



global witness

Land is life: An analysis of the role ‘grand’ corruption plays in enabling elite grabbing of land in Cambodia¹

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Introduction

On 22nd November 2011, Mrs Chea Dara committed suicide by jumping off a bridge in the centre of Phnom Penh, Cambodia’s capital (Licadho, 2011). Although she was leaving behind a husband and two children, her despair over the long-running dispute with a local development company who had illegally evicted her from her house and home in the centre of the city had become too much. Despite four years of advocacy, support from Cambodian civil society, international media, and diplomatic and donor interventions – nothing was able to counter the power of the senator-tycoon who owned the company which had taken her land.

Cambodia is a ‘country for sale’. As of late 2012, 2.6 million hectares of land had been leased to companies; equivalent to 73 per cent of the country’s arable land and an increase of 16.7 per cent from 2011 (ADHOC, 2013, p. 7).¹ Of these investments, those which are large scale land concessions (‘economic land concessions’, or ELCs) are intended to: intensify agricultural production; be conducted in accordance with local land use plans; increase employment and contribute to living standards; protect the environment; and encourage investment while generating state revenues (Royal Government of Cambodia, 2005, Articles 3 and 5). However, they are failing on all counts. According to the government’s own statistics, five tycoons hold 20 per cent of total land allocated through concessions, amounting to more than half a million hectares (ha).² This is despite the legal threshold of one company or individual’s land holding being fixed at a maximum of 10,000ha.³ Moreover, it is estimated that land-grabbing resulting from weak control of ELCs has affected 400,000 Cambodians in twelve provinces since 2003 (Licadho, 2013). Protests against the concessions’ advance are rising rapidly. In 2012 the government arrested more than twice as many people during housing and land disputes than the previous year and land disputes were at the top of the country’s 2013 general election agenda (ADHOC 2013, p. 32). As such, the phenomenon of land grabbing is having a transformative impact on Cambodia’s people; from the forced dispossession of land, to the social deprivation, landlessness and landscape change which results, to the ultimate consequences for political and social action.

Corruption pervades Cambodia; global corruption perception indices rank it 160th out of 177 countries.⁴ Cambodia’s corruption is not just every day petty bribery, but ‘grand corruption’ wherein the problem is endemic and reaches the highest levels of the public sphere. The breadth

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and scope of this corruption means that decisions are made about land without a thought for their negative impact on local farmers and indigenous communities, or compliance with legal safeguards. Consequently, biased or corrupt decisions frequently result in the rich and powerful in Cambodia gaining all the benefits, whilst the poor and vulnerable, like Mrs Chea Dara, pay all the costs.

My objective in writing this chapter is to use two case studies of well-known land disputes in Cambodia to analyse the relationship between the phenomena of land grabbing and grand corruption. I examine firstly the role grand corruption plays by enabling such individuals to grab land, secondly how it prevents communities negatively affected by these land grabs from accessing justice, and thirdly how it consolidates elite capture of the state. In doing so, I provide a typology of the relationship between grand corruption and land grabbing. Both cases involve individuals of significant power within Cambodia's business and political elite, therefore in order to protect local activists involved in both disputes, I have anonymized the sources where necessary.

'Land grabbing' and 'grand corruption': Defining the terms and setting the scene

The rush for land playing out in Cambodia is not unique. Across the global south, the impact of increasing commercial pressure on land since 2008 has been well documented by policy makers, scholars, and the media (Anseeuw *et al.*; 2012, Global Witness *et al.*, 2012; Deininger and Byerlee, 2011). However, the relationship between the phenomenon of 'land grabbing' and corruption is less well understood. Analysis by Transparency International, done in 2011, took steps to understand the role of corruption in inequitable land distribution, however as this chapter identifies, the inter-play between grand corruption and land grabbing is highly complex and needs additional empirical research. Furthermore, the secretive nature of how many large-scale land investments are undertaken hampers efforts to examine the extent, modalities and implications of corruption within this sector.

Although (following Hall *et al.*, 2011, p. 4) 'all land use and access requires exclusion of some kind', what has marked recent trends in land ownership in many developing countries is the pace and scale of exclusion, leading to dramatic negative social, environmental and governance transformations (Borras and Franco, 2010; Borras *et al.*, 2011). Such trends have received significant attention from international policy makers (see Deininger and Byerlee, 2011) and numerous works by IIED (International Institute for Environment and Development such as that by Pollack *et al.* and scholars (Peluso and Lund, 2011; Borras *et al.*, 2011; and a number of special issues of the *Journal of Peasant Studies*, including Volume 37 Issue 4 (2010), Volume 38 Issue 4 (2011), Volume 39 Issue 1 (2012) and Volume 40 Issue 3 (2013)). Hall *et al.* 2011 focused on these new forms of exclusion in Southeast Asia. In his article in the *Journal of Peasant Studies*, Hall furthermore highlights Southeast Asia's crop booms as providing insight into who is seeking to benefit from such acquisitions, how they are doing so (and to what extent such resource capture directly involves the state; namely 'licensed exclusions'), and in what way booms differentially effect areas under varying land tenure regimes (Hall, 2011 p. 844). Rising tension over land rights specific to Cambodia is also receiving increasing academic attention. For example, analysis of neopatrimonial restrictions on land reform (Un and So, 2011), how land titling interacts with the

allocation of ELCs, as well as the drivers of current land grabbing trends (Dwyer, 2012 and Neef and Touch, 2012), and the extent to which evictions are frequently under-written by law (Springer, 2013).

