

Tenure and Investment: Continental Southeast Asia

Tenure disputes in Continental Southeast Asia (Myanmar, Laos, Thailand, Cambodia, and Vietnam) create financial and reputational problems for the companies and investors involved. This paper examines recent case studies of tenure-related dispute in the sub-region to help companies, investors, governments, and CSOs avoid and resolve them more effectively.

We compare these recent cases to historical and global trends to provide a current and representative picture of the way that tenure risk impacts investment in Continental Southeast Asia. Our investigation then focuses on three case studies from the Cambodian sugar sector that illustrate some of the key issues and problems affecting land-based investment in the sub-region.

Our investigation suggests that companies and investors need to perform effective due diligence on their supply chains to identify more suitable and reputable suppliers. By working consistently and closely with local peoples and their representatives, companies and investors can improve reputations as well as operational stability. In this context, local companies that are effective in engaging local peoples and recognizing their agendas will be at an increasing competitive advantage.

1. Overview

Continental Southeast Asia is a key sub-region for land-based investments in agriculture, mining, hydropower, and other sectors. Yet the sub-region has a long history of tenure-related disputes and conflicts over land. This paper looks closely at recent tenure disputes from Myanmar, Laos, Thailand, Cambodia, and Vietnam to provide insights into the causes and impacts of tenure disputes with a view to helping companies, investors, governments, and CSOs avoid and resolve them more effectively.

Protracted disputes in the sub-region have led to international scrutiny, operational disruption, and significant reputational damage for companies, as well as severe impacts on the lives and livelihoods of local peoples. On average, disputes last for 8.9 years and only 10% have been resolved.¹ Eventually, these impacts and concerted CSO pressure contributed to increased private sector willingness to try to address issues with tenure governance.

This paper is composed of three main parts. First, we look at macro-level trends across the sub-region. The topline results of this analysis are provided directly below and are detailed at greater length in the companion [report](#) for this paper.

The macro-level perspective is complemented by an in-depth examination of three interlinked cases from the Cambodian sugar sector. This analysis provides insights into how disputes evolve; what financial and reputational impacts they can have; and, most importantly, which mistakes could have been avoided.

The last section of this report is dedicated to recommendations for companies and investors in Continental Southeast Asia. In brief, risk assessment and due diligence processes are urgently needed to address an increasingly significant material risk. Cost-effective risk management requires good local relationships at an early stage to help create a strong social license to operate. At the same time, local and national governments need clear signals from the private sector about the value and attractiveness of secure and transparent tenure regimes.

Methodology overview

This paper is based on analysis of 30 recent cases of tenure dispute in Continental Southeast Asia. We examined 16 disputes from agriculture, four from energy, four from real estate/tourism, three from mining, two from forestry, and one from transportation. We focused on disputes that were

¹This includes cases that are ongoing as of 2017.

less than 10 years old, or which had reignited recently, to gain the most representative picture of tenure risk in SEA today.²

These 30 cases were compared with 21 recent cases from Maritime Southeast Asia as well as a global set of 237 global cases (excluding Southeast Asia and cases older than 2001) from the IAN Database. The IAN data set was compiled by TMP Systems to inform the development of risk assessment and due diligence tools for tenure risk. It contains data on tenure conflicts from Africa, Asia, and Latin America, and represents a robust and comprehensive body of quantitative evidence on tenure disputes.

The process for identifying and analyzing the new cases and the IAN cases was the same, involving desk-based research and interviews with leading experts to identify a long-list of cases. These cases were then checked to ensure there was enough reliable underlying information to allow for comparison. Further information on the methodology used in this paper can be found in Appendix I.³

This paper also benefitted from interviews with leading experts (see Appendix II). This helped us to understand sub-regional trends and to look in-depth at three cases from the sugar sector in Cambodia. These cases are representative of key issues in the sub-region and their notoriety makes them powerful examples. Details on the selection of these cases is provided in Section 3.

2. Macro-level Trends

This section looks at the most notable features of tenure dispute in Continental Southeast Asia. It examines the most common causes of tenure disputes as well as the typical impacts for project backers. This is followed by a series of national profiles that pick out the key issues in tenure governance. Top-line findings are provided in brief below:

- Just 10% of cases in Continental Southeast Asia have been resolved. Around three quarters have been running for over 5 years. At a global level, around a third of the reported cases examined have been resolved. This shows how hard it is to resolve tenure-driven disputes once they begin.

² The cases in this paper date from 2001; of those cases that began more than ten years ago, all but one are unresolved, with significant events in the dispute occurring in recent years.

³ We emphasize that while the cases were identified in order to provide representative coverage, the number of cases overall is still small, and the sample is likely to be affected by issues of reporting. Breakdowns of trends among the cases in this document should be considered as indicative and heuristic, rather than as statistically robust statements of fact covering tenure-related conflict in the sub-region.

- Over half (53%) of the projects involved suffered financially significant impacts as a result of the dispute. This figure does not account for considerable reputational damage in many cases.
- Displacement was the most common driver of dispute, featuring as the primary issue in 43% of cases. Forcing people off their land is likely to lead to intractable and costly dispute.
- 77% of disputes started before operations began, underlining the importance of early stage diligence and risk assessment.
- 43% of cases involved violence and around a fifth involved fatalities, underlining the threats that these disputes can pose to employees, affected communities, and CSO workers.
- Investment from companies within the region is common, and commonly causes tenure disputes which can stoke broader tensions between countries.

Drivers of Dispute

The most common driver of dispute in the sub-region is displacement (43%), followed by compensation (33%). In many instances the initial grievance results from involuntary resettlement during the concession allocation process, although such displacement may occur before the involvement of the private company. This occurred in the Cambodian sugar cases (see pages 13-24), where it undoubtedly triggered additional grievances. Negotiations between the company and local peoples may therefore primarily concern compensation, as displaced groups look for the best outcomes available to them.

Environmental damage and curtailed access to resources are also significant drivers of dispute in the sub-region (10% and 13% respectively). In many instances in Continental Southeast Asia (and the wider region), environmental damage is caused by deforestation and mismanagement of ecosystem services. For example, local communities and activists have been in conflict with companies and the Cambodian government since 2009 over the protection of the 3,600 square kilometer Prey Lang Forest, which is currently under threat from illegal logging.

We are gradually seeing this picture change as companies and governments in the sub-region do more to protect forest resources and high carbon value (HCV) areas. Four rubber concessions in Prey Lang were cancelled in 2012, but more critically a large portion of the area was eventually declared a protected forest in 2016.⁴

Within the region, environmental damage features as a driver of conflict in Thailand, Cambodia, and Myanmar. As noted above, this factor correlates with the impacts of deforestation, but it is still somewhat striking that none of the new cases from Vietnam or Laos featured this as a primary

⁴ May Thittara and David Boyle, “Economic Land Concessions in Prey Lang rejected,” <http://www.phnompenhpost.com/national/economic-land-concessions-prey-lang-rejected>, The Phnom Penh Post (August 6, 2012); Daniel Pye, “Cambodia declares protected area in hotly contested Prey Lang forest,” <https://news.mongabay.com/2016/05/cambodia-protected-areas>, Mongabay (May 2, 2016).

driver. Nevertheless, this trend does play out across the 9 cases from these countries in the original IAN case study database, so there is clearly potential for environmental damage to drive conflict throughout the sub-region.

Disputes by sector and country

The energy cases we examined were all in Myanmar (three cases) and Vietnam (one case). Mining appears to be somewhat less significant in driving disputes in this sub-region than in other parts of the world, with one case each from Myanmar, Thailand, and Laos. Real estate played an equivalent role, with one case each from the same countries. We found just one transportation case, in Myanmar.

Agriculture is the sector that all countries appear to have in common, accounting for over half of the cases. Six cases in our sample were drawn from Cambodia, four from Laos, three from Myanmar, two from Thailand, and one from Vietnam.

This is not to say that instances of conflict related to mining do not have significant effects in the sub-region, simply that the industry is not as common in our sample of cases as other industries. The value of foreign direct investment in Laos' mining and hydropower sectors (see page 8) suggests that these industries may warrant closer scrutiny. However, the political environments in Laos and Myanmar restrict reporting, making it difficult to confidently assert the real sectoral distribution of disputes in the sub-region.

Violence and fatalities

Levels of violence across the Continental region appear to vary significantly. All the cases that led to fatalities were in Cambodia, Thailand, or Myanmar. None of the cases in Vietnam involved violence, while a third of cases in Myanmar and half of cases in Laos did. In contrast, 80% of cases from Cambodia and Thailand involved violence, although the size of the sample means we should treat these results with caution.

It is particularly difficult to draw absolute conclusions about data on violence because the suppression of independent media often goes hand in hand with the use of force in repressing internal disputes. Issues with reporting necessarily affect the number of cases that can be described in studies like this.

Concession allocation process

Across Continental Southeast Asia, one detectable but hard-to-quantify theme has been the blurring of boundaries between private and state interest in allocating concessions and addressing tenure-related conflicts. For example, the Cambodian cases we looked at all feature the prominent involvement of Senator Ly Yong Phat. We look at how this trend plays out in different countries across the sub-region in the National Profiles (pages 6-13).

