land brokers. The purchase of large amounts of land has been processed through land brokers who are chiefs of villages and communes as well as commune councillors. Those farmers who did not want to sell their abandoned DWR land have been convinced and/or threatened by those land brokers to sell because they say that local authorities intend to preserve the land as state property.

We find here the configuration organising land markets that is widespread in rural Cambodia: external (powerful) buyers, local authorities working as brokers and the use of latent violence to force farmers to sell.

People who have sold land close to main roads and urban development zones buy less expensive land elsewhere for farming and use the rest for house construction, while farmers in the upland zones, such as in RTNKR, encroach on forested land for farming after they have sold their land. There also **double dynamics here: between land sale in peri-urban areas and land purchase in peripheral areas, and land sale in peri-urban areas and land clearing in peripheral areas.** Also, farmers living in the rain-fed lowland area have bought rice land elsewhere, far from main roads and for less money after they have sold land at a higher price. This could be a farmers' strategy aimed at expanding their land for rice production, inheritance or speculation. Khmer people have sold their land or plantations in lowland areas at a high cost in order to buy chamkar land (or fallow land) land in RTNKR at lower cost.

Other farmers have sold part of their land due to many reasons, including insecurity (threatening), and also because companies or rich people have sought to buy large ampounts of land through the intervention of commune councillors acting as land brokers. Many villagers have sold land to them, and those who did not want to sell their rice land have been forced to sell their land through *persuasion and threatening* and in some cases trough the provincial court.

Occasionally, farmers who initially did not want to sell land do so because they feared that it might be expropriated by local authorities or encroached upon by others (because they had abandoned it). The appropriation of newly cleared land in upland areas is not secure. The process is also cumulative: as many farmers/neighbours have sold their land, other farmers fear land encroachment/grabbing. In this case, they have made the hypothesis that selling the land was better than nothing. **What is at work here is a strong feeling of land tenure insecurity, actually nurtured by the 'real' functioning of the land market, through brokerage, unequal power relations and threats.**

For land sales by instalments, sometimes ex-landowners have refused the selling prices that were agreed upon and then asked for a higher price or decided not to sell the land because the dateline for the payment has been exceeded. Sometimes, land sales have resulted in pawning without a written contract. Farmers have agreed to sell land by receiving additional money from the pawnbroker, who refused to give the land back, with conciliation of the chiefs of village and commune.

In some cases, farmers have re-occupied the land to be sold because they have not received a share of money from its sale. Often, local authorities have persuaded farmers to sell *chamkar* land and fallow land; the people agreed to sell due to the fear of expropriation. When land brokers have

[80] *For example, Mr. An, investor from Prasat Bakong district. He is doing the same investment in Prasat Bakong district.*

not shared money with them, in some cases, villagers have petitioned the Prime Minister, asking for assistance in reclaiming their land. Furthermore, in some areas of newly cleared land in the uplands (e.g. in SR), the FA has lodged complaints to the provincial courts against land buyers and farmers for illegal land occupation.

Sale contracts of rural sales are mostly registered and recognized at the village and commune levels. Only purchases of large tracts of land by companies or urban dwellers and the purchases of residential land in urban areas are fully legally processed and registered at the district cadastral unit.

However, **many cases of land sales lead to disputes between the new and the former owners due to diverging interpretations over the 'bundle of rights' at stake.** Was it a loan? An occupation of abandoned land? A former abandoned rice land? Fallow land? Ancestral land?

Land conflicts

Land conflicts are becoming a serious problem since the government introduced the 'open sky policy' in SR, encouraged the development of RR on former DW-FR lands in KPT (as in SR), and planned the development of tourism and industrial sectors with the establishment of SEZs in SHV. Moreover, the Northeast Triangle Development Zone in RTNKR has had a further impact on the development of the land market. It could be that the land market has rapidly expanded in a context of weak enforcement of the land law and unclear/unsecure land rights (before the infrastructure development project started). The m**ain types of land dispute have changed from disputes over boundaries to those over ownership rights**. Land markets have expanded and this has led to many land disputes for various reasons, including:

1. Unclear land rights before land transfers or sales, such as over a loan; (formal or informal) occupation for over 5 years before the issuance of the 2001 land law; rice land abandoned for 3 consecutive years, etc.
2. Absence of demarcation between state forest land and private or community land.
3. Ignoring traditional rights of fallow land in shifting agriculture areas.
4. Illegal encroachment on forested land for selling.
5. Overlapping of administrative boundaries or overlaps between administrative boundaries and customary 'ancestral' land.
6. Enforcement by the APSARA authority.
7. Over the claim of village (public) land for ownership.
8. Over informal purchasing of land.
9. Over land pawning without written contract.
10. Land encroachment on private land.
11. Grabbing of public land (e.g. lakes).
12. Encroachment on land claimed for ownership by the military.
13. Overlapping of the national park or natural protected zones on rice land.
14. Land encroachment on ethnic community land.
15. Secret sales of ethnic community land that was accessed by borrowing/loan or encroachment.

Land borrowers claimed ownership by relying on the fact that they occupied and used land before the issuance of the 2001 land law (Art. 30). They use article 30 which states that, "*any person who, for no less than five years prior to the promulgation of this law, enjoyed peaceful, uncontested possession of immovable property that can lawfully be privately possessed, has the right to request a definitive title of ownership.*" However, occupying land for over 5 years does not automatically mean ownership if borrowing was processed with a written contract. Article 38 states, "*In order to transform into ownership of immovable property, the possession shall be unambiguous, non-violent, and notorious of the public, continuous and in good faith.*"

With regard to issues of continued exploitation of land, people are far from being completely aware of the legal texts. As they used to occupy a plot of land, they believe that they can keep ownership rights to it although they have abandoned the plot. Article 76 of the 1992 land law states that, "*any land that a possessor has abandoned for three consecutive years shall return to the private domain of the state.*" Also, local authorities tend to favour new occupants by referring to the 1992 land law (art. 76) and the new 2001 land law (art. 30). However, they do not only re-assert the

law; they also act as a mediator by organising the negotiation according to a principle of equity and an objective of social peace. In KPT, as in SR, **private investors seek to invest in reservoirs on former and abandoned DW-FR land in exchange for parts of that land.** The arrangement of sharecropping between investors and groups of former landowners was considered as a mechanism for resolving disputes over the right to abandoned DW-FR land.

This is also true with regard to the re-distribution of land to newcomers or new couples. It refers to the period preceding the promulgation of the 1992 land law. Between 1979 and 1989, all land officially belonged to the state and solidarity groups (*krom samaki*). People occupied land for both agricultural and residential uses. Thus, to assist landless people, the expropriation of land by local authorities from large land occupancy was officially recognized. However, villagers, as the former owners of that land, still think that land belongs to them because they did not abandon it. To end land disputes, local authorities often make a judgement in favour the new occupants and request them to compensate the former owners.

The allocation of inheritance land was traditionally processed before the death of the parents. They allocated their land to children without written documents. Cases occur in which rural parents have allocated their land to the children living commonly with them, and have not considered the elder children who have left the family or were considered to be rich enough. If there are disputes over heritage land, the court judges in favour of all successors, based on the equity principle, refer to article 75 (2001 land law) which states, "*in case the partition of the succession is contested, the co-successors are titled to file a complaint to the court to decide the case*".

Sometimes, land speculators have deposited a part of the purchase price of a piece of land. Later, they have sought people wanting to buy the land, but since the FA has claimed that large parts of newly cultivated land area is included in the degraded forest land and complained against illegal occupants, urban dwellers or rich people are reluctant to buy the land. Normally, landowners could claim to get the land back without returning the money to the land brokers. However, sometimes this is not possible because the land brokers are perceived to be powerful men.

Shifting cultivation farmers have cleared their fallow land, *chamkar chas* or old *chamkar* after selling their rice land, while other farmers in the zone towards Tonle Sap Lake have tried to clear flooded forest for RR cultivation. Clearing the flooded forest has often led to disputes with the FA. In snatching upland illegally, both groups, farmers and rich and powerful men, have confronted the claims of the FA for state forest land. Sometimes, these disputes also relate to administrative boundaries. Commune authorities claim its role in managing all land and water areas in the administrative boundary of the commune because they are also government agencies. However, the claim is against **article 45 of the law on the administration and management of commune/*sankat* issued in 2001, which states that the commune administration shall have no power to decide on forestry.** On the ground there is no demarcation between forest or flooded forest land and private rice land. Also, the definition of *flooded forest* is not clear concerning abandoned rice land with re-growing forest. Some farmers have consecutively possessed land for DSR since the 1980s or land distribution; slashing the flooded re-growing forest.

With regard to the land sales in zones for the protection of agro ecosystems, including the zones managed by the APSARA authority, when land was bought, the environmental authorities or APSARA authority competencies were limited and the zones were not demarcated on the ground. However, local authorities might encourage the sale/purchase of land under their administration because they can get brokerage fees, without providing information on the restricted zone.

Land buying without informing the village chiefs has sometimes led to land disputes with them. Buyers lose that land as it was registered in the name of the village chief during the *SLR.*

Thus, land titles are instrumental for local authorities in land disputes, allowing them to resolve cases quickly and to their own benefit. However, SLRs have also provoked land grabbing disputes.

Arbitration mechanisms have not always been fair and people have lost their land although they have occupied and used it for over 5 years, before the issuance of 2001 land law.

What was at stake was the conversion of public land/lakes used for fishing by local communities/public purposes into private ownership. Thus, people lose their daily income from fishing and this causes villagers to lose land for future public building. Also, the local population turns themselves to the state – the provincial governor or parliamentarian – to protect the public land (lakes/village land) against grabbing and privatisation. It is important to note that state public property may not be sold or transferred to other legal entities (Art. 16 of the 2001 land law). The law states that leasing of state public property cannot exceed 15 years (Art. 106). In dealing with the collective dispute, **villagers' tactics have been to bypass local levels and move directly to upper levels to ask influential decision makers to intervene on their behalf**. In particular, when disputes over land with powerful men occurred, people have complained directly to a parliamentarian who had a close relationship with the Prime Minister.

In RTNKR, nowadays, land security tends to be like the lowland provinces. Local authorities try to prevent land disputes by the issuance of formal documents instead of through the customary tool of planting trees. This process is rapidly adopted in the areas where Khmer people have been were nominated as local chiefs.

Land disputes among ethnic minority villagers/communities have been resolved by the village elders and village chiefs based on their *customary law,* but several cases of disputes that remain unresolved are involving powerful or urban people, related to encroachment on community forest or fallow land. However, many brokers have intervened in assisting ethnic minority people to keep their land. In some cases, ethnic communities have received land back where there was an intervention from human rights organizations and the PCC.

Furthermore, not all conflicts are about land transactions, but are related to this topic as they started from land encroachment and **different understandings of land rights**. Khmer or Khmer Islamic immigrants think they are clearing forest state land, while ethnic people claim it as their forest or fallow land. In many cases, disputes among ethnic minority people have occurred on village boundaries because they have a **different way of thinking about traditional boundaries and administrative boundaries.** In many cases, outsiders or Khmer immigrants have been accused of buying or borrowing land with the intention of encroaching on fallow land or community forest land surrounding it. Some ethnic minority farmers have lost their land or plantations because they were afraid to make a complaint against men who are considered to be powerful, or because they did not know how to file a complaint.

In some cases, there are possibly illegal old 'sales' of Chamkar lands where buyers from urban areas have not been in possession but they are now trying to re-establish their rights to the land and are seeking to legitimize their old claims. Ethnic minority villagers take the sold land back as the owner has not used it. Through the negotiation process some of them have agreed to give land back, but against compensation. Buyers have lost part of the land but did not file complaints against them. They may have feared losing all land because it was not fully secure. Article 28 of the 2001 land law states that: "no authority outside the community may acquire any rights to immovable properties belonging to an indigenous community". Ethnic minority villagers have tried to get their land back after they have sold it when the price of land has increased.

When land conflicts occur, if people cannot reach an agreement by themselves, they file complaints to the village and commune chiefs. Some cases have been resolved by the village elders and chiefs of villages, particularly those related to plot boundaries and between siblings. If the village and commune chiefs cannot resolve the dispute, people bring the case to the DCC for intervention. Sometimes, people have filed a complaint of land dispute directly to the DCC, for instance, when the commune councillor or commune chief has been involved in the dispute.

Stakeholders' groups in land issues

- **Brokers involved in land transactions**

In the research sites, brokerage and intermediary actors are a widespread phenomenon as far as land transactions are concerned. In SR, as in SHV, **land brokers are extremely diverse: village chiefs, commune chiefs, commune councillors, policemen, the military, villagers, relatives or wives of local leaders and company staff, urban dwellers, real estate companies (for land in urban or peri-urban areas).**

The village chief is a key actor at the village level. He is the person who can resolve conflicts in the village related to land and other matters. Commonly, he and his commune councillors, or the chief of commune builds an alliance for buying large tracts of land at the request of the rich and/or urban people or companies. Thus, there is also **an alliance between commune councillors and land brokers and companies**.

Land sales and purchases occur between villagers and urban dwellers, mostly through the intervention of a land broker, while sales and purchases between villagers are done directly, without intervention by brokers. There are **alliances between local and urban brokers made** in order to get broader access to information on both potential buyers and sellers.