However, because of my position with Global Witness, I have chosen to embed this paper within the work of international organizations addressing such trends from an advocacy perspective. As such, I have used the definition of land grabbing adopted by a coalition of actors at the forefront of trying to reduce the phenomenon's negative impacts, during a conference in Tirana, Albania, in 2011.⁵ This Tirana Declaration defines large-scale acquisitions or concessions as problematic if they do not: comply with human rights frameworks; take into consideration the social, environmental or economic impacts; provide transparency of contract terms and benefit sharing; or allow independent oversight and remedy. In terms of relevant, international normative frameworks, the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, endorsed in May 2012, are the first international standards explicitly focusing on the relationship between land rights, tenure governance and international human rights law, in response to increasing commercial pressure on land.⁶

Between 2000 and 2013 it is estimated that in low and middle income countries at least 49million hectares of land has been leased to companies, or is under negotiation.⁷ Key drivers include: increasing demand for food, fuel (biofuels), fibre and other raw materials. Speculation and international investors diversifying shareholdings away from stock markets since the 2008 economic crisis have also contributed, as described by McMichael (2012). As competition increases to control and exploit land, and the natural resources on and below it, the attractiveness of corrupting such processes for personal gain also increases. The way in which such demand for land is manifesting in acquisitions or concessions which include one or more of the risks above, i.e. fuelling 'land grabs', has been thoroughly analysed through the lens of rights violations, food security, land reform processes, environmental risks and transparency.⁸ In the areas most recently targeted for investment in Africa, Asia and Latin America, neopatrimonial modes of governance have been instrumental in creating the conditions for land grabbing. Inequitable power dynamics, legal pluralism and state-licensed exclusion of people from their land is analysed by Hall *et al.* (2011), however the role corruption plays merits further investigation.

In terms of the second conceptual term which this chapter focuses on – corruption – policy makers, the World Bank and international organizations such as Transparency International, define it to be 'the abuse of entrusted power for private gain'.⁹ According to Cockcroft, an economist and founder of Transparency International, corruption ranges from single acts of bribery to ultimately the decay of society: '[corruption] always involves the acquisition of money, assets or power in a way which escapes the public view; is usually illegal; and is at the expense of society as a whole either at a "grand" or everyday level' (2012, p. 2). Global institutions such as the World Bank embed their practical application of anti-corruption measures within the UN Convention on Anti-Corruption, adopted by the UN General Assembly in 2003.¹⁰ Within academic literature meanwhile, Gupta (1995) examined the differentiated way in which corruption impacted on state functions, and people's interactions with them. Nuijten and Anders' (2009) significantly

evolved the conceptualization of corruption and its interaction with the state from an ethnographic perspective, recognizing the range of different responses from the actors involved, across moral and legal frameworks . However, it is Cockcroft's definition and manifestation of 'grand corruption' which I use in this analysis of the phenomenon's multi-faceted relationship with land grabbing.

Although I have more than a decade's worth of experience working on natural resource governance issues in Cambodia, my current position as a staff member of the international campaigning organization, Global Witness, has strongly influenced the framing of this chapter. Firstly, I recognize that the context of escalating land disputes in Cambodia could have been analysed through a number of alternative frameworks; for example the trade-offs between large-scale and small-scale investment modalities or the impact of decentralizing state-based decision-making on state-citizen accountability.

Secondly, (following Hall *et al.*, 2011), land exclusions in Cambodia can be both licensed by the state (as in case study one) and state-backed (as in case study two). Both examples highlight the way in which land grabs can violate a number of social and environmental protections in law, but none-the-less have the backing of the state. As such, and following Springer (2013), although the country's 2001 Land Law is considered relatively progressive in comparison to some neighbouring countries, the legal framework and its implementation in Cambodia as a whole is increasingly unjust and used with violence against its own people. In this paper I therefore analyse how 'grand corruption' can help the facilitation of land grabbing by enabling individuals to ignore the law with impunity, to enable the promulgation of new laws which are themselves violent and unjust, and misuse existing laws to underwrite land grabbing.

The tension between Cambodia's relatively strong social and environmental protection in law and its weak implementation can be regarded as a manifestation of structural violence. Galtung examined the latent and predictable nature of 'structural violence', particularly with regard to how power is used to maintain unequal distribution of (and control over) resources (1969). Mosse (2007) and others have further developed the concept of 'structural institutionalized violence' in relation to how the balance of poverty and inequality, and wealth and opportunity, can be institutionally maintained by the state and its rulers. This institutional misuse of power for personal gain closely aligns with the goal of grand corruption, according to Cockcroft '... [p]ersonal enrichment is nearly always a key objective, although corruption may be engineered by a group with the intention of achieving or retaining political power, so that these motives can become closely entwined' (2012, p. 2).

It could be argued therefore that approaches to support victims of land grabbing in Cambodia which base advocacy positions on the legal framework and implementation of the rule of law could do better by targeting these underlying institutional structures. However, such a position presumes the Cambodian government to operate as a hegemonic entity. In my experience, there are in fact reformers and reform-minded institutions within government which are as equally convinced as the affected communities of the need for improved rule of law and are therefore responsive to such framings. Furthermore, Cambodia shows that the most effective advocacy

activities, especially those involving international actors (for example, via financial or supply-chain based relationships), are those which have articulated a clear and binding framework for analysis. The law, as it is written, being the most tangible currently. An additional rationale for focusing on legal frameworks is that international investment companies (who play an increasingly important role in Cambodia's land grabbing crisis) are duty bound to follow the national law, even if the state and its rulers chose not to. Further examples of what these responsibilities mean for ELC companies in practice are provided in the Global Witness report *Rubber Barons*, published in 2013.

In terms of addressing the challenge of land grabbing, policy and institutional responses have so far primarily targeted the state and state-based agencies. However, the presence of grand corruption (at every, and all levels of government) can fundamentally undermine these basic state functions, as further outlined below. This potential contradiction has implications for the effectiveness of state-focused initiatives to tackle land grabbing, a question I attempt to address in this chapter.

An analysis of the theoretical relationship between land grabbing and grand corruption

Land grabbing, grand corruption and their subsequent deleterious impact on governance, can be viewed as mutually reinforcing. Government officials and companies acting corruptly enable land grabbing when they ignore legal and regulatory safeguards, collude to capture the state and its natural resource wealth, or act with impunity. Following Levi (1988, p. 3) on state predation and Hall *et al.* (2011), in the most extreme cases the state itself becomes criminally and entrepreneurially involved in the capture of land. Once land is grabbed it provides revenues to business and political elites (this can be on-budget, but is frequently off-budget or illicit) which further strengthens their hold on influence and power. This subsequently increases the likelihood of future corruption. Whilst the corrupt behaviours and actors themselves may be similar throughout these interactions, the dimensions, impacts and potential remedies differ, and therefore are analysed separately throughout the following section.