Intra-regional investment

Investment from companies within the region is commonplace, and as tenure disputes garner more attention, they are more likely to contribute to resentment between countries, and ultimately regional instability. Most notoriously, Chinese investment in Myanmar has resulted in tenure disputes and broader tensions. Similar tensions affect Thai sugar companies in Cambodia, Vietnamese rubber companies in Laos, and other foreign investors.⁵

Thus, while the dynamics of tenure disputes may be determined by local drivers, they can affect national politics and even international relations. As companies become more sensitive to tenure-related risks, there are strong incentives for governments in the sub-region to improve their record on the governance of tenure.

National Profiles

Looking at each country in turn, we see significant differences that appear to be linked to the countries' overall level of economic development.

Myanmar

Myanmar is a particular flashpoint for tenure dispute at the moment as the economy opens under conflicting legislative and policy frameworks governing rights to land and natural resources.⁶

Myanmar experienced an increase in net foreign direct investment from US\$0.9 billion in 2010 to US\$4 billion in 2015, although this is unevenly distributed across a small number of sectors (see figure below).⁷ More than 20 government agencies are responsible for land issues at the national and provincial levels.

Some of the disputes are between local peoples or, frequently, between local peoples and the state. In ethnic minority regions, local governments and military officers hold significant power over land

⁵ There are a number of examples of this. The Myitsone Dam of China Power Investment and China Export Import Bank faced heavy opposition from residents and activists because it would have submerged an area of 766 km² with high biodiversity and cultural importance (case N506). In 2011, dam construction was suspended, but it resumed in 2015.

In case N500, residents demanded the closure of the Letpadaung Mine owned by China's Wanbao Corporation and the Myanmar government. They protested in 2012 and 2014 because of the heavy pollution it was causing in the area. These protests were violently dispersed, with the 2014 dispersal leaving one woman dead.

Residents of Kyaukpyu in Myanmar didn't receive full compensation for their land when it was acquired by China National Petroleum Corp and Daewoo for an oil depot and pipeline (case N540). They also weren't given copies of purchase documents. Protests have occurred as a result.

In Laos, Vietnamese conglomerate Hoang Anh Gia Lai (HAGL) and the Vietnam Rubber Group have been linked to land grabs in Ban Hatxan. HAGL burned down villagers' houses and plots (case N505).

Case N502 and N504 - Thailand's Mitr Phol and KSL Group have been involved in sugar plantation conflicts in Cambodia. Their involvement is detailed below.

⁶ Transnational Institute, 2013, "Access Denied - Land Rights and Ethnic Conflict in Burma," <https://www.tni.org/files/download/accesdenied-briefing11.pdf>.

⁷ World Bank, "Foreign direct investment, net inflows (BoP, current US\$)," <http://data.worldbank.org/indicator/BX.KLT.DINV.CD.WD?end=2015&locations=MM&start=2010>.

rights.⁸ In 2012, Parliament formed a committee to investigate allegations of land grabs dating to 1988. As of March 2016, it had received 17,000 complaints.⁹ A government committee formed to seek compensation for dispossessed farmers was accused of conflict of interest by a farmers' group because members of the committee at township and regional levels have been involved in land grabs.¹⁰

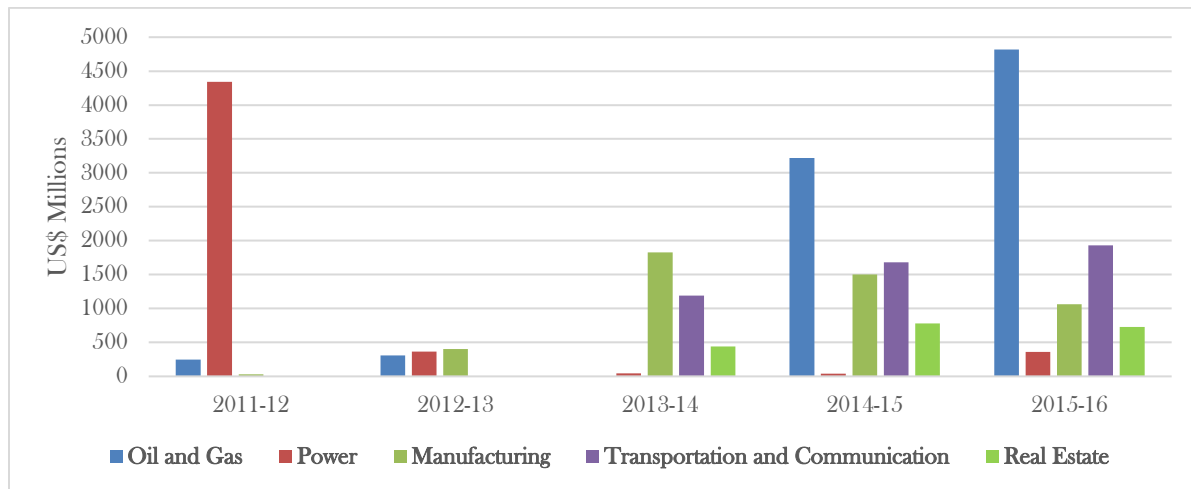


Figure 1. Myanmar Approved Foreign Investment, 2011-2016. Data: Directorate of Investment And Company Administration, Myanmar.

Where disputes involve companies, they are often Chinese state-owned ventures rather than the private companies and investors which are the focus of this investigation. Private actors (which may be more sensitive to reputational or operational impacts from tenure disputes) are taking an increasing interest in Myanmar, however. This raises the question of whether increased private investment could have a positive effect on tenure governance.

On the part of government, getting tenure governance right could create a virtuous cycle of private investment, as access to land was cited as the second biggest constraint for companies in Myanmar in a 2015 survey.¹¹

⁸ Open Development Myanmar, "Land," <https://opendevdevelopmentmyanmar.net/topics/land> (June 20, 2016).

⁹ Financial Times, "The great land rush - Myanmar: The dispossessed," <https://ft.com/sites/land-rush-investment/myanmar> (March 1, 2016).

¹⁰ Htoo Thant, "Committee for solving land disputes accused of conflict of interest," <http://www.nmmtimes.com/index.php/national-news/nay-pyi-taw/22765-committee-for-solving-land-disputes-accused-of-conflict-of-interest.html>, Myanmar Times (September 28, 2016).

¹¹ The World Bank Group, 2015, "Myanmar Investment and Climate Assessment - Sustaining reforms in a time of transition," http://www.dica.gov.mm/sites/dica.gov.mm/files/document-files/worldbank_myanmar_investment_climate_assessment_jan_2015.pdf.

Laos

Tenure disputes are a known issue in Laos not only for the hydropower sector, but also for investors in cash crops like coffee and rubber. The government has introduced corporate tax profit exemptions for certain key industries, including agriculture, “industry,” “handicraft,” and services. These vary according to whether the industry is in certain promoted zones, with the greatest incentives along the Vietnamese, Cambodian, and Chinese borders.

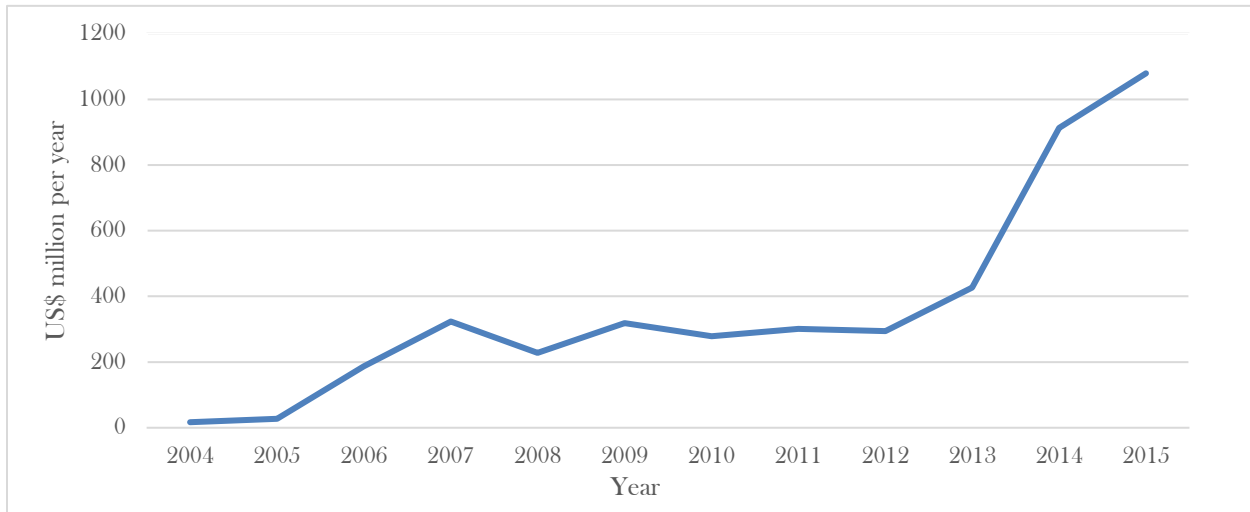


Figure 2. Net Foreign Direct Investment to Laos, 2004-2016. Data: World Bank

Laos has seen a large increase in investment from the rest of the world in recent years (as shown in Figure 2 above). The growth in Foreign Direct Investment is unevenly spread across different sectors, with mining and hydropower composing up to 80% of FDI in Laos. China, Vietnam, Thailand, Korea, France, and Japan are the largest sources of FDI.