Brokers can become land keepers/managers after the transaction. Some brokers such as the military or village chiefs may be awarded by a loan of land (the sold land) by the buyer for provisory cultivation. Sometimes, the chiefs of village and commune or other key persons, after the brokerage phase, become land keepers or managers on behalf of big land buyers. They make written contracts to loan or lease land with villagers for temporary cultivation. When **the loan is turned into a rental arrangement after 2 or 3 years, the brokers receive a part of the rental fee.** This can range from 20 to 50% of the total amount.

In some cases, urban people, having settled in rural areas, engage in land speculation, land brokerage, and other businesses such as money lending and grocery running. They loan land to villagers for temporary cultivation as a strategy to establish close relationships with them. Then they can identify those villagers wishing to sell land and use their knowledge of the local situation in their negotiations with urban people.

Villagers or local brokers organise meetings and direct negotiations between land sellers and land buyers on a small scale, whereas local authorities act as land brokers for entrepreneurs or companies on a large scale. **Nowadays, it seems that the importance of land brokers is decreasing.** Land sales/purchases are more rarely processed through brokers. Urban people tend to seek land sellers independently and they negotiate directly per/by phone with landowners. **Another emerging trend is represented by land brokers directly hired by companies willing to buy land and acting both as brokers and then as land keepers.** However, 2% of the land selling price has to be paid illegally to the commune chief and other local authorities for recognizing the sale contracts or letters of land right transfer and changing the name on the back of the receipt of land possession.

In RTNKR, the brokerage fee being allocated to all authorities involved in land sales/purchases could be up to 1/3 (one third) of the land selling price, supposedly the land value is still less expensive.

- **Formal and informal politico-legal institutions**

Formal and informal politico-legal institutions of stakeholders are classified in two groups; as stakeholders involved in land tenure regulations, and others involved in land dispute resolution. However, some of them play both roles, acting in land registration and dispute resolution. Local authorities witness and recognize all letters of land tenure transfer and letters of land sale contracts or land right transfers as formal registration and they employ local customs to resolve land disputes between neighbours or within a family.

Stakeholders involved in land registration

As mentioned above, identifying the land registration process led us to understand the intervention of the government in preventing and resolving land disputes and in securing land rights. The DLMUPC in cooperation with LMAP and other stakeholders has carried out SLRs in several communes in 11 provinces in the first period of 5 years (2002-2007). Rice lands and homestead plots were registered while *chamkar* land on the foothills, newly cleared land or *chamkar* land located in protected areas were not titled even though people have occupied and cultivated on that land since the end of 1980s. The registration of chamkar land in the foothills, newly cleared land was not made, and still requires demarcation between farm land and forest land. The disputed land could not be titled if the dispute was not solved by the AC. Moreover, rice land in all destructed reservoirs and canals was not registered even though the owners received the land during the distribution in the 1980s. However, farmers can cultivate temporarily on that land. Consequently, they will lose their rice land supposedly without compensation, according to the legal framework.

In the flooded area of the Tonle Sap basin, disputes occurred between the FiA and RR farmers because the flooded forest boundary is still not demarcated. There are different understandings of 'flooded forest' land and former DW-FR land with re-growing shrubs/forests. According to the 2006 fishery law, the construction of crossing dams or filling-in water bodies or digging or construction of new buildings in fishery areas/flood plain has to be evaluated by the MAFF/FiA (**article 25**), and it is prohibited to expand cultivated land and to provide ownership or occupation rights to land in the fishery area/flood plain (**article 28**). The enforcement of this law will probably generate or activate many disputes with farmers on rice land in the flooded areas, and maybe also conflict with the government's policy of rehabilitation of former DW-FR lands through RR cultivation.

In RTNKR, in 2002, a participatory land use planning (PLUP) was conducted after the creation of a Land Use Management Committee elected by community members. The PLUP aims to assist local ethnic minority groups by preventing land disputes and encouraging sustainable use of natural resources (land, forest). La En village, DPA (in cooperation with the DLMUPC) is conducting the registration and titling of collective land. A villagers belonging to a local ethnic minority shall have the possession rights (*Sith Poukkak*). They will have no right to sell land but it can be transferred to their children or relatives as possessors. However, the deal would **confront the conflict with Khmer land owners who have bought community land** because they would claim on the basis of individual ownership.

Stakeholders involved in resolving land disputes

Two legal institutions work on resolving land disputes: provincial court (formal mechanism) and cadastral commission (informal mechanism).

The court works and sentences disputes over land with titles but has sometimes been accused of threatening farmers to sell land (without titles) at lower than the market price to companies. However, the court has not resolved one single case related to the grabbing of degraded forest land that was raised by the FA. The PCC and DCC conciliate the land disputes based on mutual respect or equity principles of parties involved in disputes. In many cases, the PCC could not

conciliate disputes without the participation of a parliamentarian. Despite the fact that farmers repossessed their land and received the use rights for temporary rice cultivation on disputed land, the ownership rights remain uncertain[81]. Sometimes, the PCC has resolved land disputes in cooperation with human rights organizations.

To date, rural people have been far from fully aware of the DCC and PCC's existence and roles. Despite the fact that both the ADHOC and LICAHDO human rights organizations are well known, they cannot do a great deal except to monitor the cases in dispute. However, collaboration with the legal institutions is still limited. In RTNKR, CLEC has actively assisted ethnic minority people to file complaints to the provincial court or PCC seeking legal action against those Khmer land buyers who have encroached on fallow land or community forest land. As mentioned above, **to date, no single sub-decree to be approved has recognized community land**.

Especially when disputes over land with powerful men have occurred, people have complained directly to a parliamentarian who has close relationships with the Prime Minister, as mentioned above.

In some cases, monks play a role in conciliating disputes over land rights between two villagers effectively in cooperation of the DCC. The monk has succeeded in arbitrating a dispute by requesting that both parties swear at the pagoda in face of the Buddha statues and other monks. In some cases, both parties have agreed to give the disputed land to the pagoda for public use. In other cases, villagers do not complain to local authorities, DCC or PCC. However, they file a complaint to their relatives, high–ranking officials working at the ministry of interior or defence or to the opposition political party. These cases have been sent back to the provincial governor. However, the governor referred them to the PCC and to DCC for investigation.

Sometimes, villagers have filed complaints to the police (instead of to the court, for a reason of distance). This also means that people think the police could solve the dispute. Usually, the police try to reach conciliation, and **tend to favour social peace (e.g. by trying to reach a compromise) rather than 'stating the law'.** This attitude would be similar to that of local authorities who equally share the disputed plots or request compensation for the ex land owner.

In RTNKR, in cases of disputes among ethnic minority villagers, the elders must adjudicate. The mechanisms by which they are enforced are standard, according to *customary law*. It is usual for a meeting to be called and village elders to decide upon an appropriate fine. There is an arrangement set up by the community meeting, aimed at preventing land sales and encroachments, stating that the community fines those villagers who have sold the land by making them give a payment to the collective cash box.

Moreover, as with the formal and informal institutions such as the PCC, DCC or AC, the chiefs of villages and communes (local authorities) and the provincial governor have often resolved disputes over unclear plot boundaries, land rights between ex-owners and new owners (land borrowers or land occupants of the abandoned land or re-distributed land) and between successors based on the **equity principle**. Disputes on plot boundaries have been resolved by **equal allocation** to both conflicting parties. Disputes over land rights have been resolved by requesting that the new owners **compensate the ex-owners**. Moreover, disputes over rights to former and abandoned DW-FR land have been resolved by the provincial governor (or PCC) through a **sharecropping arrangement.**

[81] Interview with ADHOC provincial coordinator.

Land inequity

In the areas studied in SR, the number of LHFs who have less than 1 ha is higher than in other provinces, or the majority of farmers own less than 1 ha of land per household. In RTNKR, ethnic minority villagers/farmers sold land but keep some land for themselves by using their fallow land or clearing new land. Most of them have smaller amounts of land compared to before. Sixty per cent of LHFs have over 3 ha of land per household. In KPT, considered to be an agricultural province, the number of ALFs is on average 8% and lower than in other lowland provinces. Also, in SR, the Gini-coefficient (0.53) confirms that land inequity is higher than in other provinces.

Land equity in the selected provinces

	SR	KPT	SHV	RTNKR
Gini co-efficient	0.53	0.43	0.44	0.39
Land area of 20% of LHF of lowest land size (in % of total land)	4	3	5	5
Land area of 20% of LHF of largest land size (in % of total land)	57	42	50	45
% of LHF with less than 1 ha land	63	27	26	13
% of LHF with 1-2 ha of land	14	30	13	7
% of LHF with 2-3 ha of land	10	20	24	20
% of LHF with over 3 ha of land	13	23	37	60
% of ALF (average, range in %)	16 (2 to 31%)	8 (5 to 11%)	52 (30 to 74%)	0

Source: In-depth field survey in April-July 2005

Agricultural landless farmers

The number of ALFs range from small numbers in villages far from the city, to higher numbers in villages close to urban areas. However, the number varies depending on location and zone. In protected areas, the number of ALFs is lower than in other areas outside the protected zones. The main reasons that farmers do not have farm land are illness, lack of food, being a new couple, indebtedness and immigration. There could also be a correlation between the three main reasons: indebtedness, illness and lack of food. **The importance of immigration as a factor of landlessness shows that mobility is a key factor in land tenure by occupying abandoned land for cultivation.**

In some cases, sales of land result from the strong pressure (from persuasion to threats) exerted by brokers or buyers, showing that **the real functioning of land markets is not only a matter of supply and demand but that of power and violence**. Some households have lost all of their land through encroachments. However, agriculture remains an important economic measure in sustaining their livelihoods. They access land for rice cultivation through an arrangement of loans and renting; 41% and 53% of the interviewed ALFs in SHV, 40% and 15% in SR and 15% of ALFs in KPT borrow land for cultivation. However, there are also ALFs in SR who have cleared land that belonged to other people for temporary cultivation, while others in KPT plan to clear degraded forest for cultivation. However, in the provinces where there are large areas of land and a low population density, such as RTNKR, ethnic minority people have started to borrow land or young plantations from Khmer immigrants, communities or LUMCs.

Summary of the main findings

- **Modalities of access to land**

Despite land being distributed in the early 1980s, many farmers have cleared more land in both the upland areas for selling or cultivating and in the flooded land for RR cultivation. Many urban dwellers have bought land in the upland areas for tree plantation, and loaned it to land sellers or other villagers for growing annual crops in exchange for labour (plantation keeping), while others have purchased DW-FR land for RR cultivation, with the intention to rent it out or practice sharecropping with farmers; there is an **interaction between clearing, purchasing and loans**. However, those people who have occupied newly cleared land in the upland areas for cultivation have faced the state policy of land repossession that strategically resorts to the government's *botbanhchea* (regulation) no 01, issued in 2006. **Land clearing** is the common practice of all ethnic minority villagers for shifting cultivation but also conflicts with article 37 of the 2002 forestry law. Nowadays, people clearly land increasingly far from the village, because most of the land around the village has been sold. However, Khmer immigrants have also borrowed or bought land with the intention of encroaching upon forest land.

In the upland areas, ignoring the right of fallow land for shifting cultivation has led to land losses. Many farmers have lost all of their land through expropriation, encroachment and the granting of land to the military (military development zones). Expropriation, encroachment and military grants have generated new dynamics in terms of access to use rights. To sustain their livelihoods, farmers have had to ask for loans of land for cultivation in exchange for the labour to clear land. However, loans without contracts have recently changed to loans with contracts with the recognition of the village chief in order to avoid disputes over land rights and illegal sales.

Inheritance is linked to other modes of access to ownership: The process of inheritance in RTNKR was quite different from the lowland areas, but now, it tends to resemble it as most of land has been occupied and reserved. Inheritance, instead of clearing, is becoming an important mode of land access.

Loans are linked to land sales/purchases: Land buyers from urban areas or from abroad buy land for speculation or tree plantations, but loan it to villagers or local brokers for temporary cultivation. Also, sharecropping has declined and strongly changed to become a leasing system. However, sharecropping remains an important mode of land access at the level of relatives and neighbours evolved in a localised sphere of mutual accountability.

Linkage between capital investment, sharecropping and leasing: On the former DW-FR land areas, sharecropping with a written contract is a mechanism which helps to resolve land disputes between concessionaires/investors and former land owners. However, it is being replaced by an arrangement combining land renting and water selling which is favourable to the land owner and investor in terms of costs and management.

Despite the fact that sometimes pawning leads to distress sale of land and disputes, this arrangement is also **a mutual help within families** or relatives to prevent from distress sale of land and debt at high loan interest rates, and attempts to reimburse profit inside relative's relations.

- **Land sales/purchases**

Policy developments relating to tourism have caused land markets to develop and land concentration to increase. They have also had an effect on the evolution of agrarian contracts. In many cases, farmers have sold their land, fallow land or abandoned DW-FR land under the pressure of threats or out of fear of expropriation (anticipating strategy). However, unclear land rights before sale have led to some serious cases of land dispute such as the **sale of abandoned rice land, re-distributed land, occupied and borrowed land**. Even though Khmer immigrants gain access land, in most cases, by buying (secretly) from ethnic minority people, they also confront article 28 of the 2001 land law.

Land sales/purchases have occurred between villagers and urban dwellers through the intervention of brokers, while sales/purchases between villagers are carried out directly, without the intervention of land brokers. There is a channel between local and external/urban brokers. Some local brokers have been loaned land by land buyers for cultivation or have become land keepers.