This institutionalization of perverted benefits and vested interests resulting from corrupt land grabbing are examples of how 'shadow states' are created.¹¹ According to Reno in shadow states, rulers are able to 'manipulate external actors' access to both formal and clandestine markets, by relying on the global recognition of sovereignty, and are thereby able to undermine formal government institutions' (2000, p.434). However, reflecting on Galtung (1969), Levi (1988) and Mosse (2007), formal institutions can themselves operate in violent and unjust ways which may result in a shadow state operating symbiotically within a formal state structure.

Decision-making in the land sector that favours elite interests

Corruption facilitates land grabbing in a number of ways. Fundamentally, it is a manifestation of the vested interests and abuse of power involved when government officials at a national and/or local level, and companies interested in leasing or acquiring land (both public and private), act with disregard for the rule of law or negative consequences.

Corruption can occur in the land sector in various forms. Firstly, government officials accept 'bribes' from a company in exchange for ignoring or perverting laws, facilitating swift transactions,

giving preferential treatment, or perverting justice. 'Bribes' include payments in cash and/or in kind, as well as other favours. These benefit flows give rise to adhoc corruption where individual government officials act corruptly while their colleagues turn a blind eye, as well as the institutionalization of such behaviour across government and regulatory agencies. In some cases such corruption, especially at the local level, can be due to lack of capacity, budgetary resources, and oversight from central levels of government, however in others it can be more organised.

Secondly, corruption can also occur when vested interests are endemic to the point that senior government officials, politicians and their family members directly own or are involved in companies which are being given land through leases and acquisitions, despite the fact that this violates some social and environmental protections in the law. In these cases, a physical bribe may not have actually been given or received, but the ownership or connections between the government official and the company mean that the official in question personally benefits from the deal, with the relationship kept deliberately secret. Again, this enables companies to receive special treatment, pervert regulations and justice, and ignore negative social, environmental and governance impacts.

Both forms of corruption can occur at all levels of government and are frequently organized, such that petty officials accept payments with the expectation that part of it will be passed up the chain of command, so as to share the revenues. Although local government officials receiving bribes from companies involved in large-scale land investments is a more common understanding of corruption, grand, or central-level, corruption which is institutionalized across government agencies is a more significant problem. When this occurs, policies and central functions of the state are distorted and leaders benefit at the expense of the public good. As a result, government decision-making about who gets to own and use what land, for which purpose is not based on recognition of local rights, food security objectives, environmental sustainability or even economic growth. Rather, land and natural resources (which frequently already have a number of users dependent on them) are allocated to which ever company is best connected and willing to pay the highest price. When such corruption is present, and especially if it reaches the highest executive level, it undermines basic elements of accountability between the state and its citizens, detrimental even in fledgling democracies such as Cambodia. Government officials, for example, ignore their public responsibilities in favour of allegiance to companies and patrons, giving rise to neo-patrimonial rule and structural violence. It also becomes almost impossible for any level of government department or international donor agency to implement reforms aimed at improving governance and mobilizing the country's own natural resource base towards developmental objectives.

Victims denied access to judicial and accountability mechanisms

In addition to corruption distorting legal procedure and due process when the decision-making around the acquisition and allocation of rights to large-scale land investments is being taken at the beginning of a project's life-cycle, corruption also occurs and has impacts throughout project implementation, and beyond. The most problematic way this occurs from the perspective of victims of land grabbing is when accountability, regulatory or judicial mechanisms responsible for ensuring that land investment projects are just, legally compliant and protecting human rights, are

corrupted. This can occur for example when attempts by communities who have lost land to file complaints with the courts or non-judicial mechanisms are thwarted by officials paid not to cooperate. A separate impact during the implementation phase is when corruption prevents independent monitoring and evaluation of ongoing projects, enabling the company to ignore regulations and safeguards, operate outside of contractual terms and conditions, and prevent regulatory authorities from enforcing sanctions or annulling contracts.

Another way in which this occurs is when companies or individuals acquiring the land are well-connected enough to employ police, military and the courts to silence or block community activism through threats and intimidation, wrongful arrest and detention, spurious charges and other tactics. Research by my colleagues at Global Witness revealed that land and forest activists around the world are facing increasingly deadly responses from governments, companies and the armed forces. At least 908 people were killed in 35 countries for attempting to protect their rights to land and the environment between 2002 and 2013, with the death rate rising in the last four years to an average of two activists a week (Global Witness, 2012 and 2014).

How land grabs intensify and precipitate corruption

The negative consequences of these interactions between land grabbing and corruption are multiple, transformative and reinforcing. They range from lost or perverted revenue streams, the consolidation of power and influence of the elites, the further disenfranchisement from state functions of the victims of such land grabs, all of which ultimately undermines state accountability.

According to the World Bank, large-scale transfers of land for commercial investment theoretically have a number of potential macro and micro economic benefits; including generating employment and revenue streams, improving food security, and fostering technology transfer (Deninger and Byerlee, 2011). However, in reality (and apart from the direct negative impacts described above) there is significant leakage of actual and potential revenues from land deals. Corporate payments for acquiring concessions or property rights may, for example, be considered by state officials as bribes and as a result only a small percentage of such payments (if any) actually enter the national budget. Increased demand for land concessions (as natural resource exploitation has done in other sectors) can in fact fuel further corruption and subsequently erode state functions. Revenue generation can also be impacted when companies use their influence to negotiate favourable tax and royalty terms. In addition, corruption can prevent corporate taxes and royalties which are generated from these deals from trickling down to local levels of government or communities. If a government fails to generate taxes and other revenues from, for example land leases, a deficit is created in the national budget which means it cannot afford to pay civil servants adequate salaries, fostering further demand for alternative incomes; namely bribes.

When land leases are speculative, if the company does not have the technical capacity, or if their financial backing is not secured, then local employment opportunities and other expected economic benefits do not occur. In some cases, even when the land is used productively, many local communities (often those who have lost significant areas of land to the company) are not offered employment opportunities as the company has brought in labour from other areas. In some cases, locally affected communities refuse to have anything to do with the company (such as

accept work or salaries) because of their anger at losing their land. As a result, not only are such land grabs devastating to local livelihoods, food security, cultural well-being and the environment, they are also frequently not achieving their most fundamental theoretical economic objectives.