50% of agricultural investment originates in China, with Thailand, Vietnam, Korea, and India making up the majority of the rest. Laos may be less attractive to international investors than other countries in the region such as Thailand, but Chinese and Vietnamese companies have still expanded there and become embroiled in tenure conflict.

Although government effectiveness increased in general terms significantly between 2010 and 2015 (as measured by the World Bank’s Worldwide Governance Indicators¹²), Laos faces a serious shortfall in regulatory capacity for the governance of tenure issues. Institutions in the justice sector remain highly underdeveloped, for example.

¹² “Government effectiveness” covers “perceptions of the quality of public services, the quality of the civil service and the degree of its independence from political pressures, the quality of policy formulation and implementation, and the credibility of the government’s commitment to such policies.” See World Bank, “Worldwide Governance Indicators,” <http://info.worldbank.org/governance/WGI/#home> for more information on methodology in constructing this measure of governance.

The weakness in the administration of justice is demonstrative of the democratic deficit the country faces, with few checks or balances to executive authority. This applies not only to different branches of government, but also to the media, human rights groups, and opposition political parties, all of which are afforded little space for dissent.

Governance is also hampered by corruption, which investors report is a major concern at all levels, and bureaucratic capacity is extremely limited. For example, the average time to process and register a title is three months, and Ministry of Natural Resources and Environment officials admit bribery and corruption are sometimes encountered in the process.

Cambodia

Cambodia is profiled in more detail in Section 3, with reference to our key cases. Cambodia opened its economy ahead of Laos and Myanmar, and it now receives over US\$1.5 billion in foreign direct investment (see figure below).¹³

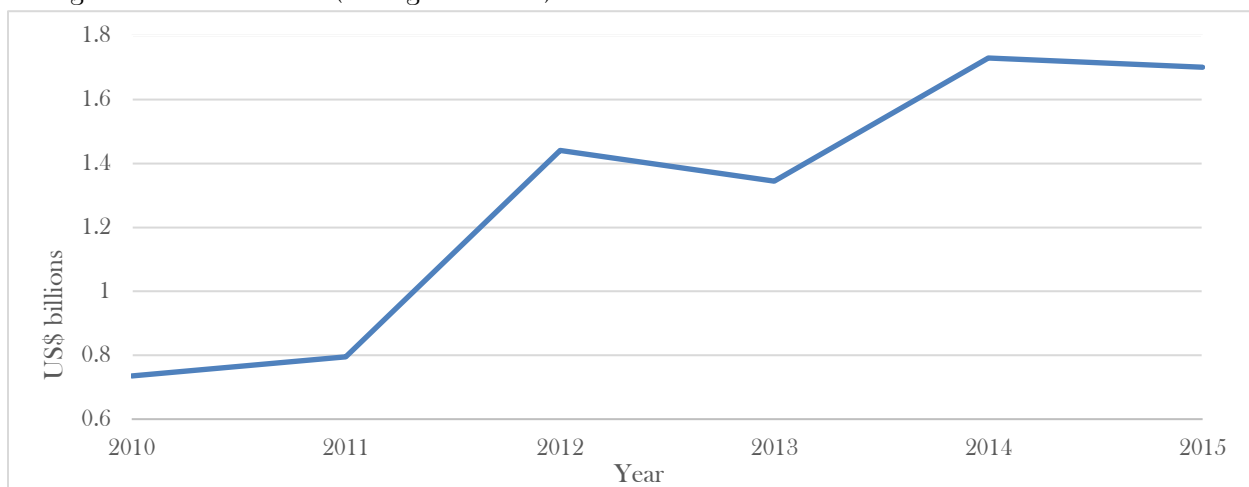


Figure 3. Net inflows of FDI to Cambodia, 2010-2015. Data: World Bank

Patterns now visible in those countries were initially clear in Cambodia too, namely that local and sub-regional investors worked closely with government officials without proper regard for tenure rights to gain access to large concessions. It is therefore possible that Cambodia’s experience with tenure disputes provides indications of what may happen (or is happening) in Laos and Myanmar.

In Cambodia, collusion between companies and the government has led to significant international scrutiny and pressure from international buyers and investors.¹⁴ This has been accompanied by

¹³ Cambodia joined the World Trade Organization in 2004, for example, while Laos joined in 2013. Foreign investment increased in Myanmar from US\$300 million in 2009-2010 to \$US20 billion in 2010-11, with the country’s first foreign investment law in two decades passed in March 2012.

¹⁴ Major advocacy campaigns by Oxfam and ActionAid linking major buyers to the disputes in Cambodia (see, e.g. Oxfam, 2013, “Nothing sweet about it: How sugar fuels land grabs,” <https://www.oxfam.org/sites/www.oxfam.org/files/nothingsweetaboutitmediabrief-embargoed2october2013.pdf> and ActionAid, 2015, “Cambodia: The Bitter Taste of Sugar - Displacement and Dispossession in Oddar Meanchey Province,” <http://www.actionaid.org/cambodia/publications/cambodia-bitter-taste-sugar-displacement-and-dispossession-oddar-meanchey-prov>)

some shifts on the part of the central government and companies making a number of moves toward achieving deals over compensation in 2016 (see pages 12 and 15).¹⁵

However, progress is uneven and potentially fragile: while some communities have been able to make use of legal tools to protect their customary land¹⁶, in many areas of Cambodia the majority of people lack formal land titles.¹⁷ While progress in late 2016 on a new Environmental Code was heralded as a major step in the right direction,¹⁸ a group representing 2,000 farming families boycotted a workshop on the new Agricultural Land Law in December after the Ministry rejected their concerns. Meanwhile, the government maintains a very limited space for dissent, jailing a prominent land rights activist in March 2017 and imposing serious restrictions on opposition parties.¹⁹

Vietnam

Vietnam presents a similarly uneven picture, but the government appears interested in exploring innovative tenure governance programs, with a greater focus on shared or community rights.²⁰ Revisions to the land law (in 2003 and 2013) appear to have been relatively effective, having supported a massive influx of FDI (see figure below) and coinciding with an overall increase in government effectiveness, regulatory quality, and the rule of law.²¹ Forest legislation has also proven

have been accompanied by shareholder action targeting major buyers like PepsiCo (see Oxfam, 2013, “Oxfam files shareholder resolution urging PepsiCo to address land grabs,” <https://www.oxfam.org/en/pressroom/pressreleases/2013-11-22/oxfam-files-shareholder-resolution-urging-pepsico-address-land>) and investors like Australian bank, ANZ (Oxfam, 2016, “Still Banking on Land Grabs: Australia’s Big Four Banks and Land Grabs,” <http://resources.oxfam.org.au/pages/view.php?ref=1734&k=c456e625dc>).

¹⁵ Kuon Narim, “Families Evicted by Sugarcane Farms Appeal in Phnom Penh,” <https://www.cambodiadaily.com/news/families-evicted-by-sugarcane-farms-appeal-in-phnom-penh-114445>, Cambodia Daily (June 22, 2016).

¹⁶ Support from Oxfam and local NGO Indigenous Community Support Organization has aided indigenous communities in filing for land titles. Christ Hufstader, “How a remote village in Cambodia is claiming its rights to its sacred forests,” <https://www.oxfamamerica.org/explore/stories/how-a-remote-village-in-cambodia-is-claiming-its-rights-to-its-sacred-forests>, Oxfam America (April 16, 2015).

¹⁷ In some areas, the figure is over 80%. Mark Grimsditch, Kol Leakhana and Depika Sherchan, 2012, “Access to Land Title in Cambodia - A Study of Systematic Land Registration in Three Cambodian Provinces and the Capital,” The NGO Forum on Cambodia, http://ticambodia.org/library/wp-content/files_mf/1436418166AccesstolandtitleinCambodia.pdf.

¹⁸ Aisha Down, “Cambodia: new code to protect environment, in theory,” <https://www.cambodiadaily.com/news/new-code-protect-environment-theory-120636>, The Cambodia Daily (November 17, 2016).

¹⁹ Lauren Crothers, “Cambodia land rights activist jailed for protest role,” <http://aa.com.tr/en/asia-pacific/cambodia-land-rights-activist-jailed-for-protest-role/756518>, Andalou Agency (February 23, 2017); Leonie Kijewski, “Courts, laws concern UN,” <http://www.phnompenhpost.com/national/courts-laws-concern-un>, The Phnom Penh Post (March 9, 2017).