Officially, land transactions have to be registered and changed to the name of the new land owner at the OLMUPCC. However, fewer people have followed this rule because of the related costs and time it takes. Most people have bought rural land without registration at the OLMUPCC. For an unofficial fee, village or commune chiefs change names on the back of receipts, witness and recognize the letters of land sale contracts or of land tenure rights transfer as the rural land changes hands. However, the exception is when rich and urban dwellers or companies purchasing large amounts of land for a large plantation, or buy land in urban areas where it is legally registered at the district cadastral unit.

- **Land disputes**

Land conflicts become a serious problem when the government has launched development plans while land rights are still insecure. Land disputes have changed from conflicts over *boundaries* to conflicts over *possession* or *ownership rig*hts. The expansion of the land market has led to many cases of land disputes due to many reasons such as: 1) unclear land rights before transfer; 2) the absence of demarcation between state or public land and private land; 3) ignoring traditional rights of fallow land; and 4) illegal encroachment into forested land for selling. Land disputes happened mainly due to unclear land rights before land transfer or sales, e.g formal or informal occupation for over 5 years before the issuance of 2001 land law and rice land abandoned for 3 consecutive years, etc. Moreover, land borrowers or occupants have claimed the right of ownership under article 30 of the 2001 land law. However, **many cases of land sales have led to disputes between the new and former owners due to diverging interpretations over the 'bundle of rights' at stake: was it a loan, an occupation of abandoned land, former abandoned rice land, a part of fallow land or ancestral land?.**

Rice production remains a main source of rural income even though the tourist sector has rapidly grown, or due to the lack of skills to run other businesses. Increasingly, farmers are interested in converting their DW-FR land to RR land through reservoir construction. Moreover, many private investors seek access to those lands through capital investment in reservoirs with the intervention of local authorities. Disputes relating to rights over that land would be a serious problem if the authorities were to grant or provide a farmer's former DW-FR land to the private sector or companies by referring to **article 76 of the 1992 land law.** Arrangements of sharecropping between investors and ex-land owners could be an example of a mechanism for resolving dispute over the rights of abandoned DW-FR land.

Shifting cultivation farmers have hoped to clear their fallow land, *chamkar chas,* after selling their rice land or other chamkar land, while other farmers in the areas towards Tonle Sap Lake are trying to clear flooded forest for RR cultivation. Sometimes, they have been encouraged by rich and powerful people to clear land, and then sell it to them. As a consequence, snatching up land

illegally has become a serious problem for both groups of people: farmers and rich and powerful men. However, **land encroachment has declined since the FA officials have filed complaints to the court and claimed for repossession of state forested land**.

Land security is the key to sustainable development. There is no empowerment and no hope for farmers or ethnic minority farmers who lack land security. **Ignoring the traditional rights of shifting cultivation farmers on fallow land and the rights of farmers on former DW-FR lands will cause an increase in the number of agricultural landless and land poor farmers**. Farmers who lose all of their land by expropriation and the granting of land to the military face an uncertain future. Their livelihoods are currently based on loans of land for cultivation in exchange for labour to clear the land. However, loans would be changed to leasing if all land has to be cleared.

CHAPTER VIII.

Land policy issues

Pierre-Yves Le Meur

Introduction

Historically, land access and control in Cambodia basically relied on shared moral principles of labour investment (property right acquired 'by the plough') and royal eminent ownership in a context of low demographic pressure. As Jean Delvert wrote in the 1950s, "Cambodia, by chance, does not know any agrarian question" (1994: 508). This is not the case anymore and the national political economy tends to produce a class of landless farmers, in relation to an increasing land concentration in the hands of the elite (Kato 1999, Pel Sokha et al. 2004); hence there is a renewed concern for land tenure policy in Cambodia. Various state institutions, development projects, NGOs, co-operation agencies and research institutes explicitly focus on the issue. A new land law was issued in August 2001 and a project funded by the World Bank – the Land management and administration project (LMAP) – has launched a process of systematic land registration aimed at covering the whole country.

The right to land ownership (limited to Cambodian citizens) was reaffirmed by the 1993 new constitution (article 44).[82] Actually, the 1992 land law did recognise ownership, its article 19 restating the legal principle of the colonial Civil Code of 1920, namely ownership as an absolute and exclusive right to enjoy and dispose of property (of course within the limits and conditions of the law). However, ownership was restricted to residential areas and the law related to urban areas was never promulgated.

Actually, the philosophy underlying the new land law and the land titling policy remains strongly 'proprietarist' boiling down the notion of land tenure security into the issuing of ownership titles. In the same vein, land markets are implicitly equated to land sales markets without taking account of the importance of land rental markets as a significant device for adjusting land supply and demand.

Besides, the concession policy, actually consisting of two diverging orientations (economic and social land concessions), seems ambiguous, at least in its implementing modalities, if not in its very conception. Social land concessions are conceived as a device to protect disadvantaged people from the impact of an open land market, which is one of the main objectives of the government's land policy strategy (see Council of Land Policy 2002: 11). Economic concessions granting procedures are rather opaque, to say the least.

These elements give shape to the legal context within which the land transaction issue must be analysed and policy proposals can be formulated. We will thus review these legal elements in the first section of the text before moving to conclusions drawn from our research results in the third section. The second, intermediary section will stress aspects of land tenure dynamics that are clearly related to, and influenced by historical trends; sometimes anchored in the long run, especially the moral principles underlying the ideology of land possession and mobility as a structural feature of Khmer farmers' life (beyond the dramas of recent history).

[82] *"All persons, individually or collectively, shall have the right to ownership. Only Khmer legal entities and citizens of Khmer nationality shall have the right to own land. Legal private ownership shall be protected by law. The right to confiscate possession from any person shall be exercised only in the public interest as provided for under law and shall require fair and just compensation in advance."*

The national context: land law, policy, history

The idea of this study stemmed from a simple observation. The national land policy in Cambodia is led by an ownership-oriented – or 'proprietarist' – paradigm symbolised by the massive land titling LMAP project. This project is embedded in the new land law promulgated in 2001 and we must first analyse its main orientations. In the second section, we will briefly compare it to the 1992 land law it has officially replaced. The objective is not to propose a systematic analysis of both laws but to highlight and analyse the points that are relevant as regards our research questions and sites.

• The policy framework: the ownership/security equation

The new land law

A new land law was issued in 2001, aimed at replacing the former 1992 law. From the introductory article, it stresses private ownership as its fundamental concern: "*This law has the objective to determine the regime of ownership for immovable properties in the Kingdom of Cambodia for the purpose of guaranteeing the rights of ownership and other rights related to immovable property, according the provisions of the 1993 Constitution of Cambodia*" (article 1).[83]

Ownership is clearly the focus of the law and not, for instance, land tenure security, equity or poverty alleviation. Article 3 focuses on the cadastral administration, the title I on "Private and public ownership" (art. 4-28; see below), the title II on "Acquisition of ownership" (art. 29-84), the title III on "The regime of private ownership" (art. 85-167) and the title IV on "The forms of ownership" (art. 168-197).

The following titles deal with "Immovable property used as surety" (title V, art. 198-225), "Cadastre" (title VI, art. 226-246), "Penalty provisions" (title VII, art. 247-266) and the title VIII is about "Final provisions" (art. 267-268). Article 267, though classical from a legal standpoint, is noteworthy: "Any provisions that are contrary to this Law are repealed". As we will see with the case studies, contradictions and legal gaps between the 1992 and 2001 land law do exist and are sometimes instrumented by actors involved in land disputes.

Despite the strong focus on ownership, the law recognises other property rights: possession, concession, leases, usufruct, use & stay, easements.

Rights to transfer land (i.e. alienation rights) are differentiated according to the legal classification of land ownership forms: state land (public and private), private land, monastery land, indigenous community land, private land (see table below).

[83] *The quotations of the 2001 land law I use in this text come from the unofficial translation into English prepared by the Ministry of Land Management, Urban Planning and Construction (MLMUPC) with the support of World Bank, ADB, GTZ and Finmap (Kingdom of Cambodia 2001).*

Legal status of rights to transfer land in Cambodia

Type of land	Can transfer?	To whom?	Conditions	Subject to possession?
State Public	Yes	State Private	No longer serves public purpose	No
State Private	Yes	Anyone	None	Yes
Monastery	No	-	-	No
Indigenous Community	Yes	Member of group	Must be leaving group or have special arrangement	No
Private	Yes	Anyone	None	No

(Source: East-West Management Institute 2003: 57)

Cadastral land registration system

The law provides two forms of cadastral land registration: sporadic land registration and systematic land registration. Thereafter, any transfer of land must be registered on the cadastre, which is called subsequent registration, referring to the crucial issue of the cadastre maintenance. Although tax collection has historically been the main objective underlying the cadastre implementation,[84] in the current Cambodian context, it functions primarily "as a record of land ownership, and includes official copies of not only title deeds, but also related legal documents such as mortgages, leases and easements, as well as details about the size and boundaries of the property" (East-West Management Institute 2003: 204). As far as our study is concerned, the question is, of course, to what extent the daily work of maintenance is really taken on by the administrations in charge of registration. This is a matter of procedure and logistics, but more fundamentally, a question of state capacity (especially as far as working links between administrative levels are concerned) and of political economy (as we will see below as regards strategic choices made in favour of a concession policy). This is also a matter of how to deal with the multilayered nature of property rights, of legal texts, and of a complex history of settlement, displacement and land appropriation.

As mentioned above, this policy has been enacted through a project of land registration and titling, the Land Management and Administration Project (LMAP 2003) funded by World Bank with German and Finnish technical assistance. LMAP has integrated previous pilot registration projects carried out by GTZ (1995) and FINMAP (1997). LMAP specific objectives are "*to improve land tenure security, and promote the development of efficient land markets*" (LMAP 2003: 3).[85] The issuance and registration of land titles constitute LMAP key action (receiving 60% of the whole project funding) besides the establishment of an efficient regulatory framework and land administration system.

The systematic land registration system is what the national land policy aims at, that is to demarcate and register all the land in Cambodia, area by area, and to record the names of the owners and the details of the land in the Land Register, which is a public and accessible document. The procedures are detailed in the sub-decree 46 of 31 May 2002 on "Systematic registration" and the whole process is carried out under the aegis of the MLMUPC. The procedure is launched at the

[84] *Let us remind ourselves here of the classical definition of the cadastre found for instance in Simpson (1976: xxxvii): "A public register of the quantity, value, and ownership of the land of a country compiled for the purpose of taxation".*

[85] *"The overarching objectives of this project are to reduce poverty, promote social stability, and stimulate economic development" (ibid.).*

provincial/municipal level by the governor who declares an area an Adjudication Area for registration and sets up an Administration Commission (AC), which plays a key role in receiving complaints and settling disputes linked to – meaning revealed, activated or generated by – the registration process. If the AC is not able to solve an objection, it is submitted to the National Cadastral Commission (NCC). The demarcation of parcel boundaries must be validated by neighbours before the creation of the cadastral map of the adjudicated area. A period of public display is organised afterwards in order to gather further claims and objections (settled through a specific procedure for dispute resolution).

The sporadic land registration system allows individual registration of parcels in the area not yet covered by the systematic registration programme (which will take years to be achieved). Owners and possessors apply individually to register their holdings in the cadastre, in accordance with the provisions of the sub-decree 48 of 21 May 2002 on "Sporadic registration". The agreement of the neighbours is needed for validating the procedure. If there is an objection, the dispute is submitted to the District/Khan cadastral commission.

At the time of the study, systematic land registration was still in an early stage of implementation in Kampong Thom and Siem Reap province. There has been a pilot project of registration in the polder areas of Prey Nup near Sihanoukville (see Kibler & Perroud 2003, Le Meur et al. 2005). Rotanak Kiri is a special case as pilot experiments of communal land titling are planned (in relation to participatory land use planning, PLUP).

A point is worth noting as far as the first systematic registration attempts are concerned. In Kampong Thom as in Sihanoukville, land titling has only been carried out in the lowlands/rice lands whereas *chamkar* lands, newly cleared lands and foothills have been left aside. This echoes the colonial cadastral policy which was eventually restricted to the lowlands too, the so-called "*Cambodge utile*". The systematic registration is in too early a stage to allow any solid evaluation and the case of Prey Nup is specific as the pilot project of land registration was a by-product of the enterprise of polder rehabilitation. This notwithstanding, the dichotomy reflects a policy orientation, shared by the government and the donors, that tends to focus on lowlands and rice production. The trend is not new and it has underlain colonial and post-colonial agricultural policies. Another interpretation we could draw from this observation is rather technical. Land titling – any form of cadastral strategy – is easier to implement in areas where boundaries and ownership are already stabilised. Upland areas used to be the domain of shifting cultivation and they are nowadays marked by a strong mobility as far as human settlement and land appropriation are concerned, rendering land registration more difficult.

- **The 1992 and 2001 land laws compared**

The main areas of legal intervention added in the 2001 land law deal with: leases, concessions, co-ownership, pledges, cadastral maps, indigenous community ownership. Articles on succession rules and temporary concessions were removed.

We will consider here the following aspects that are related to our research topics and sites: the relationship between possession and ownership, the possibility of collective ownership rights for indigenous communities, the recognition of leases by the new land law, the new policy of social and economic land concession.

From possession to ownership

The removal of temporary possession from the new law (article 60-76 of the 1992 land law) can be interpreted as marking the end of a transition started in 1989 with the limited reintroduction of the private ownership – of house (1989) and residential land (1993).