Communities impacted by land grabs are not only displaced by force from ancestral land, losing their livelihoods and blocked from accessing their share of the economic benefits; a deeper and more violent transformation is occurring. The impoverishment which comes from losing land and food security can disenfranchise households and create barriers against them participating in local level decision-making or accessing recourse or accountability mechanisms. Furthermore, certain rights as citizens, for example the ability to register to vote in elections, can require residency at a permanent address. This means that once land is lost, so may be the ability to register as a citizen or be part of a community group, to vote or be recorded in censuses or other demographic data, or have access to judicial and non-judicial forms of redress. In other situations, households who have lost land have no choice but to be employed as labourers for the plantation company which took their land; in doing so they are perceived by some as losing the last vestige of their right to denounce the company's operations.

Regimes characterized by such degrees of structural violence and 'shadow states' therefore enable the capture of power and resources by elites through two parallel processes. State rulers (formal and informal) undermine government institutions by manipulating bureaucratic structures and markets in order to 'enrich themselves and control others' (Reno, 2000, p. 437) and in such cases political power and private commercial operations become indistinguishable. Meanwhile, the poor and vulnerable households not only have their livelihoods directly affected, but impoverishment and disenfranchisement undermines their ability to hold such elites to account and the ability of basic state functions to respond.

Is the 'resource curse' extending to large-scale land investments?

For a number of years, Global Witness and other advocacy, policy and academic researchers have documented the way in which many countries rich in oil, gas and other minerals are, in spite of potential wealth, frequently mired in poverty due to the so-called 'resource curse' (also known as the paradox of plenty).¹² According to economist Jeffrey D. Sachs, this curse can be attributed to three phenomena: when resource-related capital inflows inflate currency values and crowd-out unrelated industries; the volatility of commodity prices; and the negative impacts of resource abundance on fragile political institutions, providing opportunities for elite and illicit accumulation (Brown, 2008, P. 98). It is this third phenomenon and its implications for governance upon which Global Witness has traditionally focused.

Governance issues in countries such as Angola, Cambodia and Liberia show how natural resource abundance combined with poor governance, weak rule of law, and tenure insecurity has enabled political and business elites to influence state processes and appropriate publicly held natural resources for personal profit.¹³ It is this failure of governance which means that citizens of these countries have paid the costs of resource extraction but received very few of the benefits, and have no means to hold either the government or companies to account for decisions or actions which negatively affect them. In some of these countries, for example Cambodia, the gap between

rich and poor, the powerful and the powerless has worsened as a result; inequality in these areas has increased in Cambodia since the 1900s.¹⁴ Such trends cement interests within this elite to maintain the status quo and further disable ordinary citizens from demanding changes of policy and practice.

These problems have initially manifested in the extractive industries: oil and gas, minerals and timber. Since 2008 however, commercial pressure on the land itself has increased to the point that similar risks are now associated with large-scale land acquisitions and transfers. Again, this is particularly a problem in 'emerging markets' where political and regulatory institutions are fragile, where dubious investors rush in and where governments appear to be prioritizing investor interests over legislative safeguards and their duty to their citizenry. According to one global assessment of large-scale land acquisitions acquired by investors since 2000, 66 per cent of the land was in Africa and 21 per cent in Asia (Anseeuw *et al.*, 2012). More than twenty percent of all deals were given in forests, the study continued, frequently areas on which local livelihoods depend and which are under special protection for environmental purposes (on paper). Furthermore it concluded that globally, countries most affected by these deals are significantly poorer than average and struggle with significant agricultural yield gaps. Even more concerning is Deininger and Bylerlee's conclusions that lower recognition of land rights appears to increase a country's attractiveness for land acquisition by investors (2011, p. 96 and p. 102).

The ultimate profitability of large-scale land investments is unlikely ever to equate to the revenue streams of the extractive industries sector. Nevertheless, the trends evident from increasing commercial interest in land indicate that fragile state institutions are already being undermined by such demand, thereby fitting one of Sachs' criteria for the resource curse. The question for countries like Cambodia, who have already experienced the resource curse in other sectors, is whether they will learn from past experiences.

Case studies of the relationship between grand corruption and land grabbing

I selected these two case studies because they are exemplary and very well-known examples of licensed (in the case of Pheapimex) and state-backed (in the case of Kong Yu and Kong Thom) land grabs in Cambodia. The high level positions and personal connections of those involved in these cases provided detailed information about how power manifests in grand corruption and land grabbing. However, their notoriety also prevented a meaningful in-depth analysis without it becoming clear which individuals are involved, which is the basis for my decision to explicitly name the individuals involved. Nevertheless, the specific location and names of local people negatively impacted by both of these cases have been removed for their protection.

I undertook this research through a series of direct interviews with members of the affected communities and representatives from the civil society groups working with them, between November 2012 and February 2014. The fact that both cases are extremely well documented provided a wealth of direct and secondary source material through which the results of the interviews could be triangulated. Due to the highly sensitive nature of the allegations made against the named individuals, neither hearsay nor rumour was cited without additional evidence. Under the name of Global Witness, I wrote extensive letters to those involved outlining the

allegations and asking for their perspective on the cases. Although these were sent by email, fax and hand-delivered, no responses were received by the date of publication.¹⁵

Case Study 1. Pheapimex: Overlapping state and private interests

The Director of Pheapimex, Mr Lau Meng Khin, is a Senator for the ruling Cambodian People's Party and his wife Choeung Sopheap (also known as 'Yeay Phu') regularly appears publicly alongside the prime minister's wife and used to be a leading member of the Cambodian Red Cross. Pheapimex, one of Cambodia's most powerful companies, currently holds a total of 335,142ha in land concessions, equivalent to 13 per cent of the total area leased to companies.¹⁶ Pheapimex first came to prominence as a logging concessionaire in the 1990s; every year between 2001 and 2004, Global Witness caught Pheapimex subcontractors and members of the Royal Cambodian Armed Forces illegally felling and processing significant volumes of timber in the company's Kompong Thom forest concession.¹⁷

