

Foreign Direct Investment (FDI) in Land in Cambodia

Imprint

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Content

Abbreviations	5
1. Summary	6
2. Introduction	8
3. Country Profile	9
3.1 Geography	9
3.2 Population and social issues	9
3.3 Economy	9
3.4 Climate	9
3.5 The Agriculture Sector	10
3.6 Distribution of land resources	11
4. Tenure System	12
4.1 History of the Land Tenure System	12
4.2 Access to Land and Land Distribution	12
4.3 Quantitative and Qualitative Characterisation of Land Resources	14
4.4 Land Market in Cambodia	14
5. Legal Framework Related to Land Investments and Institutions	16
5.1 Investment Law	16
5.2 Special Economic Zone (SEZ)	16
5.3 Laws Concerning Land	17
5.4 Interaction with Other Laws	19
5.5 Institutions	20
5.6 Conclusion	20
6. Foreign Direct Investments (FDI) in Land	22
6.1 Characterisation of FDI in Land	22
6.2 Case Study: Dong Nai Kratie Aphivath Caoutchouc Co., Ltd	27
6.3 Examples of conflicts	28
7. Driving Factors for FDI	29
7.1 From the investors point of view	29
7.2 From the recipients point of view	30
8. Opportunities and Risks of FDI in Land in Terms of Sustainable Development in Cambodia	31
8.1 Economic Opportunities and Risks in General	31
8.2 Opportunity and Risks at a macro-economic level	32
8.3 Opportunities and Risks at micro level	32
8.4 Risks on the Environment	35
8.5 Risks and Opportunities for Food security	36
9. Links between FDI in land and concepts/support strategies of development cooperation to promote rural development	38
9.1 Role of development aid	38
9.2 Conclusions and recommendations	38
Bibliography	42

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List of tables

Table 1: Land use in Cambodia, 2007

Table 2: FDI in Land in Cambodia, overview (Dec. 2006)

Table 3: FDI in Cambodia (Dec. 2006)

Abbreviations

ADB	–	Asian Development Bank	MLMUPC	–	Ministry of Land Management, Urban Planning and Construction
BMZ	–	Federal Ministry for Economic Cooperation and Development	MoE	–	Ministry of Environment
CDC	–	Council for the Development of Cambodia	MoI	–	Ministry of Interior
CERD	–	Convention of the Elimination of Racial Discrimination	NGO	–	Non-Government Organisation
CMDG	–	Cambodia Millennium Development Goal	NPRS	–	National Poverty Reduction Strategy
CRDB	–	Cambodian Rehabilitation and Development Board	NSDP	–	National Strategic Development Plan
ELC	–	Economic Land Concession	NTFP	–	Non-Timber Forest Products
FDI	–	Foreign Direct Investment	OHCHR	–	The Office of the United Nations High Commissioner for Human Rights
GCC	–	Gulf Cooperation Council	PPP	–	Purchasing Power Parity
GDP	–	Gross Domestic Product	RGC	–	Royal Government of Cambodia
LDC	–	Least Developed Country	SEIA	–	Social and Economic Impact Assessment
MAFF	–	Ministry of Agriculture, Forestry and Fisheries	SEZ	–	Special Economic Zone
MEF	–	Ministry of Economy and Finance	SLC	–	Social Land Concession
MIME	–	Ministry of Industry, Mines and Energy	SOE	–	State Owned Enterprises
			WWF	–	World Wide Fund for Nature