A person who has been legal possessor of a plot of land for at least five years, at the time the new law comes into effect, may apply for ownership. This provision was introduced in the 1992 land

law and renewed by the 2001 land law. If the legal possessor has not completed the five years at the time of the new law, he or she has to wait for the completion of the five years for applying for ownership.[86]

What is now prohibited is a new (i.e. after 2001) possession. As we will see, this raises difficulties for farmers engaged in land clearing in remote areas, in most of the cases after having sold their land in more densely populated and/or periurban areas (especially in Siem Reap province and Sihanoukville municipality). People develop alternative, informal ways of securing appropriation (at least at local level), for instance by planting trees on the land they have cleared.

Ambiguities result from possible discrepancies or contradictions between two provisions: the requirement of 5-year continuous cultivation on a parcel for applying for ownership and the clause according to which a land is considered as abandoned, and thus vacant (which means reverted to the state domain), after three years fallow: "*any land which the temporary possessor has abandoned for three consecutive years shall become the private domain of the state*" (article 76 of the 1992 land law). But note that article 70 considers that fallow land for reproducing soil fertility is not considered as abandoned land.

This raises the question of the possibility of claiming possession over privately owned property. The East-West Management Institute notes in analysing the new land law that prescription is evoked in the 2001 land law (article 29, 78), but not clearly defined. In article 29, it "relates to situations where someone acquires ownership rights in land not by agreement (such as sale) or by way of grant, but by way of occupying the property for such a long period of time that the law now deems them the owner" (East-West Management Institute 2003: 112). They conclude by wondering "whether the reference to prescription in Article 29 means that the right of acquisition by prescription actually exists in Cambodian law. (...) So whereas Article 29 refers to the concept of prescription no rules allowing for such a method of acquiring ownership exist in the land law" (ibid: 113).

The observations made during the field research show that practical ambiguities arise out of prescription's lack of clarity. This is especially striking in the areas (especially in Siem Reap and Kampong Thom) where farmers were forced to abandon their land (that was distributed to them when the *krom samaki* were dismantled in the 1980s) under the pressure of insecurity (continued presence of the Khmer Rouge guerrillas) or natural events (disastrous floods). The provincial authorities have considered that these lands were abandoned and thus could be granted as economic land concessions to investors. In other cases, outsiders have seized the opportunity to obtain a certificate of possession (under the 1992 land law) or a land title (under the 2001 land law). When the former owners claim their rights over land that was legally distributed to them in the 1980s, local and provincial authorities sometimes arbitrate in accordance to 'customary' principles favouring peace, by organising the negotiation between stakeholders, rather than by enforcing legal texts that reveal ambiguity (a way of "saying the law" could be, for instance, to consider the claimants as "temporary possessors" because they do not have any certificate of possession). The compromise crafted by provincial authorities can be, for instance, to give in loan the land claimed by the farmers who have been forced to abandon it. The arrangement is made under the aegis of provincial authorities.

[86] *Article 30 of the 2001 land law: "Any person who, for no less than five years prior to the promulgation of this law, enjoyed peaceful, uncontested possession of immovable property that can lawfully be privately possessed, has the right to request a definitive title of ownership. In case the granting of a definitive title to ownership is subject to an opposition, the claimant has to prove that he himself fulfils the conditions of peaceful, uncontested possession for no less than five years over the contested immovable property or to prove that he purchased the immovable property from the original possessor or his legal beneficiary or from the person to whom the ownership was transferred, or from their successors." The conditions for legally claiming land ownership are detailed in the article 38: "In order to transform into ownership of immovable property, the possession shall be unambiguous, non-violent, notorious to the public, continuous and in good faith".*

Indigenous community properties

An exception to the individual titling is constituted by so-called "ethnic minorities". The expression must not be taken at face value: Cham, Chinese or Vietnamese are not considered as ethnic minorities in this context, as they are seen as non-"indigenous" (another questionable category). Actually, "ethnic minorities" correspond to the ethnic groups living in the peripheries of Cambodia and often relying on slash-and-burn agriculture to make their living. This categorisation, evoking the "hill tribes" as they are called in neighbouring countries (Chao Khao in Thailand or Orang Ali in Malaysia), reproduces the dualism between 'civilised' (Buddhist) lowlands and 'wild' mountain, which is pervasive in the Southeast Asian worldviews. Also called "Khmer Loeu" (upper Khmer), they represent a tiny minority at the national level (around 120,000 people, less than 1% of the total population) but the great bulk of the population in the north-eastern provinces (Ratanakiri and Mondulkiri) where 90% of them are living (lowland Khmer are still the actual minority in these provinces).

Their cause has been supported by international and national NGOs. Advocacy work has combined environmentalist and autochthonous justifications aiming at preserving both nature and people, especially in front of the uncontrolled land encroachments by Khmer lowlanders and foreign companies, through clearing, purchase, and land concessions.

This active lobbying eventually resulted in the recognition of "Indigenous Community Properties" corresponding to the granting by the state of collective ownership title to the community (article 26). "*This collective ownership includes all of the rights and protections of ownership as are enjoyed by private owners*" (article 26), but it is inalienable. Nevertheless, "*for the purposes of facilitating the cultural, economic and social evolution of members of indigenous communities and in order to allow such members to freely leave the group or to be relieved from its constraints, the right of individual ownership of an adequate share of land used by the community may be transferred to them*", as long as it is not State Public Property (article 27). No right to the land belonging to the community can be transferred to an outsider, whether it is right of ownership (title) or right of use (lease, usufruct, etc.).

We handle this point in detail in the chapter on Rotanak Kiri. Let us just mention here that such a policy tends to rigidify ethnic boundaries by defining them *a priori* and using these boundaries as a clear-cut basis for land titling). It also relies on the usual misconception of collective ownership whereas these groups, as others in the world, combine collective and individual forms of property rights. It confines these groups in the stereotype of the "traditional community", which is denied any capacity or will to change (or only on the basis of an individual and exclusive choice; see above, article 27)[87]. To be fair, one must however recognise that protecting these lands and communities against uncontrolled immigration and encroachment has become an urgent matter.

Leases

Leases were absent in the 1992 law (but covered, at least partly, by the Decree #38 Contract law of 1988). They are considered in the 2001 land law: "*The owner of immovable property may lease it out to another person. A lease agreement is a contract by which the owner of immovable property makes such property temporarily available to another party in consideration for regular payment of rental, proportional to the time of possession*" (2001 land law, article 106). Two types of lease agreement are considered by the law: "*lease for an indefinite period of time and lease for a definite period of time. A lease for a definite period of time includes a short-term lease with an option to renew and a long-term lease for 15 (fifteen) years or more*" (article 106).

[87] *The article 23 illustrates this "traditionalisation" of indigenous minorities: "An indigenous community is a group of people who reside in a territory of the Kingdom of Cambodia whose members manifest ethnic, social, cultural and economic unity and who practice a traditional lifestyle, and who cultivate the lands in their possession according to customary rules of collective use" (article 23; my emphasis).*

Besides the duration of the agreement, the other major difference between short-term and long-term leases is that the former is merely a personal right between the lessor and the lessee whereas the latter creates a right *in rem* that is deemed to be stronger and more secure in the theoretical context of a functional rule of law and free-market economy.

What our case studies show is that there are different "spheres" as far as agrarian contracts (lease, sharecropping, loan, etc.) are concerned. One can differentiate between arrangements that are embedded in local relations of neighbourhood, kinship and friendship and arrangements that are 'socially dis-embedded' (but "re-embedded" in broader power relations) involving external actors. Actually, the localised sphere of socially embedded arrangement is not inherently a sphere of trust. We do not want to idealise the community. The social clauses of agrarian contracts rather express a form of mutual accountability between local actors that works through daily interactions and social relations (this observation was also made in a previous study on land consolidation; Le Meur 2005). External actors cannot rely on this form of social capital but this does not mean that they do not resort to similar mechanisms. They do it at a higher level and in other social arenas (by building alliances and networks with civil servants and officials at the provincial level, for instance). This means that the security and the strength of agrarian contracts are always, though to a various extent, a matter of social relations and not only of legal texts in rural Cambodia.

The legal framework is also blind to the fact that actual agrarian contracts and derived rights are much more diverse and context-specific than the broad categories of lease and loan recognized in the law. This raises specific questions about how these kinds of rights can be secured beyond the local sphere of mutual accountability.

Concessions

"*A land concession is a legal right established by a legal document issued under the discretion of the competent authority, given to any natural person or legal entity of group of persons to occupy a land and to exercise thereon the rights set forth by this law*" (2001 land law, article 48).

A concession is thus a right to use state land (private property of the state) for a specific purpose. Three categories of concessions are distinguished in this respect: (i) social concessions, (ii) economic concessions, and (iii) use, development and exploitation concessions. The latter type falls outside the scope of the 2001 land law.

Social land concessions constitute a tool aimed at allowing landless farmers to get access to land for residential and subsistence farming purposes now that the acquisition through temporary possession has been rejected by the new law. After five years of valid occupation, that is in accordance to legal provisions (article 18), the land recipient can apply for ownership title. This policy tool is new and we did not see it much on the ground, with the exception of an NGO (HAGAR) acting as an intermediary between the state and beneficiaries chosen among landless women in Kampong Thom province.

Economic land concessions provide investors with exclusive rights to manage and harvest land for up to 99 years but they cannot be converted into land ownership (article 52). "*Land concessions responding to an economic purpose allow the beneficiaries to clear the land for industrial agricultural exploitation of land in the territory of the Kingdom of Cambodia*" (article 49). The concessionaire must invest in land and pay an annual fee (article 51).

We will come back to the concessions issue in the last section. The three following points are worth mentioning by now:

- The nature of ELC is ambiguous. They are considered as granting rights that are legally different from ownership, possession and leasing. The question of the fee to pay off, mentioned in the law, is not clarified so far and added to the deep opacity of the whole process, we can argue that ELC are actually closer to administrative and even grant transactions (based on giver's good will and taker's power; see below §II on research

findings), than to what they are legally deemed to be, namely a commoditised transfer of use rights submitted to specific and verifiable constraint of use and investment.

- Economic concessions granting procedures are rather opaque, to say the least (in some cases, they function as disguised forest concessions bypassing the 2002 banning on non-timber products; see United Nations 2004).
- ELC can be granted by the state (up to 10,000 ha) and by the province (up to 1,000 ha). These legal limits are poorly enforced and there is an obvious lack of co-ordination between the state and provincial levels as far as grant procedures are concerned. See also the UN report on land concessions: "The fieldwork undertaken for this report also confirmed the existence of a parallel structure at provincial level, where local officials have granted smaller concessions in military development zones" (United Nations 2004: 17). We also observed the importance of military concessions especially in Siem Reap provinces and the ambiguity and conflicts linked to the process of granting these concessions.

If land titling seems to be the unique path toward land reform in Cambodia (according to development agencies and government discourses), the concession policy is another thread that proves to be at least potentially contradictory. We will come back later to the political implications of this complex co-existence.

• The influence of history

A history of land tenure and land policy would lead us far beyond the scope of this study. However, current land issues are not understandable if one does not pay attention to history, which means taking the *longue durée* into account from pre-colonial times onward. We will select here elements that are relevant to exploring and understanding the field of rural land transactions. Two are of the essence: (1) the conception of possession and its moral grounding in the principle according to which "labour creates rights"; (2) the mobility of rural populations and the related weak cohesiveness of the village level onto which recent history has superimposed chaotic movements of population displacements and resettlements.

About history, one must also add that the colonial policy appears as a matrix of later developments in this respect, particularly as regards its focus on both cadastre and concession.

Possession

One form of property relations seems to cross all historical periods, although in various forms. It is possession. Historically, land access and control in Cambodia basically relied on shared moral principles of labour investment and royal eminent ownership in a context of low demographic pressure. Property right was acquired "by the plough", meaning by investing any form of labour in land: by clearing the land, cultivating it, fencing it, planting trees, building a house, and also by investing in ritual and religious work. A corollary is that the right created by labour must be defended and publicly re-asserted through continued work. The right of possession would stop when the investment in labour was suspended, though not immediately. The 3-year delay seems to be found in pre-colonial Khmer codes too; after 3 years, the land reverted to the king (see Delvert 1994: 489). Delvert also notes that "collective property was unknown" (*ibid*: 490). Taxation attached to the crop, thus to farming activity, rather than to the land, which is consistent with the central role of labour as justifying principle of appropriation.

The colonial administration kept on with this orientation despite an official turn toward a cadastral policy of land ownership registration. The convention of June 17, 1884 abolished the king's ownership, which was replaced by a formally dual, French and Cambodian, but practically French authority on land. The cadastral policy was progressively implemented from 1902 onward and developed quite well from the 1920s and especially from 1930 to 1945. Despite this shift toward private ownership, the 1920 Civil Code also recognised the right of possession in a sense which was

implicitly similar to the pre-colonial conception. Actually, the legal opposition between 'owner' and 'possessor' never gained currency, as the possessors had the same rights and duties and could transmit and alienate land. Possession was acquired through purchase, inheritance, or occupation and exploitation during 5 years of a land belonging to the state or local domain and on which the farmer was attributed a "permit of cultivation".