In 2000 Pheapimex was given 315,028ha of land in a 70 year lease located in Pursat and Kompong Chhnang provinces, for a eucalyptus plantation.¹⁸ On December 25th of that year at a ceremony attended by Prime Minister Hun Sen, the company signed a joint-venture with the Chinese Farm Cooperation Group to build a pulp and paper mill near the concession; a US\$70 million project financed by a loan from China's Import Export Bank (Lang, 2002 and Cambodian Human Rights Committee, 2009).¹⁹

Between 2000 and 2004 Pheapimex began clearing and planting the area of their concession located in Pursat Province. This was done without any consultations with legitimate local land-owners, environmental impact assessments have never been done and details of the concession area (such as the maps) were not disclosed to locally affected households until 2010.²⁰ The social and environmental consequences of this concession have been devastating. It has affected access to farmland and forest resources of at least 100,000 local people. Villagers explained to me that the company had cleared significant areas of forest, including the resin trees on which many households rely on for an income source and which are given special protection in law, as well as clearing spirit forests, polluting the local environment with chemical fertilisers and destroying local water sources.²¹ The promise of employment opportunities also never materialised. The company reportedly refuses to employ local villagers on the concession, preferring to bring in labourers from other provinces, and employment conditions are poor with salaries low and paid late.²²

Communities affected across both provinces have continually protested against this grabbing of their land and resources by Pheapimex. The company has employed members of Cambodia's armed forces (police and soldiers) to guard the concession area, who have responded with force. Protests escalated during 2004, with prominent activists being arrested on spurious charges. That year tragically culminated with a grenade attack on sleeping protestors on 13 November 2004, which left eight protestors severely injured. This has never been investigated by the government.²³

In 2005 the Government introduced legislation governing all land leases, limiting company holdings to a maximum of 10,000ha and requiring existing leases, larger than this, to be reduced (Royal Government of Cambodia, 2005, Article 38). However, according to the Government and

the UN-OHCHR, Pheapimex has consistently refused to bring its concession within the law, has failed to pay its concession deposit and much of the land has remained unused since it was taken (UN-OHCHR, 2007, p. 11; Royal Government of Cambodia 2008 p. 1).

Between 2004 and 2009, company operations on the concession ceased, but by 2010 land clearing began again, as did protests and subsequent violent responses and arrests by government authorities. Villagers filed complaints with the Pursat provincial court against the renewed clearing of their land and forest areas by the company, but by 2013 the courts had not yet responded.²⁴ In 2011 the Council of Ministers awarded communities in Pursat province rights to manage 6,000ha of forest, under the Community Forestry model.²⁵ This included 500ha located within Pheapimex's concession and should have been returned to the community, but up to the date of publication, the company has yet to give this land back.²⁶

When I interviewed affected households from Kompong Chhnang in November 2013, they expressed concern that the company was about to start clearing the concession areas nearer to their villages. Although a new rapid land titling and dispute resolution process announced by Prime Minister Hun Sen in May 2012 and targeting land concessions had included Pheapimex's concession area, villagers were sceptical about whether this would result in their land being returned.²⁷

Their scepticism reflects the company's other activities. Pheapimex has enjoyed a long relationship with the Cambodian armed forces, and has used members of the military to provide security and exert control over its forest concessions.²⁸ These relationships were cemented in February 2010, when the company was included in a list of 'official partnerships' announced by Prime Minister Hun Sen, between private businesses and Cambodian military units (Phalla and O'Toole, 2010; Brady, 2010). This policy officially sanctioned an arrangement wherein selected businesses were reported to get military protection in return for financial backing (Global Witness, 2010). Such partnerships are particularly concerning given the involvement of Cambodia's armed forces in exclusions, evictions and human rights violations by these same Cambodian companies (Brady, 2010).

Lau Meng Khin and his wife have previously accompanied Prime Minister Hun Sen on diplomatic trips to China.²⁹ The couple are formally involved in some of the most significant Chinese investments in Cambodia, indicative of their importance in maintaining Sino-Khmer commercial relations. These include the Chinese-owned Wuzhishan L.S. Group's concession; a 10,000ha plantation which overlaps with indigenous peoples' land in Mondulkiri province.³⁰ The couple are involved in Shukaku Inc., which in February 2007 was granted a 99-year concession to develop 133ha of land around Boeung Kak lake in Phnom Penh city.³¹ The project is being developed in a joint-venture with a Chinese investor and has resulted in the displacement of more than 4,000 families and is the dispute over which Mrs Chea Dara committed suicide in November 2011.³² Lau Meng Khin and his wife are also both directors of a company which is a subsidiary of China's largest dam building company, Sinohydro Corporation.³³ At a cost of US\$280 million, Sinohydro Corporation is constructing Cambodia's largest hydropower dam, in Kampot province, with finance from China's Exim Bank (ibid). Additionally, the couple own Cambodia International Investment

Development Group.³⁴ This company is reportedly involved in a number of Chinese joint-ventures including a special economic zone and coal-fired power plant in southern Sihanoukville town and a bauxite exploration and processing project in north-eastern Mondulkiri and Kratie provinces.³⁵

This case provides clear examples of the three modalities of land grabbing and ‘grand corruption’. Firstly, the power and influence Pheapimex holds in Cambodia has apparently enabled the company to ignore legal safeguards and due process, for example being able to retain concession rights to more than 30 times the legal limit. Secondly, the company was reportedly able to work with government enforcement agencies to issue threats, arrest and bring charges against community activists in order to protect the company’s commercial assets. This has had the impact of blocking community activists’ attempts to get justice. Thirdly, since gaining rights to the Pheapimex concession, Lau Meng Khin and his wife have reinvested their assets and furthered their economic position, which has in turn strengthened their relationship with the country’s elite. This is evident in the couple’s involvement in a number of other economically significant projects, particularly those involving Chinese investments.