1. Summary

- The South East Asian country Cambodia has an area of 181,035 km², sharing its 2,438 km land border with Thailand, Lao PDR and Vietnam. The country's central plain, which comprises 75 % of the total land area, is 10 to 30 meters above sea level. The plains area is drained by the Mekong River and Tonle Sap Lake/River.
- 13.4 million people live in Cambodia with an annual growth rate of 1.8%. On average, 76 people live per km², but population density differs widely: In the highlands density falls to 8 people per km².
- Cambodia is still a poor country belonging to the group of LDCs. Though the economy grew quite fast during the last several years with growth rates of GDP in 2007 of 10.2% and in 2008, despite the beginning crisis still 6.7%. Nevertheless, GDP per capita is still low with USD 739 (MoEF). More than 68 % of the population live on less than USD 2 per day (in 2004) with 26% suffering from daily hunger (ADB 2009).
- Climate conditions are generally good for agriculture. Cambodia has two distinct rainy seasons with a rainfall period from June to October. This coincides with the peak of the high-water levels of the Mekong River where agricultural production is strongly related to. Besides, the period of heavy rainfall is often interrupted by the so-called "small dry season", some weeks of less or no rainfall in June/July which is critical for rice cultivation.
- Over 60% of the population make their living with agriculture, though the primary sector is contributing only 30% to total GDP (ADB 2009). The most important staple food is rice, growing on 2.615 million ha with on average yields of 2.76 tons/ha. During the 2008/09 season a surplus in rice production of 2.0 million tons could be achieved which was designated for export, i.e. Cambodia is generally self-sufficient in food.
- The Government of Cambodia is adapting its activities to attract Foreign Direct Investment (FDI) which has led to a steady increase of FDI in Cambodia, especially since 2007. During the last several years, the most important cash crop became rubber with roughly 100,000 ha already planted.
- During the last several years, landlessness has risen to 20 %, and 40 % of the rural households have farms that are less than 0.5 ha, i.e. less than half of the minimum area required to meet nutritional needs (SOPHAS 2009). Most of those affected are young-couple families.
- In 1989, land privatisation was introduced and land distribution became the most important form of land acquisition throughout the country after decades of conflicts. Cultivable lands were distributed to households based on family size and availability of cultivated land in the villages. On average 1.37 ha were given to those families who applied. Farmers and non-farmers had the right to possess as long as they cultivated on the given plots, but reverted back to the state within three years if lands were left unused.
- In the distribution of land, local authorities played a significant role, as they had certain power to decide the size of land, types and location of land to be given as well as to choose the recipients, based on the size of family.
- Inequality of land ownership is increasing throughout the country. The Gini coefficient indicates an inequality of land distribution in rural areas of 0.66. There are some factors contributing to this development such as rapid population growth, failing to consider demobilised soldiers and returnees, and nepotism.

- An advanced legal framework for the management of land has been developed in Cambodia. Part of it is a legal mechanism to grant state private land through a specific Economic Land Concession (ELC) contract to a concessionaire. This mechanism was created to attract foreign investors but also to use the land for agricultural and agro-industrial production. The maximum size of an ELC is limited to 10,000 ha.
 - Officially, almost 1 million ha of land were granted as ELC, constituting roughly 5.5% of the Cambodian territory. In 36 out of reported 59 ELC (exceeding the size of 1,000 ha) foreign businesses are already involved. FDI make up nearly 300,000 ha, of which wood production is the most important (108,368 ha), followed by agro-fuel production, mostly jatropha counting for 91,200 ha and food production (66,400 ha).
 - Though a legal framework with defined steps to get a concession exists, often the procedures do not comply with the regulations. It can be observed that the capacities to enforce the rule of law are partly weak and the lack of transparency encourages rent-seeking activities. The legislation has not been properly implemented and enforced; existing concessions have not been reviewed; and economic concessions have continued to be granted over forested areas and indigenous land in violation of the law.
 - The number of overlapping land use rights for certain plots is increasing dramatically, which augment social conflicts and endanger the rights of smallholders and indigenous groups.
- The introduction of ELC, and this includes to a wider extent also FDI, has led to some positive impacts such as
- significant increase of local employment opportunities,
 - increase of wage rates,
 - improved transportation system,
 - increase in export revenue.
- Nevertheless, there are also negative effects reported such as:
- Forced displacements without adequate compensation, affecting especially indigenous communities because land not only supports their economic activities, but also represents their identity, culture and livelihoods.
 - Negative impacts on the environment by introducing new tree species such as eucalyptus, oil palm tree, rubber and jatropha and cultivating them on a large-scale basis with negative effects on bio-diversity and increasing pollution of water and soils.
- In general, the process of granting ELC is accompanied by a lack of accountability and transparency, an increase in rent-seeking behaviour, a lack of local consultation and weak law enforcement.

2. Introduction

Foreign Direct Investment (FDI) is estimated to reach USD 8.9 billion in the first eight months of 2008 (PRASIDH 2008), focusing on four main sectors: garment, tourism, construction and agriculture. The recent financial crisis caused the garment and tourist industries to slow down resulting in the laying off of up to 70,000 workers since last year. To fight the current economic deficit, the Royal Government of Cambodia (RGC) has publicly welcomed FDI in Cambodia. At the same time, interest in biomass investments are also notably rising as a result of soaring food and oil prices. To secure their own country's food deficit, the food importers are trying to explore agriculture land for food production in other countries (WORLD BANK 2009a). This trend has been directed to Asian, African and Latin American countries. Cambodia, one of the attractive countries with a huge abundance of land, is trying to make deals with foreign investors to invest in large-scale agriculture production (WORLD BANK 2009b). In return, Cambodia is expected to modernise its technology in order to improve its agriculture productivity and its agro-businesses as well. Moreover, the Cambodian government is also hoping to become one of the world's top rice exporters by 2015 with 10 million tons per year (SEN 2009).