It is noteworthy that article 723 of the Civil Code is phrased with the same words as the equivalent article in the new land law on the conversion of possession in ownership: "*En matière immobilière, le possesseur devient légitime propriétaire, lorsque la possession paisible, de bonne foi, publique, continue et non équivoque pendant cinq ans consécutifs et qu'elle porte sur une terre non immatriculée*" (quoted in Delvert 1994: 490-491). Article 725 provides that the possessor loses his right after five years' non-use.

The colonial legal frame remained in force after independence in 1953 and until the Khmer Rouge victory in 1975. After four years of abolishing any form of property and possession and an aborted collectivisation, the PRK regime reintroduced property principles by 1989 (see Frings, 1997; Gottesman, 2002; Slocomb, 2003). Interestingly, the right of possession quickly re-emerged. The "*Instruction on implementation of land use and management policy*" of June 3, 1989 recognised as regards rice fields the right of possession of the person who was managing and using the land.

Other elements introduced by the colonial administration are still present in current land policy and practice.

Local administrative validation of land transaction. Under the French cadastral policy, a centralised Cadastral Conservation system was created aimed at registering the different types of right (ownership, possession, and mortgage). Actually, the cadastre was only implemented in certain parts of the country, corresponding to the central rice bowl. One could put it differently: there are landowners only where cadastre has been achieved (at the *khum* level) and elsewhere possession was hegemonic. "In places where the Conservation did not exist, landowners registered the transactions at the *khum* level" (East-West Management Institute 2003: 22). This informal role of formal authorities is currently widespread, as we will see in the case studies.

Land concession policy. As mentioned above, the concession is a specific modality of land rights granting, different from ownership and from leasing. In a way, it is a peculiar enactment of the possession right, as the maintenance of the right is submitted to effective investments in land development and agricultural production. Actually, and this a striking element of continuity between the colony and the postcolony, the politics of concessions have always been made of power relations and political collusions, and the principle that investment in land was a criteria for the grant was always subject to negotiation (see Slocomb 2007: 19 et sq. on rubber plantations under the concession regime during in colonial Cambodia and United Nations 2004 for striking similarities with the current situation).

The principles underlying land appropriation remain active in the current context. Justifying possession by investment in labour has been a central feature of land tenure dynamics from pre-colonial times through colonisation and up to now. This principle must been understood in relation to another key feature of rural Cambodia: mobility.

Mobility

Contrary to the representation of a peasantry deeply rooted in bounded localities and traditions, the history of Cambodian farmers bears the hallmark of mobility. As Delvert would note, "l'habitat n'impose donc pas au paysage une marque aussi forte qu'ailleurs. Le Cambodgien au surplus a un caractère quelque peu nomade: il se déplace facilement pour des raisons d'ordre économique, d'ordre familial et surtout, peut-être, d'ordre religieux" (1994: 198). For Nepote, "agrarian activity remains linked to practices at the edge of a fluid semi-nomadism" (1992: 171). This observation of Khmer rural life renders less relevant the dichotomy between lowland Khmer and upland Khmer (or so-called "hill tribe").

Agricultural mobility is linked to the weak definition of the 'village' as a community or social entity. Beneath the *khum* – the administrative commune created by the colonial state in 1908 (ordinance of June 5, 1908, also establishing eligibility principles for the chief of commune or *mekhum*) – the local level of the village or *phum* never acquired any strong social, political or administrative consistency. Delvert proposes a regional typology of village configurations that stresses the point. The word *phum* merely indicates "any inhabited place, whatever it is and whatever the number of houses composing it". He sums up the idea by stating that "this inhabited location has no temporal permanence" (1994: 202-204). He adds that the administrative village or *phum* (created by law in 1919) does not correspond to the "farmer *phum*", which represents any localised form of human settlement. Finally, for Delvert, it is the house which is of the essence in the rural Cambodians' life-world (see also Ovesen et al. 1996)[88].

Late colonial and post-colonial developments exerted a strong impact on farmers' mobility, all the more because of protracted situations of war generating measures of village groupings, forced displacements of population and escape strategies (people's grouping organised by the French in 1948-1954; years of war under Lon Nol, forced displacements during the Khmer Rouge regime and intense movements in the post-conflicts 1980s)[89].

All these events had a strong influence on social organization at local village level. As May Ehibara puts it for the Pol Pot years, "obviously, these moves ruptured people's ties to their home communities, familial lands, kin, and friends" (1993: 153). However, beyond the effects of crises and wars on people's displacement, mobility must be seen as a normal social fact, which is structuring in the production of social and political order (see Chauveau, Jacob & Le Meur 2004). This point has been stressed by scholars studying rural Cambodia who have shown the weak consistency of the village (as seen above). This observation implies to take account of how 'strangers' are integrated in this fluid local society through different forms of matrimonial and goods exchanges (see Nepote 1992: 175).

As far as the current situation is concerned, the mobility issue is a key point:

The rural situations we have observed are still strongly influenced by the displacement of populations of the Khmer Rouge era (especially in zones like Kampong Thom and Sihanoukville that have remained insecure until 1998 or 2000). Mechanisms facilitating the social integration of strangers have been disrupted and the sphere of mutual accountability we have identified as regards land transactions has been transformed (see the case studies and Le Meur 2005).

New forms of mobility have emerged with the development of land markets driven by external buyers (entrepreneurs and officials): farmers sell land for different reasons (distress sale, anticipation in front of increasing speculation, threat) and leave peri-urban areas (Siem Reap, Sihanoukville) to move to peripheral zones where they buy or, more often, clear land. It seems that a cycle of mobility has started related to the development of peri-urban land markets pushing poor farmers to remote areas, rather to the north and north-western regions than to Rotanak Kiri and Mondulkiri, as seems to be suggested by the aerial coverage of forest expansion recently carried out by DANIDA.

Both cycles – resettlements of refugees and returnees and land sales/land clearing – are linked in different regions, placing mobility at the core of land tenure dynamics. This issue must be dealt with by policy makers and not only by NGOs specialised in de-mining, refugees and humanitarian aid.

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[88] *May Ehibara depicts the Cambodian village in 1959/1960 in a similar way, as a rather "loose structure" (Embree 1950), but adding the structuring role of the religious factor: "The village formed a social unit as an aggregate of kinsmen, neighbours, and friends. Various bonds of affection, loyalty, and mutual aid also extended beyond the village to relatives on both sides of the family Religion was an integral and critical part of village life. Sobay had its own Buddhist temple compound (wat), with resident monks, that served as a moral and social center. Politically, Sobay and its village chief formed the lowest rung of an administrative ladder that rose through various territorial levels to the central government in Phnom Penh and, ultimately, to Prince Norodom Sihanouk, who evolved considerable respect and loyalty from Sobay villagers in 1959-1960" (1993: 150).*

[89] *See Le Meur & Leurent (2006) for a case study stressing a similar logic of frontier and farmers' mobility in the Mekong delta.*

Research findings

In this section, we have tried to **synthesise the main findings resulting from the four provincial case studies in the forms of four issues that raise specific questions for policy-makers**:

- The description of land transactions in rural areas shows that non-commoditised and more specifically, **administrative and grant transactions** play a key role in the dynamics of land rights transfer.
- A double movement linking the **emergence of landless farmers** as a significant social group and a trend toward **land concentration** has been observed in the four provinces. This link is more complex than a linear movement of social differentiation and class formation. It goes through specific links between land sales/purchases, agrarian contracts and a movement of land clearing toward peripheral areas.
- The concrete functioning of land transactions is marked by the widespread presence of different types of **intermediary actors or brokers**. We can distinguish two broad categories: economic brokers and legal/administrative brokers.
- The case studies have illustrated a **wide range of conflicts related to land transactions**, in terms of actors involved, issues at stake, modes of arbitration and authorities intervening in the process. Formal authorities legally in charge of dispute resolution are not the ones that are the most frequently used by the stakeholders: people often try to keep disputes at the local level or choose, on the contrary, to bypass formal intermediary bodies (cadastral commissions) by resorting to legal brokers and political parties.

• Non-commoditised, administrative and grant transactions

In all the areas under study, and despite the development of commoditised land transactions (see next section), we have noticed the **central importance of non-monetary transactions as a major path toward land appropriation throughout the last three decades**. Of course, inheritance plays a key role. However, the history of mobility and displacements resulting from long eras of war or regime of war (as the Khmer Rouge regime) has logically weakened its role in accessing land.

The post-Khmer Rouge era was marked by a policy of **land distribution** through the *krom samaki* that were rapidly dismantled (as soon as 1984 or 1985 in many areas). However land distributions were still practiced in the 1990s for refugees, returnees and landless farmers, according to policies implemented at the provincial level.

As we will see, complex movements of populations in the 1990s and 2000s were linked to the development of land markets and also took the form of commoditised and non-commoditised land appropriation, through land clearing, buying, grabbing and encroachment. **Actually – and this is a crucial point from both analysis and policy points of view – the difference between these categories is less than obvious**. For instance, in the Cambodian context, land purchase often comprises elements of threat, violence, force and corruption, let alone the question of controlling information, and often thus resembles land encroachment.

Administrative and status transactions have thus been playing a key role since the 1980s and the end of the Democratic Kampuchea, especially in the form of administrative transactions: several waves of land distribution since 1979 and the more recent policy of economic and social land concessions. Other forms of grants and concessions, for instance to military forces, are also frequent.

The following table helps differentiate between broad categories of transactions according to the nature of the social ties linking the stakeholders involved in the transaction.

Typology of transactions

Transaction type	Transaction features	Examples
Bargained transaction	Bilateral agreement between legally equal partners, through price arrangement	*Sale/purchase, agrarian contracts*
Administrative transaction	Unilateral transfer between parties engaged in a relation of authority and subordination	*Public concession*
Status transaction	Transfer ruled by social status, referring to social obligations and not (or to a lesser extent) to bargaining exchange mechanisms	*Intra-household delegation, inheritance*
Grant transaction	Unilateral transfer of rights based on the giver's "good will", thus not directly resulting from his social status	*Extra-household loan, donation*

(Adapted from Schmid 1987, quoted in Colin 2004: 19)

It must be noticed that the **boundaries between these different categories are not clear-cut and transactions can be interpreted in different ways by the stakeholders**.

The case of economic land concession is illustrative of this difficulty. Officially, a concession differs from both land appropriation and land lease. It corresponds to the granting for a long period of a specific bundle of rights for economic purpose, with a requirement of effective investment and a fee to be paid off. However the very process of concession attribution is totally opaque, the legal criteria are often bypassed, as regards the ceiling surface (10,000 ha for state concessions, 1,000 for provincial concessions), the reality of the investments (no real evaluation), and also the payment of the fee. All this means that the nature of transaction is not easy to interpret. In many cases, we are obviously close to a grant transaction relying on a rationale of personal ties (or corruption).

The dis-articulation between the state and province levels generates further uncertainties and strengthens the pervasive opacity of the process. The lack of clarity of the legal status governing many concessions renders the delegation of (already derived) rights on these areas highly uncertain for the farmers who are granted use rights. There is a sort of **cumulative mechanism reinforcing institutional opacity and uncertainty that contributes to farmers' land tenure insecurity**.

- **Land concentration, power relations and farmers' vulnerability**

Compared with the 1950s, where there was "no agrarian question in rural Cambodia" (Delvert 1994) and the 1960s when social classes did not exist in the village studied by May Ehibara, although people spoke of four categories of wealth (1993: 161; 1968), the current situation in rural Cambodia has profoundly changed in terms of economic differentiation and class formation.

We observe the parallel emergence of landless farmers and big landowners very often of urban origin. According to various estimations there are between 12 and 20% of landless farmers in Cambodia. The 1990s have been a crucial period of land sales development after the dismantling of the *krom samaki* in the 1980s and the recognition of private ownership by 1989 (at least possession, but it practically makes no difference). There have been slight differences between provinces in terms of land market development. For instance, in Siem Reap, the peak of land

sales/purchases occurred in 1998-2004, thus a bit later than in Sihanoukville province (1993-1995). These differences depend on external factors: urbanisation, tourism policy, entrepreneurs' investment strategy.

However this double trend is more complex than a linear movement of social differentiation and class formation. It goes through **specific links between land sales/purchases, agrarian contracts and a movement of land clearing toward peripheral areas**.

There are **two sets of mutual links resulting from the development of land sales**:

Links between land sales, land clearing and mobility. Smallholders living in the agricultural areas surrounding the city of Siem Reap sell their lands under the pressure (that is, very often, under the threat) of land brokers and buyers, or anticipating a risk of complete land loss, and move to peripheral areas to buy land at a lower price or, more often, to clear land, at the risk of being evicted by forest agents or concessionaires (military). In the uplands, there is also a tendency toward the commoditisation of land and the individualisation of property rights in former areas of shifting cultivation.

Links between land sales and derived rights**.** Land sellers, generally smallholders and poor farmers, take in loan the plot they sold. Very often, the loan is changed into a rental contract without any negotiation, due to a highly uneven power balance. Or if the plot is used for planting cashew nut trees, the loan duration is limited to 4 to 5 years by the growth of the trees. We observe also a trend toward the commoditisation of derived rights with the development of rental contracts and, to a lesser extent; sharecropping at the expense of loans.

We must also mention another way of accessing land through a commoditised right transfer, which does not exactly correspond to a purchase of land. This trend, specific to the Tonle Sap area (especially in Kampong Thom, to a lesser extent in Siem Reap), is the **access to land through capital investment in water reservoirs, with the active participation of local authorities acting as brokers between external investors and local farmers**.