²⁰ Peter Narh, et. al., 2016, “Land Sector Reforms in Ghana, Kenya and Vietnam: A Comparative Analysis of Their Effectiveness,” *MPDI Land*, 5, 8, www.mdpi.com/2073-445X/5/2/8/pdf.

²¹ Andrew Wells-Dang, Pham Quang Tu and Adam Burke, May 2015, “Agrarian Change and Land Tenure in Vietnam through a political economy lens,” https://www.iss.nl/fileadmin/ASSETS/iss/Research_and_projects/Research_networks/LDPI/CMCP_45-Wells-Dang_et_al.pdf, Land grabbing, conflict and agrarian-environmental transformations: perspectives from East and Southeast Asia.

reasonably effective, with almost 4 million hectares (around 29% of Vietnam’s forest area) now under the management of local peoples, both individuals and collectives.²²

One reason for the relatively small number of major tenure disputes coming out of Vietnam may be that primary industry and agriculture make up a fairly small proportion of FDI in Vietnam. Only 1% of the 2016 FDI was in agriculture (up from 0.4% in 2012). Manufacturing, on the other hand, accounted for 76% of FDI in 2016, with science and technology at 4.9% and the motor industry at 3.5%.

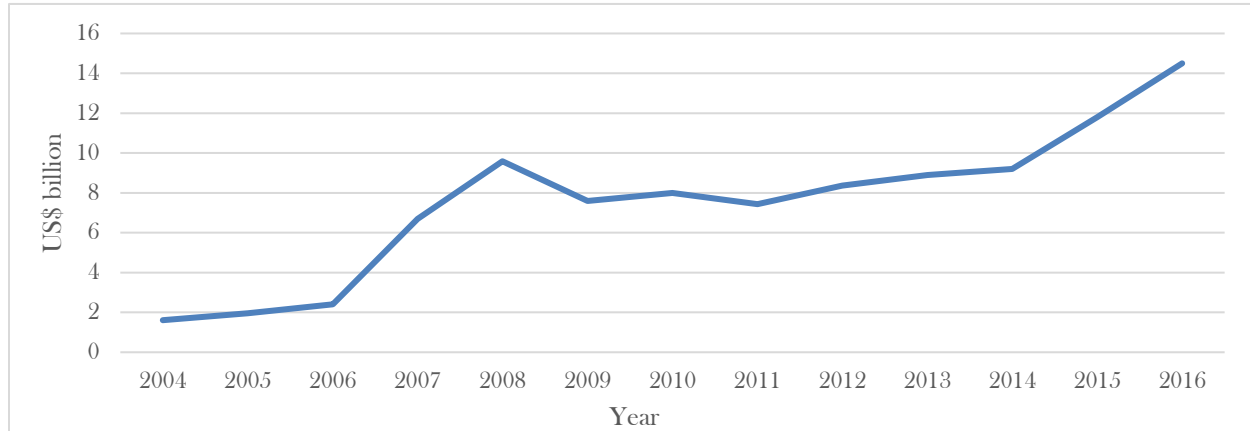


Figure 4. Net Foreign Direct Investment in Vietnam, 2004-2016. Data: World Bank

Enforcement of the laws, however, remains problematic. The ability of the state to appropriate land, and the loose definition of socio-economic development under which it is entitled to do so, have led to many disputes over land rights; this has led to the issue being a major driver of protest in Vietnam.²³

Local courts and dispute resolution mechanisms, meanwhile, remain ineffective. In spite of significant progress in the last five years, the legal system remains ineffective in settling disputes. This is a particular issue for land-related complaints: the National Assembly’s Standing Committee reported that just half of the one million land-related complaints made since 2003 were “correctly, or partially correctly, handled.”²⁴

The state is still in a position to work with companies to abuse the process of granting concessions, but it is noteworthy that the disputes we looked at in Vietnam are relatively old (starting in 2005) and did not involve violence. This trend is also apparent in the original case study database.

²² David Gritten et al., “An Uneven Playing Field: Regulatory Barriers to Communities Making a Living from the Timber from Their Forests—Examples from Cambodia, Nepal and Vietnam” *Forests*, 6, 3433-3451 (2015).

²³ US Department of State, “Vietnam,” <https://www.state.gov/e/eb/rls/othr/ics/2016/eap/254329.htm>.

²⁴ Tuấ Trê 2012, via Burke, Wells-Dang and Tu, “Conversion of Land Use in Vietnam through a Political Economy Lens,” available at: <http://www.opml.co.uk/sites/default/files/Conversion-of-Land-Use-in-Vietnam-through-a-Political-Economy-Lens.pdf>.

Thailand

Thailand has the sub-region’s most mature economy. FDI levels are relatively high for the region, although subject to significant year-on-year variations (as shown by Figure 5 below), largely as a result of political instability.

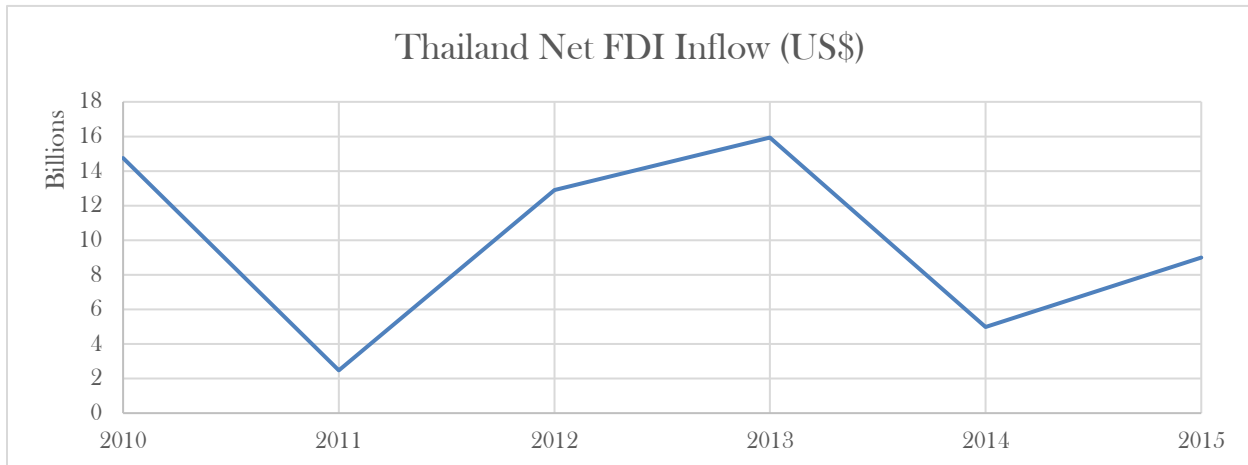


Figure 5. Net Foreign Direct Investment in Thailand, 2010-2015. Data: World Bank.

The two key pieces of legislation concerning resource tenure (the Foreign Business Act and the Thai Land Code) have both been superseded by the interim Constitution and various orders made by the military government, the National Council for Peace and Order (NCPO).

Order No. 17/2015 declared five Special Economic Zones (SEZs) in border regions, resulting in the expropriation of land. One of these expropriations is detailed in our case studies (Case N543).

The NCPO also released a series of orders aimed at reducing deforestation, which accompany a Master Plan to increase forest cover from 32% to 40%. Order No. 64/2014 ordered the arrest of people involved in encroachment of or damage to forest land; Order No. 66.2014 stated that the prime targets of enforcement would be “capitalists or large-scale encroachers.”

These measures were criticized for targeting poor people who claimed and inhabited areas involved before they were declared forest areas, rather than the logging companies—legal and illegal—that were largely responsible for deforestation.²⁵ The involvement of military forces and associated corruption was seen as a major problem with the enforcement of the Orders on deforestation.

²⁵ Puangthong Pawakapan, “Thai Junta Militarizes Management Of Natural Resources - Analysis,” <http://www.eurasiareview.com/18092015-thai-junta-militarizes-management-of-natural-resources-analysis>, Eurasia Review (September 18, 2015).

Finally, the NCPO has continued the problematic process of land reallocation and redistribution, which resulted in two cases of dispute in our study (N530 and N532). In February 2016, the government ordered the allocation of 31,200 hectares to landless poor.²⁶

Disputes in Thailand are longstanding, but the more recent cases are often connected to sectors besides agriculture and mining, like tourism and real estate. There are some examples of local communities succeeding in the courts, including case N536, in which indigenous seafarers won a land claim case regarding a beach property.

However, a series of disappearances and unsolved killings of land activists has been noted by the UN, alongside official intimidation such as the issuance of arrest warrants. Civil society organizations long active in the country that play an important role in supporting sub-regional accountability are also facing a restriction of space by the military regime.

Thai companies typify the expansion of companies from wealthier countries in the region investing in land-based projects in poorer countries. A number of Thai companies are associated with disputes we examined, including two of the sugar cases in Cambodia.

3. Case Study Focus: Sugar in Cambodia

The following section looks in some detail at a series of tenure-related disputes in the Cambodian sugar industry. This analysis is designed to provide insight into the dynamics of tenure dispute and their development. The description and analysis below is complemented by the macro-level quantitative analysis presented in the companion [trends paper](#).