The government, with its policy, intends to support partnerships between smallholders and large-scale farm developers (SEN 2009). Despite its past and present experiences in granting large scale agricultural land and agro-industries in the form of "Economic Land Concessions" (ELC), there have been negative effects to the environment, human rights and local people's livelihoods. Food security has been achieved, but its contribution to the economy is not evident.

This paper by GTZ on behalf of BMZ aims to define the characteristics and phenomenon of foreign direct investments in land with both existing projects and recent proposals in an effort to figure out the impacts of FDI in land on the socio-economic and ecological environments. It aims to provide a better insight into the current concerns thereby contributing to future decision-making at the political level.

3. Country Profile

3.1 Geography

Cambodia has an area of 181,035 km², sharing its 2,438 km land border with Thailand, Lao PDR and Vietnam. The country's central plain, which comprises 75 % of the total land area, is 10 to 30 meters above sea level. The plains area is drained by the Mekong, Tonle Sap Lake, and Bassac Rivers through the Mekong Delta in southern Vietnam. Other areas of the country are heavily forested, with mountainous area forming the border with Thailand and encircling Cambodia's central plains. To the north, the sandstone Dangrek Range extends eastward along the Thai border, falling abruptly southward to the plain. To the southwest are the granite Cardamom Mountains, with the highest peak at 1,813 meters. Extending south and southeast from the Cardamom, the Elephant Range separates the central lowlands from the narrow coastal plains on the Gulf of Siam. In the northeast, the hills of the Darlac Plateau rise as high as 2,743 meters.

3.2 Population and social issues

In 2008, the population was 13.4 million (census 2008). According to a Socio-Economic Survey 1999, the population in the 1980s rose rapidly at the end of decades of conflicts. Between 1990 and 1998, it went up about 30%. The annual population growth rate of Cambodia at the national level between 1998 and 2004 worked out to be 1.8% (Population census 2004)¹. The distribution of population differs widely: On average, 76 people live per km², but in the highlands density falls to 8 people per km² (NATIONAL INSTITUTE OF STATISTICS, GENERAL CENSUS 2008).

Cambodia still belongs to the group of LDCs. More than 68 % of the population live on less than 2 USD per day (in 2004) with 26% suffering from daily hunger. 36% of children under 5 are undernourished (ADB 2009).

In 2007, net enrolment ratio in primary education was with 89.4% relatively high, but only 54.5% reached the last grade of primary school.

Corruption is well known in Cambodia. In 2008, Cambodia was ranked number 166 out of 180 countries on the corruption perceptions index developed by Transparency International².

3.3 Economy

In 2008, the ADB reported a GDP (at PPP) per capita of 2,030 USD per year (ADB 2009). The economy grew quite fast during the last several years: in 2007, the growth rate of GDP was 10.2% and in 2008, despite the beginning crisis still 6.7%.

There has been a steady increase of FDI in Cambodia, especially since 2007, resulting in a net inflow of foreign investing capital of USD 867.6 million in 2007 (2006: USD 483.2 million).

3.4 Climate

Cambodia's climate is tropical with two distinct monsoon seasons. The rainfall period is from June to October. The intense rainfall period in September and October coincides with the peak of the high-water levels of the Mekong River which can lead to severe flooding in riparian areas. Except in mountainous areas, the temperature is consistently high with little daily or seasonal variation, with an average mean temperature in Phnom Penh of 27°C. The relative humidity averages 80 % throughout the year. Typhoons – tropical cyclones – that often devastate coastal Vietnam rarely cause damage in Cambodia.

¹ More detailed data from the census 2008 are not yet published.

² See website of transparency International: http://www.icgg.org/corruption.cpi_2008.html

Rainfall varies in different parts of the country from year to year, resulting in periodic droughts or floods, sometimes concurrently in different parts of the country. The period of heavy rainfall is frequently interrupted by the so-called “small dry season”, a one or two week period of relatively less or even no rainfall in June/July. This period is observed to be very critical for rice cultivation. Farmers tend to delay plantation to avoid possible risks of damages on the rice seedlings.