Another key element for understanding the concrete working of the land market is power.

In the four provinces, the importance of powerful urban people in land purchases and the unequal agreements linking land sales and loans show that the boundaries between market transaction (the model of bargained-exchange system) and non-market transactions (linked to social status and power relations, and also threat and corruption) is not easy to identify. Or put it differently, **the functioning of land markets is inherently pervaded by power relations and violence**. If we add to this the extreme opacity of the land concession policy, we can have an idea of the high level of land tenure and institutional insecurity farmers are currently experiencing in Cambodia.

As regards the central place of threat and power in land transactions, it must be added that they are not necessarily enacted by the buyer – generally an outsider who never or seldom meets the farmers – but very often by the brokers (see the next section), and among them, local authorities play a key role.

The link between land concentration and farmers' vulnerability takes the form of purchase and concession implying a resort to power relations, on the one hand, and of land sales, mobility (exit option) and precarious contracts (loans transformed into leases), on the other.

- **Brokerage and the social working of land markets**

The strategic groups or stakeholders involved in the field of land tenure and land transactions are plural and they fulfil different roles: dispute arbitration, regulation enforcement, policy making, brokerage. Each function does not correspond to a specific type of actor and many of them are involved in different forms of action.

In this respect, the pervasiveness of intermediary actors and functions is a striking feature of the concrete working of land rights markets. In the four provinces where we carried out fieldwork, brokers were present at different "places" of the transaction. We can define a broker as a specific entrepreneur whose strategy is based on the control over information and social relations[90].

We have identified two main categories of brokerage, depending on the function fulfilled:

- Economic brokerage centred on the land transaction itself (widespread as regards land sale and purchase, rare in cases of agrarian contracts except for leasing).
- Legal and administrative brokerage helping private persons to get access to legal information and public authorities.
- One must also analytically differentiate the brokerage as social function from the brokers as social actors.

Economic brokerage

The cases observed in the four provinces allow us to outline a typology of the brokers, according to a set of criteria:

- Private persons or representatives of local authorities (village chief, commune chief, commune council member).
- Independent broker or private company staff.
- Local or non-local broker.

In Siem Reap for instance, where land markets are booming, land brokers are extremely diverse: village chiefs, commune chiefs, commune councillors, policemen, military personnel, villagers, relatives or wives of local leaders and company staff, urban dwellers, real estate company (for land in the urban or peri-urban areas).

In Kampong Thom, too, many categories of people act as land brokers: villagers (rice farmer and/or cattle trader), money lenders, village chiefs, urban dwellers (also traders of agricultural products, motorbike repairers and land keepers.

Brokers do not always operate alone:

In Siem Reap, the village chief is a key actor at village level. He is a person who can resolve conflicts related to land and other matters in the village. Moreover, he acts as a land broker in order to generate more income. Commonly, he and his commune councillors, or the chief of commune, build an alliance for buying large tracts of land at the request of the rich or/and urban people or a company. We also observe alliances between commune councillors and companies' land brokers.

Another observation regards the plurality of activities fulfilled by people.

Brokerage and dispute arbitration. A typical case in this respect is represented by local authorities acting, according to the context, as land brokers, dispute arbitrators or for the enforcement of regulations, and this from a point of view which is more or less private or public, depending on the situation, and does not necessarily reflect their official position. This makes the boundary between private and public, between arbitration and direct involvement somewhat difficult to draw.

[90] *" A person who builds and manages an enterprise for the pursuit of profit in the course of which he innovates and takes risks may be called an entrepreneur. Now the resources an entrepreneur manipulates are of two distinct types, although they are very often found in combination. The first are resources, such as land, jobs, scholarship funds, specialized knowledge, which he controls directly. The second are strategic contacts with other people who control such resources directly or who have access to such persons. The former may be called first order resources, the latter second order resources. Persons who dispense first order resources may be called patrons. Those who dispense second order resources are brokers. A broker is thus a special type of entrepreneur: one who controls second order resources and manipulates these for his own profit. Brokers are thus highly expert network specialists" (Boissevain 1974: 147-148).*

Brokerage and land keeping. Brokers can become land keepers/managers after the transaction. Some brokers such as military or village chiefs may be awarded by a loan of land (the land bought) by the buyer for provisory cultivation. We have observed cases where a military member acting as a broker becomes land keeper and has been supported with rice food by his commander who is the land buyer. Sometimes, the chief of village, after the brokerage phase, becomes land keeper and manager on behalf of a big land buyer. He makes written contracts with his villagers for temporary cultivation.

A final point; the concrete setting of a land sale can vary according to the position of the broker:

- There is a direct interaction between the buyer and the seller and the broker plays a role in organising the interaction.
- There is no direct interaction between the buyer and the seller and the broker plays a role in keeping the two other actors at bay by monopolising strategic information.

Legal and administrative brokerage

Legal and administrative brokerage represents a different type of activity which is taken on by different social actors, generally organisations rather than individuals. We observe a flourishing of NGOs working in the field of human rights and legal issues (LICAHDO, ADHOC, CLEC, CIDSE, etc.). They play an important role in making legal information circulate downward, to farmers often caught in conflicts with powerful outsiders. One of the dimensions of this power relies upon access to information, in this case, to legal information on land property and land transactions.

Direct intervention in land disputes. Legal brokers strive to shift the balance in favour of poor farmers in intervening directly in front of courts of justice and administrative authorities (communes, cadastral commissions), by bringing arguments or acting as observers, and they sometimes succeed (see cases in Sihanoukville and Rotanak Kiri and Le Meur et al. 2005).

Information diffusion. Human rights NGOs are also involved in a long term work of training, information circulation and awareness raising with the farmers and rural people.

It seems that there is no overlap between these two mains types of brokerage in terms of who is doing what – except in the case of a policeman we met in Prey Nup, who was actively involved in land brokerage and was proud to exhibit his LICAHDO card.

A last case is represented by an NGO, HAGAR, fulfilling in Kampong Thom a specific form of **administrative (or social) brokerage**, by helping poor women (generally widows) to get access to land through the social land concession policy.

Land (100 ha of degraded forestland) was allocated by the provincial authority to HAGAR, an NGO operating in Kampong Thom since 1995 in the field of community development, for settling of a group of women in 2000. Each woman was allocated 2 ha of land for farming and homestead and title would be given to the women after 5 years of consecutive cultivation.

• Conflict solving mechanisms and land tenure security

The case studies have illustrated a wide range of land conflicts, in terms of actors involved, issues at stake, modes of arbitration and authorities intervening in the process.

Land dispute and institutional pluralism

Formal authorities legally in charge of dispute resolution are not the ones that are the most frequently used by the stakeholders. People often try to keep disputes at the local level or choose, on the contrary, to bypass formal intermediary bodies (cadastral commissions) by resorting to legal brokers and political parties.

At the local level, local authorities are central in dispute solving processes. It is however difficult to assess to what extent they act in a formal or informal manner. The legal basis for the intervention

of commune authorities in the domain of agrarian contracts remains questionable. Many examples from the four provinces show that local authorities tend to endorse a function in the enforcement of agrarian contracts which is not defined by law and often expresses collusion with private interests.

This leads us to the much debated issue of legal pluralism, which is all too often reduced to a mere dualism. Many research documents (such as So Sovannarith et al. 2001: 16) tend to oppose two forms of what would be legal systems: customary law and state law, as if both where (1) internally consistent and homogenous and (2) belonging to a common conceptual and social (legal) category. Actually, each of them is internally pluralist.

So-called "state law" is made of different regimes of order: the legal order (land titles and land concessions as regards land, for instance), but also the political order (in the real working of land concessions, for instance; see UNDP 2004, Global Witness 2007 on the politics of land and forest concessions), or, from a broader point a view, the political economy of land transaction including patron-client ties, social networks, business interests, corruption and collusion.

It is debatable whether one can categorise so-called "customary law" as a form of legal order. It is actually closer to a mode of reasoning that underlies the way of dealing with disputes. It is a matter of interpreting and arbitrating cases in accordance with local principles of justice. To put it briefly, the customary logic is rather a socio-political logic aiming at restoring social ties and peace than a legal logic able to "say the law".

The plurality of normative orders gives social actors room for interpreting disputes – here land transactions – and for resorting to various arguments and institutions (cf. Luco 2002). It is probably in the case of Rotanak Kiri that the "cultural gap" between actors involved in land disputes is at the widest, as is the gap between the interpretations of a transaction (for instance between sale and loan).

It is noteworthy that **the functioning of land transactions is itself embedded in different normative orders (before any conflict)**, as we have seen in the four provinces. We have identified two spheres of transaction and accountability (this without any dualism, as actors and discourses overlap).

- One is based on localised social ties (kinship, neighbourhood, alliance, friendship) generating a sort of mutual accountability.
- The other involves local actors and outsiders and is relatively 'dis-embedded' from local norms, resorting to the administrative and legal framework and/or being 're-embedded' at a higher level of social ties and power relations.

Legal pluralism and the local history of settlement and land appropriation

Conflicts are more often about property rights than about boundaries.

In Sihanoukville for instance, the main conflicts we have identified were about (1) land encroachment on private land, (2) grabbing public land, (3) encroachment on land claimed for ownership by the military, (4) overlapping of the protected area of national park with villagers' rice land.

*In Kampong Thom, we have observed that many cases of land loans or informal occupation started around five years before the 2001 land law, resulting in disputes as people use article 30 to ground their claim to ownership: "*Any person who, for no less than five years prior to the promulgation of this law, enjoyed peaceful, uncontested possession of immovable property that can lawfully be privately possessed, has the right to request a definitive title of ownership*". Due to the room for interpretation generated by the absence of written contracts and the informal nature of many settlements and arrangements, arbitration results were often different or inconsistent. Moreover, the SLR process was instrumental in the expression of claims.*

This trend is linked to the complex history of displacement and settlement we have encountered in the four provinces, made even more complex by the intrusion of powerful outsiders. **The**

multilayered history of settlement and property meets an equally multilayered history and land policy and land law. This creates areas of uncertainty as regards what legal text should prevail in case of dispute.

Many conflicts between former and new owners show that individuals can manipulate the legal ambiguities and gaps existing between the 1992 and 2001 land laws. Ambiguities result from possible discrepancies or contradictions between two provisions: the requirement of 5-year continuous cultivation on a parcel for applying for ownership and the clause according to which a land is considered as abandoned, and thus vacant (which means reverted to the state domain), after three years fallow: "*any land which the temporary possessor has abandoned for three consecutive years shall become the private domain of the state*" (article 76 of the 1992 land law). This gap leaves room for diverging interpretations. The result of such disputes depends on the uneven distributions of power and social capital among the actors involved.

Land conflict and land registration

Land registration is often advertised as a conflict-solving tool. Actually, land registration procedures almost mechanically stimulate, activate or generate conflict. We are still at a pilot phase of the systematic land registration carried out through LMAP with first experiences in Kampong Thom and Sihanoukville.

What we observed in Kampong Thom is already significant however:

In Kampong Thom, disputes over unclear plot boundaries of deep water rice land and land right between ex-owners and new owners were very common during systematic land registration (SLR). Most of the land disputes during SLR related to boundaries because the plot of deep water rice land was not clearly measured during land distribution in the 1980s and has no dike for demarcation. Moreover, disputes over land right between new owner and old owner, and between successors often remain unresolved because of diverging interpretations of the law, even though they were brought to the NCC.

Moreover, land titles have been instrumental for local authorities in land disputes, allowing them to solve cases quickly and to their own benefit, namely by having plots bought by outsiders registered on their own name. But systematic land registration also provoked land grabbing disputes. Arbitration mechanisms have not always been fair and people have lost their land although they have occupied and used it over the last five years before the issuance of 2001 land law.

The systematic land registration process has let emerge numerous land disputes highlighting the plurality of historical and legal layers of land property.

Policy debates

The four issues we have raised in the precedent section – on non-commoditised land transaction, land concentration and landlessness, brokerage, conflict and institutional pluralism – are the result of empirical case studies carried out at the local level in four provinces of Cambodia.

They all raise questions for policy-makers, especially as regards the overall orientation of the national land policy toward land titling but also land concessions. We have tried to summarise the points of debate in order to structure and launch the debate.

• Legal and political invisibilities

Any public policy has an impact on the visibility of social facts. In other words, before acting on reality (or by acting upon it), public policy renders things visible and others invisible. We argue that the following components are made invisible by the current land policy and legal framework:

- **Derived rights** as a means to get access to land: there is a great diversity of institutional arrangements and agrarian contracts that provide smallholders and the landless with a relatively secure access to land (use rights). They are not visible in the legal framework. These forms of right delegation are also useful as a variable of adjustment between land distribution/availability and the means of production (see the different forms of sharecropping and exchange between land and labour). The absence of derived rights from the interpretive grid underlying land policy makes also **landless farmers**, if not invisible, at least difficult to "grasp" from a conceptual point of view (in terms of concrete access to land rights of any kind).
- Transactions are very often facilitated or made possible by a wide range of intermediary actors or **brokers**. These brokers can be private persons, but in many cases, they belong to the local authorities (village chief, commune chief, communal councillor) and play an ambiguous role by doing more than establishing a contact between buyer and seller: they resort to persuasion or threat, get personal benefits from the transaction while they are involved in dispute arbitration (here again in a role which is not fully formalised). There is thus a **double invisibility**, of brokers as key players in the functioning of land markets, of **local authorities** as ambiguous actors playing on the edge of informality.
- Behind the discourse on land market development, there are **real markets** that work according to other principles than the ideal-type of a commercial transaction between partners standing, at least formally (from the legal point of view) on an equal footing (corresponding thus to the model of bargained transaction). Land purchase often comprises elements of threat, violence, force and corruption, let alone the question of controlling information, and thus often resembles land encroachment.
- As an effect of the development of land transactions, we have observed **renewed forms of farmers' mobility**. Mobility cannot be reduced to the question of refugees and returnees. On the one hand, it has been for centuries a key feature of the peasant's rationality and livelihood in rural Cambodia. On the other hand, new forms of mobility are rather a by-product of the "real land markets" mentioned above, as smallholders tend to sell land under the strong pressure exerted by outsiders and local brokers, as much as in distress situations, and move away to find new land to clear or buy. This movement seems to happen on a national scale, from central/urbanised areas to peripheral regions.