Case study selection and rationale

We focus on three cases of tenure-related dispute in the Cambodian sugar sector. Each will be referred to by the name of the province in which it happened: Koh Kong, Oddar Meanchay, and Kampong Speu (see map below).

These cases are linked principally by the companies involved, all of which are connected to a Cambodian politician, Senator Ly Yong Phat. The cases have also drawn the attention of the European Commission²⁷ (see timeline, page 19).

²⁶ Thai PBS via Mekong Eye, “Government to distribute state land for the landless,” <https://www.mekongeye.com/2016/03/10/government-to-distribute-state-land-for-the-landless> (March 10, 2016).

²⁷ On March 22, 2001, the European Union adopted the Everything But Arms (EBA) scheme that allowed Cambodia, Laos, and Myanmar to export goods, except weapons and ammunition, tariff-free to the EU. Since 2011, the Clean Sugar Campaign has been calling on the EU to investigate land grabs by sugar companies in Cambodia. In December 2014, the EU and Cambodian government reached a deal where the former would pay for consultants to draft conditions for investigating the claims of evicted families from Oddar Meanchey, Koh Kong, and Kampong Speu provinces, leaving the Cambodian government to decide if any investigation would push through. No audits have been carried out since the agreement. The European Parliament has been criticized for not applying human rights safeguards within the EBA.

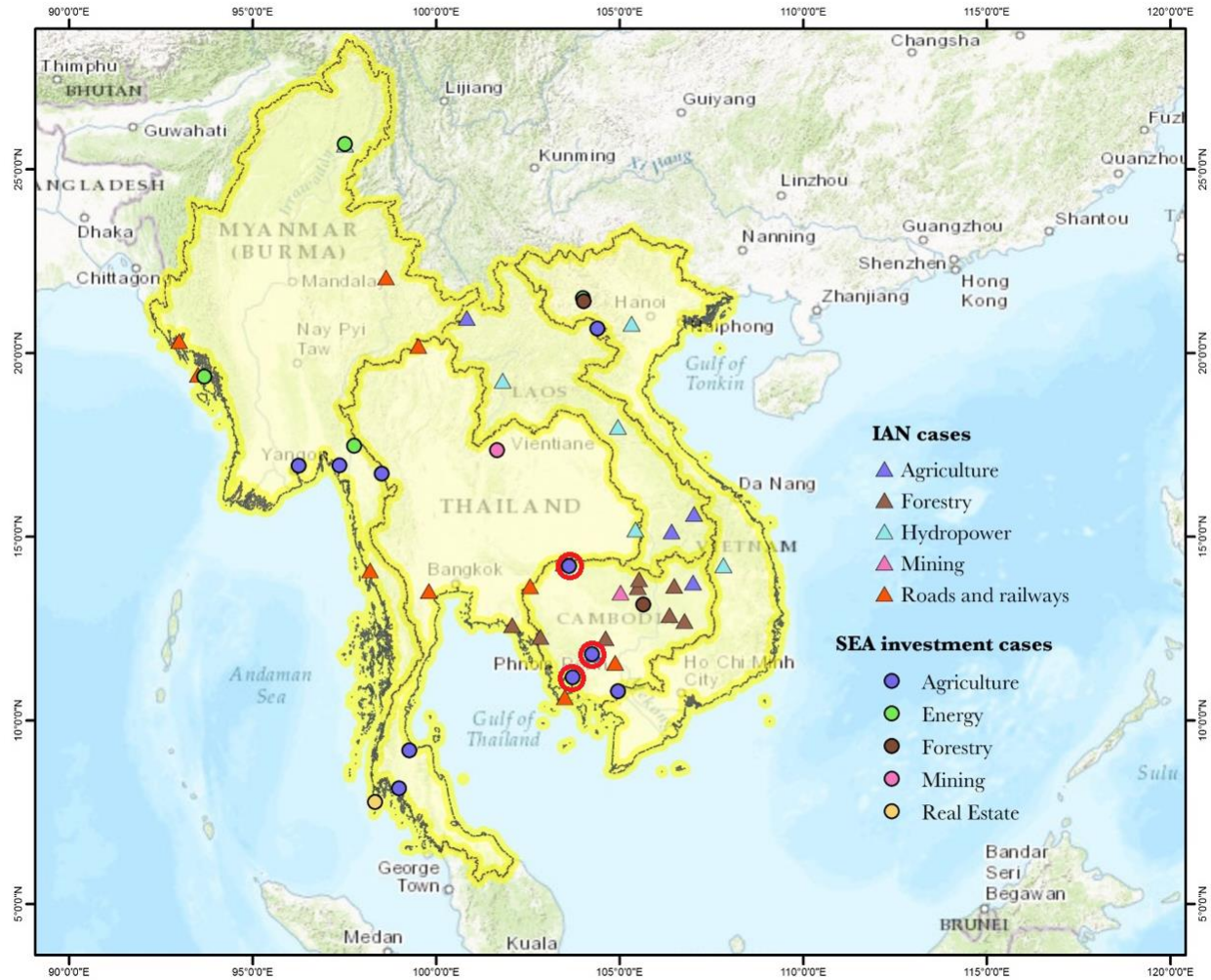


Figure 6. Original IAN and new Continental Southeast Asia Investment cases, with Cambodian sugar cases marked in red.

Like the majority of cases in Continental Southeast Asia, these cases involve agricultural investments and feature violent interactions between local communities and security forces or forces assumed to be working for companies.²⁸ As with many disputes across the sub-region, the primary or secondary driver of opposition in these cases was involuntary physical displacement. The selected cases are particularly striking in this regard. Allegations of forced evictions and a complete lack of consultation are widespread.²⁹

Another feature of many Continental cases which is well represented by the Cambodian conflicts is the financial or operational involvement of foreign companies from within the region. Again, there

²⁸ We are cautious in drawing parallels across the region on the use of the military to maintain social order. While there are certainly similarities between the Cambodian sugar cases and other cases analyzed in this work, notably in the creation of Special Economic Zones in Thailand (case 54328), and in cases in ethnic states in Myanmar (e.g. case 506), it would be misleading to present this as a regional trend.

²⁹ A number of other cases we reviewed included instances where the resettlement or construction process had serious flaws or sparked serious opposition. Examples include disputes related to large-scale hydropower projects in Myanmar and Vietnam.

are caveats to this: for example, China has been the largest investor in Myanmar since the late 1980s, making this quite different to the more recent opening up of the Cambodian economy to international trade partners.³⁰

Yet the expansion of agribusiness companies from Thailand and Vietnam into neighboring countries like Laos and Cambodia differs from these broader regional trends. Rising costs for companies domestically have prompted them to look for cheaper options,³¹ and in the process they have leveraged their political connections. The way these companies interact with host governments without engaging local peoples—the unrecognized counterparty in negotiations—creates conditions for tenure disputes.³²

Overview

For the last decade or so there has been a massive expansion in agricultural production in Cambodia, particularly in sectors like sugar.³³ Especially in the early phases of this expansion, companies owned or associated with Cambodian politicians were heavily involved. In the examples profiled below, the politician involved is ruling Cambodian People’s Party (CPP) Senator Ly Yong Phat. He allegedly funded the army through donations and used his influence to gain lucrative concessions, initially in his home province of Koh Kong, where he was elected Senator in 2006, the same year the first featured conflict began.³⁴

This kind of high-level political backing has made it hard for local peoples and their representatives to oppose projects and protect their tenure rights. Nonetheless, many disputes have been long-running (averaging around 10 years) and all cases remain unresolved. In some instances, these disputes ultimately led to activists being murdered and local interests becoming part of national discussions.³⁵

³⁰ Marcus Colchester, et. al., August 2013, “Agribusiness and Large-scale Land Acquisitions and Human Rights in Southeast Asia,” <http://www.forestpeoples.org/sites/fpp/files/publication/2013/08/1sla-studies.pdf>, Forest Peoples Programme.

³¹ Achara Pongvutitham, “Thai Hua to expand rubber plantations in Indochina,” <http://www.nationmultimedia.com/news/business/corporate/30184826>, The Nation (June 25, 2010).

³² According to Meghan MacInnes of Global Witness in 2013, “We’ve known for some time that corrupt politicians in Cambodia and Laos are orchestrating the land-grabbing crisis that is doing so much damage in the region.” Reuters, “Vietnam rubber firms illegally take land in Cambodia, Laos, group says,” <http://www.reuters.com/article/vietnam-rubber-land-idUSL3N0DQ2T520130513>, Reuters (May 13, 2013).

³³ From ‘negligible’ amounts in 2006 to over 100,000 hectares by 2012. Equitable Cambodia and Inclusive Development International, “Bittersweet Harvest - A Human Rights Impact Assessment of the European Union’s Everything But Arms Initiative in Cambodia,” 2013, http://www.inclusivedevelopment.net/wp-content/uploads/2013/10/Bittersweet_Harvest_web-version.pdf.