With respect to water availability, agricultural production is strongly connected to the annual cycle of flood where 4 million ha of the country becomes wetlands during rainy season. Cambodian farmers rely on rain and flood water for rice production and fishing, as well as for a wide range of other products derived from flooded forests and wetland areas. Despite being ranked third in Southeast Asia for its abundant water resources, Cambodia suffers from seasonal water shortages and constraints for domestic and agricultural supplies.

The soils of Cambodia have developed in humid to sub-humid tropical climatic conditions with pronounced alternate wet-dry seasons of six-month duration. Ancient alluvial deposits along the Mekong River consisting of sandy clay to silty clay materials have developed into shallow-profile soils with low capability. In other parts of the country, the ancient alluvial deposits of sandy loams to clays have formed soils with similar capability. Areas adjacent to the Mekong River, tributary rivers and streams, and Tonle Sap Lake have received recent alluvial deposits of a generally fine texture of mixed materials which have formed soils with relatively high capability for agriculture (MAFF 2009b).

3.5 The Agricultural Sector

60.3 % of the population works in the agricultural sector which contributes 30.1% to the GDP (ADB 2009). Agricultural growth had shown steady improvement (although highly variable) averaging 2 % annually over the decade prior to 2005, when the sector had unusually high growth of 16 %. With numbers of workers in the sector growing, the sector value added on a per worker level was lower, achieving 19 % growth over this same period.

Given the large rural population and high potential for improvement, the government has highlighted promotion of agricultural development as the primary strategy for achieving higher growth and poverty reduction.

Table 1: Land use in Cambodia, 2007

Type of land	in million ha
Country area	18.104
Land area	17.652
Protected areas	5.381
Agricultural land	5.455
- Cultivated land	3.800
- Permanent crops	0.155
- Permanent meadows and pastures	1.500
Forest area	10.009
Other land	2.187
Inland water	0.452
Area equipped for irrigation	0.285

Source: FAO Statistics 2007

Land is a crucial and productive asset. 60 % of the Cambodian people make a living from agriculture activities (ADB 2009). According to FAO Statistics, 5.4 million ha are used for agriculture. These data differ widely from those of the Ministry of Agriculture, Forestry and Fishery (MAFF): In 2001, agricultural land accounts only for about 20% of the total area of 181,035 km² (MAFF 2009a). The central plains lowland of the country is used for food production, while the upland areas are used for plantations. The far most important crop is rice, grown on 2.615 million ha; other crops are cassava (179,000 ha), maize (163,000 ha), beans (445,000 ha) and vegetables (48,000 ha) (MAFF 2009a). During the 2008/09 season a surplus in rice production of 2.0 million tons could be achieved (designated for export).

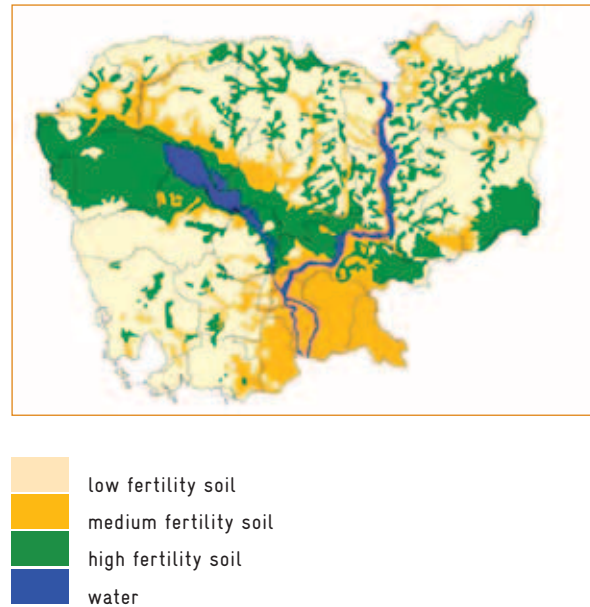
During the last several years, the most important cash crop became rubber with roughly 100,000 ha already planted (MAFF 2009a), but most of the plants are still immature, followed by soybeans (74,000 ha), sugar (36,000 ha), peanuts (18,000 ha) and sesame (13,000 ha).