- **Legal and political contradictions**

The second point is about contradictions and dichotomies. Of course, some of them can stem from the different forms of invisibility we have listed in the previous section.

A key issue about the current policy with regards the relation between its **two main orientations**. On the one hand, we have a strong policy directed toward **the issuing of private ownership titles** (except in the areas of ethnic minorities where a specific policy of communal titling is implemented). On the other hand, the **policy of land concession** is applied to huge areas in absence of transparency and without any evaluation of the effectiveness of the legally requested investments. The question is extremely simple: in a case of conflict involving a farmer (endowed with a land title) and a concessionaire (endowed with social capital), who wins?

Another possible contradiction takes its roots in an old representation of Cambodia as made of two opposite components (beyond the internal diversity of each area, in terms of farming systems and land tenure dynamics): the **lowlands** where water is abundant and rice is produced and the **uplands**, which stay a bit outside the policy landscape (as was already the case during the colonial era). Re-integrating upland areas in the policy framework would help see the links between both areas and the contradictions generated by massive land evictions and migrations toward peripheral zones.

As regards these two oppositions, it is noteworthy that the World Bank wishes now "to extend titling from the densely-settled, stable communities where it has operated to date (and where formalization of ownership is relatively straightforward) to more conflict-prone, marginal areas where titling will need to engage with carefully-managed reclassification of state land" (World Bank 2007: 55). It sounds like a tacit recognition that the national policy of land-titling implemented through LMAP has not really been a national policy so far (the similarity with the colonial land policy is striking in this respect). What is striking (and a bit appalling, I would say) in the same report is that the World Bank keeps on taking for granted the equation between land title and tenure security: 'big men' and entrepreneurs involved in the concession business obviously know that the equation is false and they choose political and economic forms of security.

- **Proposals regarding invisibilities and contradictions**

  - **To think in terms of land tenure security rather than in terms of ownership** – and this would imply that local institutional arrangements are integrated into the land policy and legal framework –, it could be interesting to reflect on the social land concession from this standpoint. Land tenure security is related to the issues of accountability and authority. We have identified different spheres of mutual accountability, depending on the actors involved (local/non-local, etc.) and resulting in different strategies for securing transactions. These findings offer a sound basis for developing policy taking roots in actors' principles and norms, instead of designing huge machineries like LMAP (without knowing their exact domain of validity: in terms of feasibility and sustainability).[91] Such a viewpoint – starting with local principles and norms – is close to the notion of interim institution proposed by Adler et al. (2007).
  - **To reappraise the roles and functions of local authorities in the frame of decentralisation** and, for this, to link decentralisation and land policy. This could help get local authorities out

[91] *World Bank statement (2007: 66) according to which "rather than constituting a general problem, tenure insecurity is concentrated among vulnerable groups, particularly poorer households who occupy lands outside of core residential or farming zones, such as those which are or were forests, flood plains, seasonal lakes, marshes and informal urban settlements – that is land contested by the state" is questionable, at least a bit convoluted: it could actually mean that tenure insecurity is 'restricted' to a wide array of frequent situations and strongly linked to state ambiguities (to say the least).*

of the "grey zone" in which they work (between brokerage, privatisation of their function, the informal validation of transactions) and involve them in local but legal processes of transaction validation (including local forms of institutional arrangements).

- **To work in cooperation with legal brokers and human rights NGOs around diffusing legal information** to farmers and supporting them in cases of land conflict. For this, training, forums of dialogue and negotiation, communication strategies, etc. are needed.
- **To really enforce the land concession policy**, especially in terms of productive investments and effective exploitation of ELCs: "the vast majority of these concessions have not been planted since they were allocated, strongly suggesting that they are being held as speculative rather than productive investments, and currently make no contribution to the economy" (World Bank 2007: 59). This would imply, however, a profound reform of the state which is not likely to happen rapidly considering the deeply entrenched neo-patrimonial nature of the Cambodian state (see Pak Kimchoeun et al. 2007) and the poor co-ordination between administrative levels (as seen in the granting of economic concessions).
- **To clarify the boundaries of state lands**, one of the necessary conditions for implementing the SLC policy through which the government could allocate state land to the poor for housing and agricultural use (ownership rights would be granted after 5 years of continuous occupation). The delimitation of state lands and specifically state forests is also necessary for securing the land rights of small rubber growers, for instance. We have the same reservations about the effective enactment of this point as for the previous one on ELCs: vested interests and neo-patrimonialism constitute powerful obstacles[92].

These proposals are situated at the level of general statements and they have to be made operational, at least in the form of **pilot projects** and through the implementation of **dialogue forums** involving all the stakeholders' categories involved in land transactions

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[92] *See World Bank's sense of understatement: "For SLCs to succeed requires finding ways to recover illegally-claimed tracts and reach consensus on reallocation of specific state lands. Policy documents provide the basis for recovery, mapping and allocation of state lands, but it is not yet clear if these mechanisms can be implemented In a manner that meets all the desirable process criteria" (2007: 63).*

Annex 1. Programme

	Phase	Duration	Objectives	Participants
0	Preliminary mission (April 2004)	8 d.	- Defining research themes - Identifying national partnerships - Defining the research canvas	GRET researcher
1	Research sites identification & literature overview		- Identifying research sites (criteria of diversity regarding land tenure) - Defining research units (commune? village?) - literature overview on land tenure and transactions	Senior researcher and resource persons
2	Preliminary inquiry & literature overview	4 d.	- Identifying the main stakes and actors involved in land issues at the local level - Literature overview on the research area	Junior researchers
3	Preliminary workshop (1)	4 d.	- Discussing first data and hypothesis - Elaborating (and training in) methodology and objectives	Junior and senior researchers (CEDAC/GRET), resource persons
4	Collective field research	4 w.	- Short collective field research on the different sites (1 week for each: Kampong Thom, Sihanoukville, Siem Reap, Rotanak Kiri)	Junior and senior researchers (CEDAC)
5	Intermediary workshop (2)	3 d.	- Presentation and discussion of first results and hypothesis - Definition of the 'terms of reference' of individual fieldwork (research hypothesis, methods, descriptive indicators)	Junior and senior researchers (CEDAC), resource persons
6	Individual field research	4 m.	- Individual fieldwork (carried out by junior researchers in teams of 2 researchers for each 2 sites)	Junior researchers
7	Supervision field trip	10 d.	- Field visit on each site - State of advancement, practical and methodological difficulties, new research orientations, etc.	Senior researchers (CEDAC/GRET)
8	Final workshop (3)	4 d.	- Internal discussion of research results and analysis - Organisation of the comparison - Preparation of the public presentation	Junior and senior researchers (CEDAC), resource persons
9	Individual report writing	1 m.	- Fieldwork report writing by junior researchers (in English) - Editing by national senior researchers	National junior and senior researchers (CEDAC)
10	Result presentation	2 d.	Several presentations of the research results and of policy orientation - At MAFF and Land policy national council level - Public seminar	Junior and senior researchers (CEDAC/GRET), resource persons, policymakers, development agency, NGO, researchers
11	Final report writing	10 d.	- Final report writing in English	Senior researchers

Annex 2. Supervision in Rotanak Kiri Province (9-13 May 2005)

The methodological recommendations apply well for Siem Reap province, too (supervision 4-6. May 2005). The descriptive indicators must be adapted to the specific site contexts.

- **Fieldwork organisation**

▷ Up to now, the JR did not stay at night in the villages (came back to Ban Lung for accommodation)

▷ They have conducted research in 2 villages so far: Lon, Sek

▷ The 2 next villages are: La'en, Trong Chom

▷ JR have conducted interviews mostly together with translators (two Tampuon people from Lon villages; the two are CEDAC trainees in agriculture)

Recommendations

▷ Stay in the villages (see the land use committee chief's invitation in La'en): **getting the view from the village/villagers!**

▷ Maybe keeping only three of the four selected villages for the inquiry

▷ Separate interviews (but systematic exchanges of information and hypothesis each evening)

Methodological points

▷ Combining quantitative & qualitative methods: "late & light" questionnaires

▷ How to use the case study method: productive if embedded in a good knowledge of the local context and of the local actors

▷ Politics of interview: social interaction, negotiation (never forget that the informant has his own strategy and perception of the situation of interview); translating questions you are asking yourself into questions to ask (also to make easier the translator's task)

- **Topics (descriptive indicators)**

Based on: January workshop (first list of indicators), identification field research, supervision field trip

The list of criteria is not limited.

Local leadership:

Main question: strong or weak leadership? (*cf.* the enforcement of the banning on selling land)

Village chiefs

▷ Who are the village chiefs? How were they nominated or elected? When? Are they close to the traditional leaders (possibly the same)? Are they literate?

▷ Did they stay their whole life in the village or did they migrate or have jobs outside (including military experience)?

- ▷ What is their local legitimacy and how are they perceived by the population (as a real insider or a hidden outsider…)?
- ▷ Were they involved in land disputes (as actors, for instance by buying or selling land or signing a contract without informing the villagers)?
- ▷ Role and composition of the VDC?

Traditional leaders

- ▷ Who are the traditional leaders? What is their life history (biographical elements as for the village chiefs)?
- ▷ What is their power, field of competence, role in dispute settlements, religious ritual?
- ▷ What is their local legitimacy and are they perceived by the population (as a real insider or a hidden outsider…)?
- ▷ Where they involved in land disputes (as actors, for instance by buying or selling land or signing a contract without informing the villagers)?

Other forms of local leadership

- ▷ Is there any other local leader or big man respected or followed by people and, if yes, for what reason (money, power, wisdom, knowledge, etc.)?
- ▷ New committees (for instance Community Land Use Planning Committee in La'en)
- ▷ Presence of NGOs representatives (cf. ADHOC informants at the district, commune and village levels) and project facilitators and agents?
- ▷ Influence of political parties? (hypothesis: less influence than in the lowlands)

Internal relations

- ▷ Are there conflicts, forms of co-operation or labour divisions between "modern" and "traditional" leaders?

Link with the supra-village levels

- ▷ Identifying the local intervention or interference of the commune chief (cf. section on brokerage too) as well as of other supra-village (district, province) authorities
- ▷ How these interventions and also the idea of the state are lived and perceived locally (also: local peoples' expectations vis-à-vis the state)?
- ▷ Role of tribal networks (probably too new) and national/foreign NGOs and development & natural resource management projects?

Migrants' biographies

- ▷ Trajectory and reason to migrate, stops on the way to Rotanak Kiri province
- ▷ Previous relations in the province, first access to land and previous jobs in the province (for instance wage labourers in rubber tree plantations or "brought" by a big landowner, *cf.* the Cham in Toen village)
- ▷ Movement within the province and associated land transactions (and other forms of natural resource access and use: clearing, non timber exploitation, gem or gold mining)
- ▷ Social integration in the village or living outside (in Ban Lung), marriage, participation in local ceremonies, contribution to collective works, specific relation with one insider ("tutor")

- **Brokers**

Land brokers

▷ Sociological profile, biography, strategy (professional or part-time), mode of remuneration (share of the transaction, others?), incomes investments (politics, business, housing, farming, etc.)

▷ Typology (first hypothesis): local authorities (village and commune levels), professional brokers, members or not of local ethnic groups

Transactions without brokers

▷ See section on land alienation and migrants' access to land

Legal brokers

▷ Human rights and natural resource management NGOs and projects

▷ Hypothesis: situation less conflictive and more co-operation between NGOs and state administrations (cf. ADHOC Rotanak Kiri compared to ADHOC Siem Reap)

- **Land alienation: processes and perceptions**

▷ Keep documenting the process of sales (cf. the pattern identified: the broker finds a seller, asks him his price, goes to find a buyer, organises a visit to the plot, but avoids any direct contacts between the buyer and the seller)

▷ "Biographies" of sold plots: succession of transactions (sale and transfer of use rights) (beyond the face-to-face: lowlander/buyer-highlander/seller)

▷ Perception of selling: what is sold? Is there any clear delimitation of the plot? Hypothesis: what is sold would be a right to clear the land in a given direction (hence the "misunderstandings", real or manipulated)

- **Derived rights**

▷ See if there is any form of leasing or sharecropping (even if a case is marginal, it can be significant)

▷ Traditional loans within a community or for a newcomer

▷ Forms of loans associated with plantations of cashew nut trees (cropping between the row to weed and protect the plantation)

▷ Are there links between land rights transfers and other transfers of goods and services (wage labour, investment in land development or plantation, marketing of crops etc.)