³⁴ Prior to his election as Senator, Ly Yong Phat was President of the LYP Group of Companies in 1992 and 1999. In 2000, he was appointed as Government Delegate to Koh Kong Province’s development and Special Economic Adviser to Prime Minister Hun Sen. He is also currently President of Phnom Penh Sugar Company. LYP Group, “President Profile,” <http://www.lypgroup.com/president-profile.php>.

³⁵ On April 26, 2012, activist Chut Wutty of the Natural Resource Protection Group (NRPG) was murdered by a military officer while accompanying journalists investigating Timbergreen, a Chinese logging company operating in Koh Kong, Ly Yong Phat’s home province. In October, the murder charge was dropped by the court because the supposed suspect was killed. In 2016, the

Due to their notoriety, disputes in the Cambodian sugar sector have increasingly attracted scrutiny from both international civil society organizations like Oxfam and Global Witness, as well as reputationally-exposed actors downstream in the supply chain, like Coca-Cola and PepsiCo. This has played a role in the growing commitment of these companies to “zero land grabbing” policies.

Due to pressure from downstream players as well as the financial impacts of project delays (see below for more detail), the Cambodian government and the local companies involved increasingly have an incentive to resolve disputes. The solutions have involved returning land to dispossessed communities and/or providing other forms of compensation. In Oddar Meanchay, the company withdrew from the concession entirely and engaged an independent assessor to allocate compensation. In the other cases compensation and land repossession has been more piecemeal.

While compensation or the return of land is often a welcome advance, it still remains insufficient in the eyes of many of those affected, and the NGOs representing them. As such, the disputes continue, which underlines just how hard it is for companies to extricate themselves from tenure-related conflicts once they have begun.

Certification bodies like Bonsucro—the leading global platform for sustainable sugarcane³⁶ that includes companies and CSOs—have been instrumental in moving this dispute from deadlock to a process of constructive negotiation. Bonsucro has had an impact because it has a level of independence from sugarcane producers, like Mitr Phol and Tate & Lyle, but is able to leverage the support of downstream supply chain actors. Companies like Mitr Phol are, as a result, sensitive to being suspended from Bonsucro, which contributes to a business case for tenure diligence.

Mitr Phol resigned from Bonsucro in 2012, after Bridges Across Borders Cambodia and the Cambodian League for the Promotion and Defence of Human Rights (LICADHO) filed a complaint with Bonsucro in 2011.³⁷ English sugar company Tate & Lyle was suspended by Bonsucro in 2013 for refusing to address complaints against them by residents of Koh Kong.³⁸

Cambodian government banned a documentary about Chut Wutty, but millions were able to view it online. Global Witness, “Cambodian Courts Drop Case of Murdered Environmental Activist Chut Wutty,” <https://www.globalwitness.org/en/archive/cambodian-courts-drop-case-murdered-environmental-activist-chut-wutty>, Global Witness (October 4, 2012); The Economist Intelligence Unit, “An environmental campaigner is killed,” http://country.eiu.com/article.aspx?articleid=1159071500&Country=Cambodia&topic=Politics&subtopic_5, The Economist (June 1, 2012); John Vidal, “Cambodia bans film about murdered rainforest activist,” <https://www.theguardian.com/environment/2016/apr/21/cambodia-bans-film-about-murdered-rainforest-activist-chut-wutty>, The Guardian (April 21, 2016).

³⁶ Bonsucro, <https://www.bonsucro.com/en>.

³⁷ Eang Vuthy, David Pred, Naly Pilorge, “Letter to Bonsucro Complaints Manager,” <http://www.inclusivedevelopment.net/wp-content/uploads/2016/02/Amended-Complaint-to-Bonsucro-re-Mitr-Phol-Group-05-February-2016.pdf> (February 5, 2016).

³⁸ Business & Human Rights Resource Centre, “Koh Kong sugar plantation lawsuits (re Cambodia),” <https://business-humanrights.org/en/koh-kong-sugar-plantation-lawsuits-re-cambodia>.

Mitr Phol in particular has since worked to improve its performance on tenure issues, showing that these disputes can compel companies to change their approach to local engagement.³⁹ Their receipt of the 2015 Bonsucro Award for Sustainability is a testament to the company’s efforts to address their performance on tenure.⁴⁰ However, insecure tenure continues to create risks for the sugar sector in Cambodia and none of these disputes has been clearly resolved. These companies still need to do more to make local peoples a genuine counterparty in land deals.

Timelines

The table below presents a simplified version of the sequence of key events in the three cases we examined. It is followed by a narrative description of some of the key features of each case.

Providing this timeline offers a picture of how the disputes developed while also giving a sense of which events had serious repercussions. The cases in question are highly controversial and have been reviewed in numerous reports.⁴¹ As with many cases of protracted dispute, getting a fair and accurate portrayal of events can be difficult. By providing a simple statement of facts, we hope to provide the basis for a balanced assessment.

Year	Koh Kong	Oddar Meanchay	Kampong Speu
2006	April: Koh Kong Plantation Company (KKPC) and Koh Kong Sugar Industry (KCSI) request Ministry of Agriculture, Fisheries and Forestry (MAFF) to conduct study of land in Sre Ambel District.		
	May: Clearance of crops in Sre Ambel, with clearance workers accompanied by military and police.		
	August: Concessions awarded to KKPC and KCSI.		
	September: Asian Human Rights Commission publishes report detailing evictions.		

³⁹ This included withdrawing entirely from the Cambodian concessions, and engaging an independent company to settle outstanding claims.

⁴⁰ Petchanet Pratuangkrai, “Mitr Phol committed to embracing modern farming methods,” <http://www.nationmultimedia.com/news/business/corporate/30303685>, The Nation (January 9, 2017).

⁴¹ Oxfam, “In Cambodia, still fighting for the land they lost,” Oxfam International, <https://www.oxfam.org/en/countries/cambodia/cambodia-still-fighting-land-they-lost>; Inclusive Development International, “Cambodia: Sugar Cane Land Grabs,” <http://www.inclusivedevelopment.net/campaign/cambodia-sugarcane-land-grabs>; Environmental Justice Atlas, 2017, “Blood sugar’ land grab by Phnom Penh Sugar Company, Kampong Speu, Cambodia,” <https://ejatlas.org/conflict/blood-sugar-land-grab-by-phnom-penh-sugar-company-kampong-speu-cambodia>.

	December: Land activist An In murdered.		
2007	Disclosure of Ly Yong Phat's interests in Koh Kong companies.	October: MAFF approves three sugar concessions.	
2008		Concessions finalized.	
		Evictions and land clearance begin, with clearance workers accompanied by military forces.	
2009	Tate & Lyle enter into 5-year contract for sugar off-take.	Evictions and land clearance continue.	
		October: Complainant against company arrested and jailed for "offending forestry laws."	
2010	Li Yong Phat sells shares in Koh Kong companies.		February: Phnom Penh Sugar Company (PPSC) & Kampong Speu Sugar Company (KSSC) (owned by Ly Yong Phat and his wife) granted concessions.
	January: KSL opens sugar factory in Sre Ambel.	June: Complainant released after agreeing to sign papers stating the withdrawal of her land claims.	February: Bulldozers accompanied by troops from the Royal Cambodian Armed Forces arrive in Omlaing.
		Thai National Human Rights Commission (NHRC-T) launches investigation into labor rights violations.	March: Company offers \$200 per hectare of seized rice land or "air."
		Some villagers report receiving compensation of 10-30% of their original holdings.	March: Protests and destruction of company property.
			March: NGO condemnation of judicial tactics used against community leaders.
			August: Residents block National Road 52; company files a case against three demonstrators.
		November: Site assessment ordered by ANZ bank.	
2011		January: Two Cambodian NGOs file complaint against Mitr Phol with Bonsucro.	March: Additional 4,700 hectares of Protected Area

			allocated as extension of KSSC area by Prime Minister.
			Operations at plantations begin. ANZ bank begins part-financing the plantation.
2012	September: Provincial Court judge rules that the court does not have the power to hear the case, and transfers it to the Cadastral Commission.	Mitr Phol resigns from Bonsucro.	June: Public debate in which Deputy Provincial Governor announces that officials are working to solve the dispute.
	October: Case filed with OECD United States National Contact Point.		October: NGO conducts interviews at relocation sites. December: Processing factory opened.
2013	March: Complaint filed against Tate & Lyle in the UK.	May: Equitable Cambodia files petition against Mitr Phol subsidiaries with the NHRC-T.	Child labor discovered at plantations by Phnom Penh Post; company blames it on sub-contractors.
	July: Bonsucro suspends Tate & Lyle.		
	October: Oxfam releases report linking PepsiCo, Coca-Cola, and ABF to Sre Ambel conflicts.		
	November: Oxfam and others issue PepsiCo shareholder resolution to investigate land rights violations.	November: Coca-Cola announces audit of its suppliers.	December: Several residents receive court summons and arrest warrants for encroaching on the plantation.
2014	June: Tate & Lyle resigns from Bonsucro.	August: Ly Yong Phat denies connections to sugar plantations.	July: ANZ severs ties with PPSC.
	Families involved in lawsuit refuse to settle, court date set for October 2014.		October: Cambodian NGOs file complaint with OECD Australian National Contact Point.
	December: European Commission hires resettlement experts to investigate claims, finding that 2,500 families were evicted for sugar plantations across the three provinces.		
2015		10 May: ActionAid and Oxfam release report on abuses at plantations.	
		10 May: Mitr Phol withdraws from Oddar Meanchay plantations.	