3.6 Distribution of land resources

In rural areas where more than 80% of the total population reside, landlessness has risen to 20 %, and 40 % of rural households have farms that are less than 0.5 ha. This is less than half the minimum area required to meet nutritional needs. A study on Poverty and Social Impact Analysis (2004) indicated that landless and land-poor households are mainly composed of young-couple families who are newly married, and this has led to land fragmentation and a high demand for new settlements and agricultural land (WORLD BANK 2008a).

Regarding the potential of fertile soil, 28% of land is highly fertile (5.0 million ha) and 19% is medium fertile (3.4 million ha). These figures indicate that there is a potential for increasing agricultural land and increasing production (see figure 2.1).

Figure 2.1: Soil fertility and productivity in Cambodia



Source: FAO Statistics 2007



4. Tenure System

4.1 History of the Land Tenure System

During the pre-colonial period, land belonged to the King (sovereign), but people could freely occupy the land as they required. There were no land markets since there was no shortage of land. During the French colonisation period, they tried to introduce a system of private property ownership but this was not entirely successful. In the post-colonial period, the government used the same land system introduced by the French, but privatisation of land was rather limited.

During the Khmer Rouge regime all land was collectivised (SOPHAL AND SARTHI 2002a). After the Khmer Rouge regime in 1979, the country was devastated and faced the threat of a widespread famine. The new government decided to establish collective property rights for land and housing. Although all land property belonged to the State, some homestead land was unofficially transferred.

By 1989 the policies of collectivisation and the planned economic system failed and this was the turning point to adopting the free-market economy system. The government also took further steps to reintroduce private property rights (RAMAMURTHY ET AL. 2001). An area of 2.5 million ha land has been distributed to private owners, but technically 80% of Cambodia's total land area is still kept as state land after privatisation (WORLD BANK 2008a).

Large population movement and resettlement accompanied these transitions and largely because of the disruptions, the land issue is still not fully settled. Some farmers are still seeking land on which they can properly settle down, some are looking for some suitable locations and some other are still waiting for the resolution of land conflict.

With regard to land, a few of the major outstanding issues are the incomplete cadastral measurement and titling, identification of jurisdiction and security of tenure. This is in addition to problems in the functioning of land markets, land mines in some areas and landlessness. Perhaps the most irksome is the issue of landlessness, since lack of access to land becomes the paramount cause of impoverishment in an agrarian society (SEDARA ET AL.(CDRI) 2002).

4.2 Access to Land and Land Distribution

When land was privatised in 1989, land distribution was introduced and it was the most important form of land acquisition throughout the country after decades of conflicts. Cultivation lands were distributed to households based on family size and availability of cultivated land in the villages. The distribution was based on a “first come first serve principle”. Though land rights were individualised, the state was reluctant to hand over the complete rights to occupiers, especially for agricultural land. Farmers and non-farmers had the right to possess as long as they cultivated on the given plots, but this reverted back to the state within three years if lands were left unused.

During the distribution of land, local authorities played a significant role, as they administered local resources and distributed the land to villagers. Local authorities had certain decision power to decide the size of land, types and location of land to be given as well as to choose the recipients, based on family size. The bigger the families, the more land they received. Consequently, single households got small land areas which were not sufficient anymore as the family grew.

Many households have had to sell or mortgage their paddy fields to meet expenses on different items: paying off debts, illness expenses and/or tiding over seasonal food shortage or travel expenses for seeking work across the border in Thailand and Vietnam. In some other areas of the survey conducted by SEDARA ET AL. (2002), it is shown that the distribution made in 1989 was done fairly, with each household receiving between one to two ha of land. However, inequality in land holdings began to emerge soon after because some households cleared forest land and converted it into farmlands.

Another issue regarding access to land arose with newly-married couples still living with their parents. Land inequality and landlessness have also risen as some smaller farmers have sold their lands to larger ones. In addition, due to the sudden increase in land prices in recent years, a separate study conducted by MAKATHY AND SEIMA in 2008 in Siem Reap province explained the pattern of land agglomeration among few rich and elites. Local farmers lost their land in exchange for short-term bait especially for land located along the National Route 6A and down to the south (MAKATHY AND SEIMA 2008).