- **Current land policy**

▷ Pilot communal land registration (La'en): observing the process, the external actors involved, the local reactions and expectations, special events (like meeting or training sessions)

▷ Conflicts and public policy: for instance the defining of community boundaries in La'en (conflict with neighbouring villagers and Khmer migrants)

- Determing whether there are any social & economic land concessions (also gem mining concessions)
- Perception and knowledge of local people regarding the land laws, the policy of concessions, the pilot registration, the communal titling

For the rest, see the first list of descriptive indicators!

Bibliography

Ballard, Brett with Tong Kimsun 2005. Land tenure database development in Cambodia. Rome-Phom Penh: CDRI-FAO.

Biddulph, Robin 2004. *Poverty and Social Impact Assessment of Social Land Concession in Cambodia : Landlessness Assessment*. Phnom Penh : OXFAM GB.

Boissevain, Jeremy 1974. *Friends of Friends. Networks, Manipulators and Coalitions*. Oxford: Blackwell.

Chan Sophal & Sarthi Acharya 2002. *Facing the Challenge of Rural Livelihoods. A Perspective from Nine Villages in Cambodia*. Working paper 25, Phnom Penh: Cambodia Development Resource Institute.

Chan Sophal and Sarthi Acharya 2002. *Land Transactions in Cambodia. An Analysis of Transfers and Transaction Records*. Working paper 22, Phnom Penh: Cambodia Development Resource Institute.

Chan Sophal, Tep Saravy and Sarthi Acharya 2001. *Land Tenure in Cambodia. A Data Update*. Working paper 19, Phnom Penh: Cambodia Development Resource Institute.

Chandler, David P. 2003 (3rd ed.). *A History of Cambodia*. Chiang Mai: Silkworm Books.

Chauveau, J.-P., Jacob, J.-P. and P.-Y. Le Meur (eds.) 2004. *Gouverner les hommes et les ressources. Dynamiques de la frontière interne*. Autrepart 30 (special issue), Armand Colin: Paris.

Cheron, Christian 2002. *Premières expériences de la coopération franco-cambodgienne en matière de foncier rural*. Phom Penh: MAFF-SCAC.

Delvert, J 1994 [1st ed. 1957]. *Le paysan cambodgien*. Paris: L'Harmattan.

East-West Management Institute 2003. *Land Law of Cambodia. A Study and Research Manual*. Phnom Penh: ADB Land Legislation Project.

Ebihara, May 1993. "Beyond suffering. The Recent History of a Cambodian Village". In: Ljungrenn, Börje (ed.) *The Challenge of Reform in Indochina*, Cambridge, Harvard Institute for International Development, Harvard University Press: 149-166.

Frings, Viviane 1997. *Le socialisme et le paysan cambodgien. La politique agricole de la République Populaire du Kampuchea et de l'Etat du Cambodge*. Paris: L'Harmattan.

Global Witness 2007. *Cambodia's Family Trees. Illegal Loging and the Stripping of Public Assets by Cambodia's Elite*. Washington: Global Witness Publishing Inc.

Gottesman, Evan 2002. *Cambodia after the Khmer Rouge. Inside the Politics of Nation Building*. New Haven and London: Yale University Press.

Guérin, Mathieu, Hardy, Andrew, Nguyen Van Chinh and Stan Tan Boon Hwee 2003. *Des montagnards aux minorités ethniques. Quelle integration nationale pour les habitants des hautes terres du Viêt Nam et du Cambodge ?* Paris-Bangkok: L'Harmattan-IRASEC.

Hughes, Caroline 2001. *An Investigation of Conflict Management in Cambodian Villages. A Review of Literature with Suggestions for Future Research*. Phnom Penh: CRDI-Centre for Peace and Development.

Kato, Elisabeth 1999. *Where Has All the Land Gone? Land Rights an Access in Cambodia*. Vol. 2: Case Studies. Phnom Penh: OXFAM GB.

Kibler, Jean-François and Catherine Perroud 2003. *Vers une cogestion des infrastructures hydro-agricoles. Construction associative et réhabilitation de polders : l'expérience du projet Prey Nup au Cambodge*. Paris: Editions du GRET (English version available online on GRET website www.gret.org: *Towards co-management of hydro-agricultural infrastructures: lessons learnt from the Prey Nup Project in Cambodia*).

Kingdom of Cambodia 2001. *Land Law 2001*. Phnom Penh: LMAP-MLMUPC (unofficial translation).

Kingdom of Cambodia 2002. *Strategy of Land Policy Framework. Interim Paper*. Phnom Penh: LMAP-Council of Land Policy.

Kirk, Michael 2003. *State Land Economics in Cambodia*. Phnom Penh-Marburg: University of Marburg-LMAP-MLMUPC.

Land Management and Administration Project 2004. *Annual Report 2002/2003*. Phnom Penh: LMAP-MLMUPC.

Lavigne Delville, Philippe, Toulmin Camilla, Colin, Jean-Philippe and Jean-Pierre Chauveau 2002. *Negotiating Access to Land in West Africa: A synthesis of findings from research on derived rights to land*. London: IIED.

Le Meur, Pierre-Yves 2005. *Land Consolidation in Cambodia. Intervention Procedures and Policy*. Mission report, Paris-Phnom Penh: GRET-MAE.

Le Meur, P.-Y., Bayart, J.-F. and R. Bertrand 2005. *La politique de l'apolitisme. De la mise en œuvre d'un projet à l'élaboration d'une politique sectorielle: processus de construction d'institutions de gestion agricole de l'eau au Cambodge*. Paris: GRET-FASOPO-AFD.

Le Meur, Pierre-Yves Tim Leurent 2006. "Agrarian Colonisation and Frontier Politics in the Mekong Delta". *Moussons* 9-10 (CNRS): 231-254.

Ledgerwood, Judy 1995. "Khmer Kinship: The Matriliny/Matriarchy Myth". *Journal of Anthropological Research* 51 (3): 247-261.

Ledgerwood, Judy and John Vijghen 2002. "Decision-Making in Rural Khmer Villages". In: Ledgerwood, Judith (ed.) *Cambodia Emerges from the Past: Eight Essays*, DeKalb, Northern Illinois University, Center for Southeast Asian Studies: 109-150.

LMAP 2004. *Cambodian Land Law Materials. A compilation of laws and other legal texts related to land law issues*. Phnom Penh: ADB-East-West Management Institute-GTZ-LMAP, CD-Rom.

Luco, Fabienne 2002. *Entre le tigre et le crocodile. Approche anthropologique sur les pratiques traditionnelles et nouvelles de traitement des conflits au Cambodge*. Phnom Penh: UNESCO.

Lund, C. 2002. "Negotiating Property Institutions: On the Symbiosis of Property and Authority in Africa". In: Juul, K. & C. Lund (eds.) *Negotiating Property in Africa*, Portsmouth, Heinemann: 11-43.

Ly Sareoun and John Vijghen 1996. *Customs of Patronage and Community Development in a Cambodian Village*. Phnom Penh: Cambodian Researchers for Development.

McAndrew, John P. 2000. *Indigenous Adaptation to a Rapidly Changing Economy. The Experience of Two Tampuan Villages in Northern Cambodia*. National Conference on Landlessness and Development, 22-24 August 2000, Phnom Penh: CIDSE Cambodia-OXFAM GB.

McCaskill, D. and K. Kampe (eds.) 1997. *Development or Domestication? Indigenous Peoples of Southeast Asia*. Chiang Mai: Silkworm Books.

Mosse, David 2005. *Cultivating Development. An Ethnography of Aid Policy and Practice*. London: Pluto Press.

Ovesen, Jan, Trankell, Ing-Britt & Joakim Öjendal 1996. *When every household is an island. Social organization and power structures in rural Cambodia*. Uppsala and Stockholm: Uppsala University and SIDA.

Pel Sokha, Keam Makarady, Pel Setha and Hay Leakhena 2006. *Review of the existing sectoral policies, strategies related to wetlands agriculture, land use & irrigation*. Phnom Penh: CEDAC.

Pel Sokha, Yonekura, Yukiko, Saito, Kaori and So Sokcheath 2004. Land Issue Study in Cambodia: Landlessness, land Dispute & Project Affected People. Phnom Penh: Centre d'étude et de développement agricole cambodgien (CEDAC)-Japan International Volunteer Center (JVC).

Ribot, J. & N. Peluso 2003. "A Theory of Access". *Rural Sociology* 68 (2): 153-181.

Sik Boreak 2000. *Land Ownership, Sales and Concentration in Cambodia. A Preliminary Review of Secondary Data from Four Recent Surveys*. Working paper 16, Phnom Penh: Cambodia Development Resource Institute.

Slocomb, Margaret 2003. *The People's Republic of Kampuchea. The Revolution after Pol Pot*. Chiang Mai: Silkworm Books.

Slocomb, Margaret 2007. Colons *and Coolies. The Development of Cambodia's Rubber Plantations*. Bangkok: White Lotus.

So Sovannarith, Real Sopheap, Uch Utey, Sy Rathmony, Brett Ballard and Sarthi Acharya 2001. *Social Assessment of Land in Cambodia. A Field Study*. Working paper 20, Phnom Penh: Cambodia Development Resource Institute.

Stirrat, R.L. 2000. "Cultures of Consultancy". *Critique of Anthropology* 20 (1): 31-46.

United Nations 2004. *Land concessions for economic purpose in Cambodia. A human rights perspective*. Phnom Penh: Cambodia Office of the High Commissioner for Human Rights, United Nations.

Van Acker, Frank 1999. *Hitting a Stone with an Egg? Cambodia Rural Economy and Land Tenure in Transition*. Antwerp: Centre for ASEAN Studies-CIMDA (CAS Discussion Paper 23).

Vanna, Chor, Biddulph, Robin & Ok Lundy 2004. *O Tko Settlements Research 2004*. Phnom Penh: OXFAM (Cambodia Livelihood Study Project).

Williams, Shaun 1999. *Where Has All the Land Gone? Land Rights an Access in Cambodia*. Vol.1: Review of Land Issues Literature and Property Rights. Phnom Penh: OXFAM GB.

Land Transactions in Rural Cambodia

A Synthesis of Findings from Research on Appropriation and Derived Rights to land

This study on land transactions in rural Cambodia is based on a twofold observation. On the one hand, Cambodian land policy, basically organized around a large-scale land titling program (LMAP) funded by the World Bank, ignores the land tenure relations that do not tally with the individual private ownership model, namely derived rights and indirect access to land. On the other hand, research on land tenure in Cambodia has mainly focused on purchase and sale markets and not on the transactions that are precisely the ones public policy neglect. The study, carried out by CEDAC with GRET methodological support, has relied on a qualitative approach on research sites located in four provinces: Siem Reap, Sihanoukville, Kompong Thom, Rotanak Kiri. The empirical fieldwork has made possible the identification and analysis of the transactions as social processes and of the actors involved, and thus the understanding of « real » land rights markets. Were highlighted the importance of land brokers in the transactions, the informal functioning of local authorities, the weight of urban stakeholders, and the influence of power relations on so-called « market » mechanisms, resulting in the eviction of smallholders from peri-urban areas and in the emergence of a class of landless farmers. The contradictions between land titling policy and the concession policy were also underscored.

The study was funded by the Solidarity priority fund (FSP) of the French ministry of foreign affairs « Supporting agricultural policy » lodged at the Cambodian ministry of agriculture, forests and fisheries.

Cette étude sur les transactions foncières dans les campagnes cambodgiennes part d'un double constat. D'une part, la politique foncière cambodgienne, essentiellement structurée par un grand programme de cadastrage et d'immatriculation foncière (LMAP) financé par la Banque mondiale, ignore les relations foncières ne correspondant pas au modèle de la propriété privée individuelle, à savoir les droits délégués et les modes de faire-valoir indirect. D'autre part, les recherches foncières au Cambodge se sont essentiellement intéressées aux marchés de l'achat/vente et très peu aux formes qui précisément sont celles que négligent les politiques publiques. L'étude, menée par le CEDAC avec l'appui méthodologique du GRET, a privilégié une approche qualitative dans 4 provinces du pays : Siem Reap, Sihanoukville, Kompong Thom, Rotanak Kiri. Ce travail empirique a permis d'identifier et d'analyser les transactions en tant que processus sociaux et les acteurs impliqués et ainsi de mieux comprendre comment fonctionnent les marchés « réels » des droits fonciers. On a en particulier mis en lumière l'importance des intermédiaires et courtiers dans les transactions, les fonctions informelles des autorités locales, le poids des acteurs urbains et l'influence des rapports de forces sur les mécanismes marchands, aboutissant entre autres à l'éviction des petits paysans des zones périurbaines et à l'émergence d'une couche de paysans sans terre. Les contradictions entre politiques d'immatriculation foncière et politiques de concessions ont également été mises en lumière.

L'étude a été financée par le Fonds de solidarité prioritaire (FSP) du ministère français des Affaires étrangères « Appui aux politiques agricoles » basé au ministère cambodgien de l'Agriculture, des Forêts et de la Pêche.

GRET

Groupe de recherche et d'échanges technologiques
Campus du Jardin tropical, 45 bis avenue de la Belle Gabrielle
94736 Nogent-sur-Marne, France.
Tél. : 33 (0)1 70 91 92 00. Fax : 33 (0)1 70 91 92 01.
E-mail : gret@gret.org. Site Web : www.gret.org

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