		12 May: Mitr Phol agrees to compensate displaced farmers, and engages Swiss company to conduct an assessment and distribute compensation.	
	June: NHRC-T releases report recognizing human rights violations.	Mitr Phol successfully reapplies to Bonsucro.	
		July: Mitr Phol notifies Cambodian government that it has left the concession areas.	
2016	January - August: Demonstrations deliver petitions to commune halls, district governors, National Assembly, government ministries, and the European Union.	February: Cambodian NGOs file a supplementary complaint against Mitr Phol with Bonsucro.	February: Oxfam Australia releases report saying ANZ still has obligations to affected people.
	August: Ministry of Land Management forms Working Group to settle claims.	June: Joint petitions delivered to National Assembly, Ministries, and National Assembly's Human Rights Commission.	May: 200 families strike deal for \$500 each.
			11 August: Residents and PPSC announce agreement for \$500 - \$5,000 each for 313 families.
			15 August: Petition on behalf of 300 families demanding compensation delivered to Ministry of Land Management.
			6 October: 100 villagers rally, protesting 539 unresolved claims.
2017	January: Working Group offers 200 affected families 1.5 hectares compensation; the offer is rejected.		
	February: Attempt to protest at the home of the Prime Minister is disrupted by security forces.		February: Affected families call on ANZ to provide compensation, with Oxfam sponsoring four farmers to lobby ANZ institutional investors in Melbourne.

Case Study Narrative

Major disputes in the sugar sector first began in 2006. In August 2006, the Ministry of Agriculture, Forestry and Fisheries (MAFF) awarded two concessions in Koh Kong province to two new companies. These companies were formed from a partnership between KSL Group of Thailand, Ve Wong Corporation of Taiwan, and the newly elected Senator Ly Yong Phat.

Earlier that year, the MAFF led an inter-ministerial working group which conducted a study of the proposed concession area at the request of the companies. The study found that the land requested overlapped various protected areas, concession lands, and the land of local peoples.⁴² Nevertheless, land clearance and forced evictions followed.

Affected communities appealed to civil society organizations and pursued cases in court, with the Asian Human Rights Commission reporting in September on forced evictions⁴³ and complaints filed in the Koh Kong Provincial Court in February 2007. This resulted in little apparent progress in resolving the dispute over the following three years.

Direct action was also pursued to little avail. After a road was blocked, the Secretary of State of the Ministry of the Interior instructed local authorities and company representatives to cease clearing community lands and cooperate in resolving the dispute; he was reportedly ignored.⁴⁴

Apparently recognizing the relative power of the companies and local authorities in the area, the Secretary suggested in March 2008 that each family accept two hectares of land as compensation. This offer was repeated as the basis for negotiations in January 2017. Legal channels proved equally fruitless: the Koh Kong Provincial Court effectively took no action for over five years, finally ruling in 2012 that it did not have the power to hear land disputes and referring the case to the Cadastral Commission.⁴⁵

The patterns driving the disputes in the other two cases are very similar, beginning with forced evictions aided by military personnel or military police that occurred almost immediately after large concessions had been granted to two or three companies.⁴⁶ The initial response of local

⁴² This study was either ignored, or the concession areas were altered to include areas that also had local peoples living in them. Between May and September, land clearance and forced evictions continued, with reports that clearance had affected over 400 families in Sre Ambel district. Equitable Cambodia and Inclusive Development International, “Bittersweet Harvest.”

⁴³ Asian Human Rights Commission, “CAMBODIA: Two villagers shot and several injured during the illegal forced eviction in Koh Kong,” <http://www.humanrights.asia/news/urgent-appeals/UA-321-2006>, Asian Human Rights Commission (September 28, 2006).

⁴⁴ Equitable Cambodia and Inclusive Development International, “Bittersweet Harvest.”

⁴⁵ Business & Human Rights Resource Centre, “Koh Kong sugar plantation law suits (re Cambodia),” <https://business-humanrights.org/en/koh-kong-sugar-plantation-lawsuits-re-cambodia>.

⁴⁶ Evictions and land clearance began in 2008 in Oddar Meanchay and in 2010 in Kampong Speu. In Koh Kong, villagers in Chi Kor Leu commune were reportedly attacked by clearance workers, accompanied by military and police forces, on May 19, 2006. See Equitable Cambodia and Inclusive Development International, 2013, “Bittersweet Harvest,” http://www.inclusivedevelopment.net/wp-content/uploads/2013/10/Bittersweet_Harvest_web-version.pdf.

government or the companies in all three cases was to ignore or intimidate aggrieved communities. One activist, An In, was murdered in December 2006 in relation to the Koh Kong case, and a complainant was arrested and jailed in October 2009 in relation to the Oddar Meanchay case.

Compensation was offered more quickly as companies and authorities realized that direct action and exposure in the press were likely. By the time of the land clearance in Kampong Speu in 2010, company representatives offered some displaced people compensation within a month of the forced relocations. However, these offers were not acceptable to residents, and company representatives reportedly refused to meet with them. Further attempts to offer alternative land were rejected by either residents or the government, and in August three demonstrators were the target of a lawsuit from a company employee.¹⁷

Roadblocks and legal action or complaints on the part of the communities had little success. Over time, a succession of NGOs picked up the cases. Initially, most of the organizations involved were domestic, and appear to have exerted little influence on operations. Subsequent involvement of the Thai National Human Rights Commission appears to have precipitated the interest of larger international organizations, as well as putting pressure on the Thai companies involved in the cases.

International campaigns run by prominent NGOs like Oxfam and ActionAid had significant impacts on buyers and investors like Coca-Cola (who bought from Mitr Phol) and ANZ Bank (who funded PPSC). These were effective in driving investor withdrawal (e.g. ANZ severing ties with PPSC), buyer-influenced withdrawal (e.g. Coca-Cola's audit of its suppliers which precipitated Mitr Phol's withdrawal from plantations), and action from industry bodies like Bonsucro.

It is also significant that Bonsucro was insistent on non-compliant companies resigning (as in the case of Mitr Pohl) or being suspended (as in the case of Tate & Lyle). This pressure filtered down to the local operating companies who subsequently attempted to strike deals for compensation, with apparently greater success. However, these disputes remain ongoing and it is unclear whether companies have been acting strategically to limit reputational damage, or have genuinely recognized the value of responsible action.

Local peoples often found the initial compensation packages to be unfair and inadequate. For example, residents in the Oddar Meanchay case were offered 10-30% of their original holdings, in kind, in 2010. Residents also report being told that if they did not accept the offers, they would

¹⁷ May Titthara, "Road blocked over dispute," The Phnom Penh Post, <http://www.phnompenhpost.com/national/road-blocked-over-dispute> (August 24, 2010).

receive nothing.⁴⁸ Similarly, the first settlement offer in the Koh Kong case was in 2008, two years after the evictions, for two hectares per family with no other compensation.⁴⁹

Aggrieved communities appear to have taken confidence from the international attention and held increasingly public demonstrations, while the same attention pushed the Cambodian companies to make more acceptable offers. In 2016, a series of demonstrations were held to deliver petitions to successively higher levels of government, resulting in a Ministerial Working Group being established to look into the Koh Kong cases.

In Oddar Meanchay, residents have begun to return to the land vacated by Mitr Phol, who agreed to compensate displaced farmers. For those displaced by the Koh Kong and Kampong Speu plantations, a satisfactory resolution looks much less certain. In spite of a settlement with 313 families in August 2016, 539 claims from Kampong Speu residents were reported as unresolved by October that year. In January 2017, the Ministerial Working Group offered 200 families from Koh Kong 1.5 hectares—less than the two hectares offered in 2008. The offer was rejected, and a further demonstration was held in February, suggesting that progress with the compensation negotiations is slow.

These conflicts had significant effects on companies' profits. In Kampong Speu, an estimated US\$240,000 per day of potential refined sugar sales was impacted by roadblocks.⁵⁰ At least four roadblocks, some lasting several days, occurred between February 2010 and September 2013.⁵¹

The plantation also lost a potential of US\$2.1-2.6 million/year in income when the government gave back 1,050 hectares of the original concession to local peoples in 2010.⁵² Mitr Phol experienced a larger setback when they were forced to abandon their 19,736 hectare concession

⁴⁸ This is documented on successive occasions in the Kampong Speu case. Equitable Cambodia and Inclusive Development International, "Bittersweet Harvest"; Khuon Narim, "Families evicted by sugarcane farms appeal in Phnom Penh," <https://www.cambodiadaily.com/news/families-evicted-by-sugarcane-farms-appeal-in-phnom-penh-114445>, Cambodia Daily (June 22, 2016).