Land distribution in Cambodia is the first and most important way of acquiring land after 1989. But inequality of land ownership is increasing throughout the country. The Socio-Economic Survey 1997, in which the sample size represented the country, indicates the Gini coefficient of inequality of 0.66 for the rural area. Similarly, Mekong River Commission (MRC) also addressed similar trend, having a Gini coefficient of inequality of 0.61. There are some factors contributing to this development:

- First of all, the above mentioned rapid population growth rate imposes additional burden on the demand of land. According to the national survey, there were 2,093,152 households in the country compared to 2.88 million ha of agricultural land available. This means that on average 1.37 ha were given per family (SOPHAL AND SARTHI A. 2002a). According to different family sizes, the size of inherited land differs. There is a strong relation between the increasing number of family members and the lack of access to land.
- Secondly, the families of the demobilised soldiers and the returnees from the Cambodian-Thai border during 1992-93 did not receive land. WILLIAMS concluded that approximately 1 million people have never received land since 1989 (WILLIAMS 1999). Similarly, VAN ACKER agreed that land had not been distributed to demobilised soldiers or returnee families, but to the family members of the local authorities. They had better chances of receiving a better condition of land, for example lands which are located next to the water sources or lands that are not prone to flood (VAN ACKER 1999).
- And thirdly, the banking system in rural Cambodia is very weak to support the urgent needs of villagers/farmers. Available studies confirm that due to shortages of food, natural disasters (floods and drought), and illnesses, some families borrowed money from private lenders with an extremely high interest rate. They finally sold some parts of lands or all to pay debts. The lack of social facilities, especially health care centres, imposes heavy burden on families that have no alternatives to affordable services but using expensive private services.

Yet, effort is being made by the RGC to distribute land to landless and land poor households (Sub-Decree No. 118 on Social Land Concession) for residing and family subsistence farming. Following the Prime Minister's Order, approximately 10,000 households were targeted for land distribution in 2008 alone. Considering that a household can receive up to 5 ha of land according to the Social Land Concession Sub-Decree, a considerable amount of land should have been distributed. At a country level, of the total land area of 69,799 ha under SLC reported, only 13,297ha (or 19%) was distributed and 56,503ha (or 81%) is being planned for SLC (under process of proposing land for distribution).

4.3 Quantitative and Qualitative Characterisation of Land Resources

It is reported that more than 1.7 million land parcels are registered and about 1.25 million land titles have been distributed through the systematic land registration as of November 2009. In addition, an area of 4,770 ha has been registered as state private land for Social Land Concession (SLC) (ECONOMIC INSTITUTE OF CAMBODIA 2008). Besides this, most of the land in the country has not yet been registered or given titles. The boundaries between state land and private land, forest land, agriculture land, urban areas etc. have not been demarcated (SOPHAL ET AL. 2001). As a result, some common property resources such as forests, rivers, lakes and agricultural land, which were not redistributed in 1989, have become private property. Roughly one million ha of forests have been granted as concession forests to private companies, and many fishing lots have been created along the main rivers and lakes. Thus, the accessibility to those resources has been reduced for many people (RAMAMURTHY ET AL. 2001).

It is said that the government institutions have little accountability to the public or civil society or inter-ministries in the management of state lands. In addition, the weak public disclosure mechanisms and the enforcement of the legal framework have resulted in widespread informal possessions of land, corruption in the management of state land, increasing landlessness, speculation and

illegal encroachment on state lands and land grab by powerful people of small farmers' lands. This brings about negative environmental and social impacts in conservation areas as well as in areas occupied by indigenous peoples' communities (WORLD BANK 2008a).

4.4 Land Market in Cambodia

The privatisation of land in 1989 was not accompanied by a detailed cadastral mapping and titling exercise. As a result, the informal boundaries that separate individual land plots and corresponding agreements between owners were the only means by which private property rights were established and articulated in the closed economic system. But with the transition to market economy in 1991, together with rapid population growth, Cambodian people as well as foreign investors began to acquire land for commercial farming, logging, and non-agriculture activities, as well as for speculation. The uncontrolled land market and weak law enforcement resulted in a dramatic increase in land prices as demand exceeded supply. It is noted that land markets are beginning to develop in commercialised and urban areas as well as in the high population areas.

4.4.1 Prices

The rate of land price increases is closely linked to land development and road rehabilitation in areas where many new infrastructure projects have been implemented recently (SOPHAL AND SARTHI 2002A). There are three additional factors that have caused dramatic changes in the land markets as well as land prices in Cambodia and these are as follows:

1. The sudden influx of foreign money in the form of expenditures incurred on behalf of and by UN peacekeeping forces, FDI and repatriation of money by overseas Cambodians.
2. The devastating wars and changing economic systems and the consequent unreliable banking system. Cambodian people prefer to buy land as a way of investing their savings rather than putting their money in banks.
3. The huge increase in demand for land as a result of dramatic population growth in the 1980s and 1990s.