Case Study 2. Kong Yu and Kong Thom: Undermining accountability mechanisms

In August 2004, Mrs Keat Kolney, the sister of Deputy Prime Minister and Former Senior Minister for Economy and Finance H.E. Keat Chhuon, and the wife of Secretary of State for Ministry of Land Management H.E. Chhan Saphann, announced she had purchased 450ha of land from the villages of Kong Yu and Kong Thom, Ratanakiri province (EWMI, 2009, p. 13 and Interviews with lawyers working on the case, November, 2012). This land, she claimed, was bought on a private basis, through more than 100 land transfer documents (EWMI, 2009, p. 16; CLEC, 2008). The indigenous Jarai minority communities of Kong Yu and Kong Thom dispute this claim saying they have been living and working this land for generations and despite the lack of title, according to the Land Law, it belongs to them collectively (EWMI, 2009, pp. 12–13; Amnesty International, 2008, pp. 8–9).³⁶ Sixty five households in these two villages have lost ancestral agricultural land, burial grounds, spirit forests and natural resources on which their livelihoods depend (Walker, 2009; CLEC, 2008).

According to the villagers, between March and August 2004, they agreed under duress to give 50ha of their land to local authorities, who told them the area was being taken to re-distribute it to disabled soldiers. This process involved villagers signing (by thumbprint) numerous documents on 20th August of that year approving the land transfer of 50ha (some of the documents were in Khmer language which many do not read, and others were blank). They were not given copies of these documents (EWMI, 2009, pp. 12–13; Amnesty International, pp. 8–9). Approximately one week later, villagers explained, Keat Kolney arrived, accompanied by District and Commune government authorities and military officials, to distribute gifts and envelopes of money to the community (EWMI, 2009, p. 13; CLEC, 2010, p. 1). At this ‘ceremony’, villagers were asked to sign receipts for the gifts, again in a language they could not read, which in fact turned out to be contracts for the sale of the land; a fact the villagers were not informed about until the following day (CLEC, 2010, p. 2; EWMI, 2009, p. 13; Amnesty International, 2008, p. 9). Advocacy groups report that upwards of US\$20,000 was paid to local officials to complete this transaction (Asian Human Rights Commission, 2007). Lawyers acting on behalf of the villagers also allege fraud, such

as backdating land receipts and half of the land transfer receipts being signed by individuals who have never lived in either village and thus have no right to transfer village land, including local authorities (CLEC, 2008, p. 1; CLEC, 2010, p. 1–2).

Within a month villagers were prevented from accessing their fields and forest as the land was cleared to plant rubber by Keat Kolney. Between 2004 and 2007 communities tried to get their land back by filing complaints to government officials, holding public protests, filing petitions and contacting the media. However, these strategies failed, so on 23rd January 2007 villagers filed civil and criminal complaints against Keat Kolney in the provincial court (Asia Human Rights Commission, 2007; EWMI, 2009, p. 13; Amnesty International, 2008, p. 9–10). A lawyer working on the case described it as a ‘... no clearer example in Cambodia today of the rich and powerful exploiting the poor and marginalized. And no better opportunity for the judicial system to finally play its role in upholding the law and protecting the rights of ordinary citizens against the abuse of power’.³⁷

Unfortunately, such optimism has been dashed. After more than six years since the lawsuit was filed, the provincial court has dropped criminal charges against Keat Kolney and is yet to decide if the civil case will move to trial (Kuch, 2012a, 2012b; Interview with lawyers working on the case, November 2012). Since 2007 five different provincial court judges have been assigned to the case but none have taken action to investigate the original civil complaints filed by the communities who lost their land (Kuch, 2012c; Interview with lawyers working on the case, November 2012). Local media reports this as being due to political interference from supporters of Keat Kolney, describing how the provincial president of the court stated that judges were too scared to get involved in the case (Kuch, 2012b; Neou, 2010). Meanwhile criminal charges of collusion, defamation and fraud were acted on by the provincial prosecutor against six of the most prominent community activists in 2007 and 2010, at the request of Keat Kolney (Amnesty International, 2008, p. 8; Kuch, 2012a, 2012b; Interview with lawyers working on the case, November 2012). Consequently, lawyers defending the case allege that judges have prioritised civil and criminal charges against the communities, instead of the communities’ lawsuit relating to the land grab (CLEC, 2010, p. 3–4; Interview with lawyers working on the case, November 2012; Kuch, 2012a).

Community members and their lawyers have faced continued threats, harassment, and intimidation, and had their most basic human rights violated (for example freedoms of assembly, association and speech). On numerous occasions lawyers have been prevented from entering the village, money has repeatedly been offered to individuals to drop the case, misinformation has been spread to confuse the community (such as their case having been lost or their lawyers having been imprisoned) (CLEC, 2010, p. 2; Amnesty International, 2008, p. 8; Interview with lawyers working on the case, November 2012).

In 2007, Keat Kolney is reported to have written to the Cambodian Bar Association accusing lawyers working on the case of incitement. Lawyers allege this resulted in an investigation into their work. The President of the Bar Association has publicly denied initiating such steps but has admitted to calling the lawyers to a meeting (CLEC, 2010, p. 3; EWMI, 2009, p. 14; Amnesty

International, 2008, p. 15; Lawyers Rights Watch Canada, 2009, p. 6).³⁸ Keat Kolney also met directly with several of the lawyers during this time, making thinly veiled threats for their security if they continued their work on the case.³⁹ The clearing of land taken from the villagers and planting of rubber has continued throughout these legal proceedings despite an order from the provincial court judge in October 2008 to cease company operations (CLEC, 2010, p. 3; EWMI, 2009, p. 16).

By the date of publication, the dispute was ongoing. The case remains without a judge at the provincial courts and subsequently lawyers working with the affected communities are attempting to bring it to national level courts. Meanwhile the communities themselves continue to fight for justice.⁴⁰

Like Pheapimex, the Keat Kolney case provides examples of the breadth and depth of ways in which 'grand corruption' inter-relates with land grabbing in Cambodia. Her connections appear to have enabled her to illegally acquire 450ha of indigenous peoples' land through threats, deception and fraud. The systemic failures within the judicial system to respond to the civil and criminal charges filed by affected communities against Keat Kolney, in comparison to the swift action by the courts when she then filed complaints against those same community members are also reportedly due to her connections.

Reversing an unvirtuous circle: Analysis and conclusions

These two case studies from Cambodia highlight a number of forms and modalities of the nexus of grand corruption and land grabbing. They provide examples of how powerful and influential companies and private individuals can grab land, through the manipulation of state power and authority. They then exemplify how such powerful actors employ strategies of structural violence to retain control of the land, in some instances despite the best efforts of reforming elements of the state. As a result, victims are powerless to fight against licensed exclusions which are violently transformative; in other words 'violent exclusions'.