⁴⁹ Equitable Cambodia and Inclusive Development International, 2013, "Bittersweet Harvest" http://www.inclusivedevelopment.net/wp-content/uploads/2013/10/Bittersweet_Harvest_web-version.pdf.

⁵⁰ These estimates come from a relatively crude calculation of the capacity of the mill combined with global sugar prices. The Kampong Speu complex can crush 6,000 tons of sugar cane per day, and refine 600 tons of raw sugar per day (Phnom Penh Sugar, "About Us," <http://phnompenhsugar.com/about-us.html>); Average world price for raw sugar in 2009 (when Tate and Lyle signed their offtake agreement) was around US\$400 per ton, but prices for refined sugar varied from \$500 to US\$800 per ton from July 2009 to December 2010 (<http://w2.zuckertechniker.de/uploads/media/2011-90-100.pdf>).

⁵¹ Four roadblocks were reported by August 2010 (May Titthara, "Road blocked over dispute," <http://www.phnompenhpost.com/national/road-blocked-over-dispute>, Phnom Penh Post (August 24, 2010); Later reports cited what appear to be additional roadblocks between 2010 and 2013 (Thin Lei Win, "EU under fire for policy linked to land grabbing in Cambodia," <http://news.trust.org/item/20130917055110-wdiuy>, Thomson Reuters Foundation (September 17, 2013).

⁵² Sugar earnings per hectare in Cambodia are estimated at US\$2,000-2,500. May Kunmakara, "The Sweet and Sour Side of the Sugar Industry," <http://www.khmertimeskh.com/news/27316/the-sweet-and-sour-side-of-the-sugar-industry>, Khmer Times (July 18, 2016).

after only planting 220 hectares of it. Assuming a land clearance cost of US\$74/hectare, unrecoverable expenses amounted to US\$1.4 million.⁵³

These financial impacts demonstrate that companies and investors face major risks when they disregard tenure issues in the development of new agricultural concessions. The materially significant costs indicated here are highly likely to be in addition to other impacts which are harder to calculate: lost business from reputational impacts, opportunity costs, and the costs of responding to court cases and other regulatory action.

⁵³ Dararath, Y., et al, September 2011, "Rubber Plantation Development in Cambodia: At What Cost?" http://cepseapartners.org/pdfs/pdf3/Rubber_Report-Cambodia-Yem_Dararath-et-al-Technical-Report.pdf.

4. Recommendations for Companies and Investors

The following recommendations consider how companies and investors can improve their local impact on tenure governance as well as the wider policy environment, before considering how to improve private sector reputations and overall financial performance in the Continental Southeast Asian sub-region.

- Companies and investors need to apply high levels of diligence when evaluating agribusiness projects. The agribusiness sector is at the root of many recent tenure disputes in the sub-region. Investors should be particularly wary of information and guarantees provided by the host government. Even the involvement of senior politicians is no protection against controversy and financial loss. Particular caution is advised to investors in cases where there is pressure to involve the military or security services; this seems to be a reliable way to entrench dispute and elevate the risk of violence.
- Companies and investors should conduct proper due diligence on their entire supply chains, even and especially where traceability challenges are high, as in the sugar sector. Even if a purchasing company has no formal relationship with its producers, it can still be exposed to tenure-related problems involving its supply base. Fortunately, there are now more opportunities to partner with well-organized cooperative and ethically-oriented local companies.
- Local relationships with companies, CSOs, cooperatives, and experts can provide valuable intelligence and assist with local engagement, including the vital process of claims mapping. These partners can help to establish effective consultation, dispute resolution, and participatory monitoring systems that ultimately save money, as well as improve local relationships. As such these partners and practices can help prevent tenure conflicts and facilitate positive stories to enhance reputations.
- Companies and investors should strongly consider involvement with the regional and international frameworks designed to improve tenure governance and the role of the private sector in it. The Mekong Regional Land Governance Project, implemented by GRET LAND Equity and involving many companies and CSOs from the sub-region, is a leading example of such a local effort. At the international level, the Interlaken Group (a network of leaders from influential private, governmental, and non-profit organizations focused on expanding and leveraging private sector action to secure community land rights) can provide a pre-competitive space for companies and investors to address tenure issues.

Crucially, these initiatives can help direct the significant influence that companies and investors collectively wield over governments in the region and therefore the policy environment around tenure. They provide a safe space for different groups to discuss policy issues, but they also allow potentially conflicting groups to find solutions to chronic project-level problems.

- Companies and investors can manage tenure risk effectively by treating local peoples as the key counterparty in land deals. The government may be the signatory to the concession agreement and is often an integral part of a deal. But the cases examined in this paper indicate that governments cannot be relied on to uphold standards or provide an accurate picture of ground-level realities. It is ultimately local peoples who can grant the license to operate without the risk of serious disruption or rapidly escalating reputational damage.

Appendix I: Methodology

This paper looks at 30 recent cases of tenure dispute in Continental Southeast Asia, identified as part of a research project which analyzed 51 tenure disputes in the wider region. These were drawn from a diversity of sectors, including agriculture, mining, hydropower, and forestry. We determined key trends in the region by comparing these cases with a set of 237 global cases from the IAN Case Study Database.

The methodology for this analysis followed a four-step process designed to produce a large but robust sample of cases for comparative purposes as well as a handful of key cases for in-depth investigation. These four steps involved: compiling a long-list, cutting this down to a short-list, filling out key details, and executing comparative analysis.

1) Creating a long-list

As a first step, we scoured a variety of sources—including academic papers, conflict databases, news reports, and CSO studies—to find as many cases as we could. In addition, we asked participants in the consultation process to identify any cases they thought should be included.

These cases were compared with the IAN database to avoid duplication. We also applied criteria to ensure that this body of cases was recent and relatively diverse. We concentrated on disputes that were less than 10 years old or which had reignited recently. We did not set a quota for the search or for the number of cases that should come from any country or sector. However, we did try to find at least one case from each national context.

Our long-list of cases eventually came to about 50 examples that were not included in the IAN database. A large proportion of these cases were suitable for further analysis.

2) Reducing to a short-list

The first task in this step was to ensure that none of the cases we had were too old and that all of them related to a tenure dispute between private actors and local peoples. We also excluded some urban tenure disputes with very different dynamics to the sectors examined in this paper.

The next, much more complicated task was establishing whether sufficient and reliable data was available to enable the analysis that would be executed in Step 4. Where data was meagre or where it conflicted to a degree that made it very difficult to construct a consistent narrative, the case was omitted. This was by far the most common reason for removing cases from our short-list.

This process of vetting is a necessary condition of meaningful and reliable analysis. However, we do note some practical implications of this approach. First, the most recent cases often have to be excluded as the existing information is inadequate; second, we are seeing what is reported rather than what is happening; third, the large number of disputes involving the government or state-owned companies are not included.

3) Second pass investigation

With a complete list of cases, we initiated the process of identifying their key characteristics. This followed the same analytical process used to create the IAN case study database. A team of three researchers worked independently and then cross-verified results at the end of the process. These results were then verified by a fourth senior researcher.

In addition, for each of the cases we created a geospatial profile using the IAN Risk database. These profiles were based on average social and environmental indicator values for a 50 kilometer area around the conflict site. Indicators include: land use type; soil quality; water stress and variability; exposure to climate change; population density; poverty and social welfare; access to basic services (food, water, energy); and instances of social conflict.⁵⁴

4) Final Trends Analysis

The final step simply involved comparing the results of Step 3 at different levels. We compared Continental and Maritime Southeast Asia, and compared the regional results with the averages for other regions that figure in the IAN Case Study Database. This did not involve any complex statistical processes and was a straightforward like-for-like exercise.

The results of the trend analysis are available in a companion report to this paper, available [here](#).

⁵⁴ More information can be found about these indicators and the data used for them here: [IAN Technical Note](#)

Appendix II: Expert Consultation

Name	Institution	Areas of Interest
Chloe Christman	Oxfam	Disputes in Cambodian sugar
Marus Colchester	FPP	Indigenous Peoples, forests and tenure in Continental Southeast Asia
Kam Nawat	CP	Purchaser models, Thailand
Malcolm Childress	Land Alliance	Land governance and customary tenure in Southeast Asia
Suisue Mark	Independent	Land governance and investment in Myanmar
Kevin Ogorzalek	Bonsucro	Dispute resolution in the sugar sector
Natasha Schwarzbach	PepsiCo	Agribusiness investment in Continental Southeast Asia
Kate Rickersey	Land Equity	Tenure issues in the Mekong region
Song Saran	Amru Rice	Agribusiness in Cambodia
Thomas Thomas	ASEAN CSR	CSR in Southeast Asia

Appendix III: Case Study Data Summary

A complete set of the cases analyzed in this paper can be accessed using the link below:

<https://docs.google.com/spreadsheets/d/1xAzrVKJRB4ibAxV4Qb7O7hF4McZIKKmMdwNfUeJrKk/edit?usp=sharing>