What is most evident from these cases is that in countries like Cambodia, corruption and elite capture create a durable inequality (following Mosse, 2007, p. 21) wherein efforts by these communities to seek justice which rely on state functions are likely to fail; in these cases for fourteen and ten years respectively. Given the prevalence of corruption in many of the countries seeing increased commercial interest in land investments and lack of understanding of the modalities of this dynamic, this conclusion should serve as a critical warning.

If what could be termed an 'unvirtuous circle' of corruption and land grabbing in countries like Cambodia is to be reversed, then reform-orientated actors (those within and beyond government agencies) need to recognise the structural and institutionalised violence within the state and its rulers, and their subsequent vulnerability to corruption. These implications could not be better described than by Cockcroft:

Thus the common characteristics of corruption in today's world includes the close relationship between personal enrichment and political survival, the willingness of

international partners to participate in corrupt stratagems, and the extent to which dual systems facilitate this and make it very difficult for formal institutions to control the corruption at the heart of the process (2012, p. 42).

Mosse went so far as to conclude that development policies and programming attempting to end inequality within such a context would inevitably be co-opted (2007, p. 22). I tend towards a more (cautiously) optimistic view. Policy makers, scholars and the media need to invest adequate resources in better understanding land grabbing and its relationship with corruption, and look for solutions beyond the state. A more nuanced and situated understanding of corruption needs to inform policy responses for land, building on the work of Nuijten and Anders (2009). Other natural resource sectors such as oil, gas and mining, and timber, where the dynamics of the relationship between corruption and resource governance is addressed through the 'resource curse' lens, may also offer appropriate starting points.

Current reform agendas, especially those promoted and supported by international development agencies, have a tendency to prioritize overly technocratic, 'silver-bullet' solutions. This is not surprising given that the programming and monitoring of overseas development aid is increasingly jointly negotiated between development agencies and the country in question.⁴¹ Cambodia is an example of how development frameworks and benchmarks for the land sector have evolved from those which measured progress towards governance objectives, to targets and indicators which are simply legalistic and technocratic. This has occurred while land rights in the country have become increasingly sensitive and central to political discussions, suggesting evidence of the co-optation Mosse (2007) describes.⁴² The country is also a clear example of how strong legal frameworks on paper can be easily ignored and manipulated, especially if the international development community turns a blind eye. Therefore, it must be recognized that reform and accountability mechanisms addressing land grabbing and corruption in countries like Cambodia tackle an inherently political and politicized issue and therefore must be designed to be robust enough to counter potential 'interference'. If the degree of robustness cannot be assured through programme design, then development agencies should consider scaling up their work in these areas directly with non-state actors, such as civil society groups and international investors.

Finally, to present the communities involved in both case studies as simply victims to social, economic and environmental transformations outside their control, does not pay their activism due justice. Both cases have evolved in parallel to national level political transitions which have the potential to be transformative for Cambodia's future. This transition, which culminated in the 2013 general elections and subsequent political protests, is addressed comprehensively in other chapters. Whilst the 'land issue', particularly ELCs, have been at the heart of last year's election, it is unclear what implications this political transition will have for land and resource governance in the longer-term. Nevertheless, it is critical that anti-corruption and land reform efforts explicitly recognize and respond to these social, economic, environmental and political transformations.

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¹ The total land mass of Cambodia is 176,515 km², of this 20.44 per cent is arable (equivalent to 36,079 km²) according to the CIA, which defines arable land as 'land cultivated for crops like wheat, maize, and rice that are replanted after each harvest', in comparison to permanent crops and other forms of land use, (CIA Factbook, <https://www.cia.gov/library/publications/the-world-factbook/geos/cb.html>, accessed 16 April 2013, and for CIA's definition of arable land, see <https://www.cia.gov/library/publications/the-world-factbook/fields/2097.html>, accessed 17 March 2014). Based on this 20.44 per cent figure, the 2,657,470 hectares of land allocated to concessions is equivalent to 73 per cent of Cambodia's arable land and 15 per cent of the country's total land mass. Rice paddy cultivable areas in 2011 totalled 2.76million hectares (Prime Minister Hun Sen, Speech at the 'Closing of the 2011–2012 Stocktaking and 2012–2013 Directions Setting Conference of Ministry for Agriculture, Forestry and Fisheries (MAFF)', Royal University of Agriculture, 11 April 2012).

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⁸ See aforementioned Journal of Peasant Studies special issues for examples of such analyses.

⁹ For further information see http://www.transparency.org/cpi2011/in_detail, accessed 3rd October 2012.

¹⁰ The Convention and further information is available at <http://www.unodc.org/unodc/en/treaties/CAC/>, accessed 1st February 2013.

¹¹ For further details of shadow states and their operations, see Reno (1999) and Funke and Solomon (2002).

¹² For definitions and explanation of the 'resource curse' phenomena, see Ross (1999), Ascher (1999), and Le Billon (2012).

¹³ See Global Witness reports for further details: for Cambodia – Cambodia's Family Trees (2007) and Country for Sale (2009); for Liberia – The Usual Suspects (2003) and Curse or Cure (2011); and for Angola – Time for Transparency (2004). All are available at www.globalwitness.org.

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¹⁵ Letters sent by Global Witness to Senator Lau Meng Khin and his wife Choeng Sopheap, to Mrs Keat Kolney and Mr Ky Tech (President of the Cambodian Bar Association at that time), on 29 February 2014.

¹⁶ The ELC owned by Pheapimex totalling 335,142ha of land is 12.89 per cent of the total area of land currently allocated by the Cambodian government (2.6m ha). For references for the total holdings belonging to Pheapimex see Vrieze and Kuch (2012) and documentation relating to the company available on Open Development Cambodia, <http://www.opendevelopmentcambodia.net/>, accessed 17 February 2014.

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¹⁸ Ministry of Agriculture, Forestry and Fisheries ELC profile and lease documents for Pheapimex, at http://www.opendevelopmentcambodia.net/references/Phea_Phime_x_21.06.2011.pdf, accessed 17 February 2014.

¹⁹ See also the article 'Chinese firm to plant eucalyptus for paper manufacture in Cambodia', *People's Daily*, 25 December 2000, http://english.people.com.cn/english/200012/25/eng20001225_58790.html, accessed 17 February 2014.

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²² Interviews with villagers affected from Pursat and Kampong Chhnang provinces, November 2013.

²³ Interviews with villagers affected from Pursat and Kampong Chhnang provinces, November 2013; Licadho (2004); UN (2004).

²⁴ Interviews with villagers affected from Pursat and Kampong Chhnang provinces, November 2013.

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- ²⁵ The Government of Cambodia awards rights to community groups to manage their forest under Sub-decree number 79 on Community Forestry Management, <http://www.forestry.gov.kh/Documents/CF-Sub%20Decree-Eng.pdf>, accessed 17 February 2014.
- ²⁶ Interviews with villagers affected from Pursat and Kampong Chhnang provinces, November 2013.
- ²⁷ Interviews with villagers affected from Pursat and Kampong Chhnang provinces, November 2013. For further analysis of the land titling and dispute resolution process, see Milne (2013) and Focus on the Global South and Heinrich Boell Foundation (2013).
- ²⁸ Minutes from a Ministry of Agriculture meeting at the General Headquarters of the Royal Cambodian Armed Forces, 3 February 1997.
- ²⁹ Images from Cambodian television news footage, 2004, obtained by Global Witness; China-ASEAN business and investment summit, list of participants, <http://www.cabiforum.org/foreign.html>, accessed November 2004
- ³⁰ Lau Meng Khin was previously a Director of the Wuzhishan L.S. Group, as can be seen from the company's registration profile on the Cambodian Ministry of Commerce online database, <http://www.moc.gov.kh/Company/Detail.aspx?MenuID=18&NoticeID=2&ID=94>, accessed 01 February 2014; Wuzhishan L.S. Group is registered at the same address as Pheapimex in Phnom Penh, on both the Ministry of Commerce database and on the online registration database for their ELC in Monduliri province, http://www.opendevelopmentcambodia.net/pdf-viewer/?pdf=references/Wuzhishan_LS_Group_21.06.2011.pdf, accessed 1st February 2014.
- ³¹ Lau Meng Khin was previously both the Chairman and a Director of Shukaku Inc., according to the company's registration profile on the Cambodian Ministry of Commerce online database, <http://www.moc.gov.kh/Company/Detail.aspx?MenuID=18&NoticeID=2&ID=4997>; according to this database on 02 May 2012, both positions were transferred to his wife: <http://www.moc.gov.kh/Company/Detail.aspx?MenuID=18&NoticeID=2&ID=2264>; See also UN-OHCHR (2007, p. 11). Shukaku's involvement in the Boeung Kak Lake case was also reviewed by the World Bank's Inspection Panel in 2010, during their investigation into a complaint to the World Bank from the communities threatened with eviction by this project.
- ³² Details of the Chinese investment involvement in Shukaku's operations in Boeung Kak Lake are available here: <http://www.inclusivedevelopment.net/bkl/>, accessed 20 May 2014; and the company's business relations were also covered by various Cambodian and Chinese media outlets, for example, Strangio and Titthara (2010).
- ³³ According to company registration information for Sinohydro (Cambodia) United Co. Ltd issued by the Cambodian Ministry of Commerce on 7 April 2006; See also Grimdsitch (2012).
- ³⁴ According to the company registration information for Cambodia International Investment Development Group available from the Cambodian Ministry of Commerce online database, Mr Lau Meng Khin was a Director of the company between 2006 and 2010, whilst his wife currently holds the positions of Board Director and Chairman of the company, and the company is registered at the same address as Pheapimex in Phnom Penh, <http://www.moc.gov.kh/Company/Detail.aspx?MenuID=18&NoticeID=2&ID=6370> and <http://www.moc.gov.kh/Company/Detail.aspx?MenuID=18&NoticeID=2&ID=408>, both accessed 20 May 2014
- ³⁵ As described by the introduction on the website of Sihanoukville's Special Economic Zone: <http://www.ssez.com/en/company.asp?lone=3>; <http://www.cambodiainvestment.gov.kh/list-of-sez.html>, accessed 23 February 2014. See also Lan Lan (2010); 'Miner encroaches on ancestral lands', Radio Free Asia, 22nd June 2011, <http://www.rfa.org/english/news/cambodia/bauxite-06222011171620.html>, accessed 20 May 2014; ; 'Erdos Hongjun Investment Plans to Build a Refinery in Cambodia', The CM Group, 01 December 2011, http://cmgroup.net/en/blogs/industry/articles/erdos_hongjun_investment_plans_to_build_aa_refinery_in_cambodia, accessed 20 May 2014; Weinland and Kunmakara (2011); Weinland (2011).
- ³⁶ According to chapter three of Cambodia's 2001 Land Law, indigenous ethnic minorities (such as the Jarai of Kong Yu and Kong Thom) are eligible to register traditionally owned land under collective title. However, due to delays in the passing of government regulations, indigenous communities were not able to begin registering their collective land until 2009, five years after this sale is alleged to have been agreed.
- ³⁷ Mrs Peung Yok Hiep, Director of Legal Aid of Cambodia, quoted in a joint press statement regarding the lawsuit filed by the communities of Kong Yu and Kong Thom villages against Keat Kolney, 23 January 2007, <http://www.licadho-cambodia.org/press/files/139JointPRKong%20YuRattanakiri07.pdf>, accessed 18th February 2014.
- ³⁸ Under the name of Global Witness I wrote to the President of the Cambodian Bar Association during this period, on 29 February 2014, asking for his comment on his involvement in this case. By the time of publication, no reply had been received.
- ³⁹ Personal communication with a lawyer previously working on the case, February 2014.
- ⁴⁰ Interview with lawyers working on the case, November 2012 and January 2013.
- ⁴¹ For further information on the principles of 'aid effectiveness' see <http://www.oecd.org/dac/effectiveness/>, accessed 3 February 2014.
- ⁴² For further analysis of this transition and the Cambodian Government's repeated failure to meet land sector development targets, see Global Witness (2009) Country for Sale, <http://www.globalwitness.org/library/country-sale>, accessed 20 May 2014