Rural housing

During the peak of land prices in 2007 purchasing prices for land were eight times higher than three years before. The price for one square meter in a prime location in Phnom Penh went up from USD 250 per m² in 2004 to USD 2,000 per m² in 2007. For one ha of agricultural land prices increased from USD 250 in 2004 to USD 2,000 in 2007 (Kampong Cham Province)³. But in 2009, prices went down by nearly 35-40% in comparison to the prices at the end of the property boom (2004-2007).

The fees for land concessions are between USD 0 and USD 10 per ha annually. According to an MAFF-officer interviewed, companies were not charged the fee in the first three years, especially for cultivations that would take time to receive yields such as rubber, acacia and eucalyptus⁴.

Prices for leasing land in urban prime locations were about USD 3.75 per m² (for agricultural land no data are available), but due to the global economic downturn, the current rental price for land is estimated to have declined by 10 to 15%⁵.

4.4.2 Structure

Land sub-division has been increasing due to inheritance, but, as a result of market forces and economies of scale, very small land plots are uneconomical under the emerging crop regimes and this has led to the disposal of small plots.

Farmers take up other more viable vocations (SOVANNARITH ET AL. 2001). People prefer to sell their land rather than lease or rent it out as there is low security of land tenure. For example, powerful interests from the business and state apparatus have been instrumental in acquiring those lands that customarily belonged to the community (SOPHAL AND SARTHI 2002A).

It can be concluded that the privatisation in 1989 was designed neither for accommodating the rapid transformation of the land market nor the rapid population growth. In addition, there is a lack of market regulations and information and also of proper administration.

4.4.3 Transparency

It is important to have information on land prices for the land market to properly function. But reliable and standardised information on land prices does not exist and the land valuation method is still under discussion. Rural people do not know how to make proper land transactions and do not make an effort to obtain proper documentation. In addition, it has been found that cadastral procedures are not uniformly undertaken in all parts of the country. In some areas, the officers are less professional than others with regards to their technical skills for measuring land and for mapping land. As such, the transactions in these areas are not properly recorded and documented (SOVANNARITH ET AL. 2001).

³ Interview with B. Richter, GTZ, in September 2009

⁴ Interview with deputy chief of office of statistics and planning of MAFF in June 2009

⁵ Interview with BONNA REALTY GROUP in June 2009

5. Legal Framework Related to Land Investments and Institutions

In 1994, the government of Cambodia established a new Law on Foreign Investment in Cambodia, making the Council for the Development of Cambodia (CDC) the highest decision-making level of the government for private and public sector investment. The CDC is chaired by the Prime Minister, and the Cambodian Investment Board (CIB) is the CDC's operational arm for private sector investment.

The government is committed to speeding up the new investment project approval process and making the CDC a **one-stop** service or **single window**. CIB is required to give a decision regarding approval and investment incentives within 28 days of the application being submitted. In addition, all favourable conditions for investments including legal and institutional framework plus efficiency, transparency, accountability and predictability are assured by the government⁶.

5.1 Investment Law

All investment projects in Cambodia are regulated by the Law on Investment of the Kingdom of Cambodia (August 5, 1994) and the Law on the Amendment to the Law on Investment of the Kingdom of Cambodia (March 24, 2003). The Council for the Development of Cambodia (CDC), which consists of the Cambodian Rehabilitation and Development Board (CRDB) and the Cambodian Investment Board (CIB), is responsible for the evaluation and the decision-making of all investment project activities (Law on Investment, article 3 & 4).

5.2 Special Economic Zone (SEZ)

The SEZ scheme was introduced to Cambodia for the first time in December 2005. "Sub-Decree No.147 on the Organisation and Functioning of the Council for the Development of Cambodia (CDC)" was issued on December 29, 2005 to restructure the organisation of the CDC and a new wing of the CDC called the "Cambodian Special Economic Zone Board (CSEZB)" was set up to manage the SEZ scheme⁷.

All investment projects located in SEZ are entitled to receive the incentives for tax on profit exemption for a maximum period of 9 years and also the exemption on import duties and other taxes for the import of equipment and construction materials to be used for infrastructure construction in the zone (article 6).

Regarding the basic concept and conditions for the SEZ, the SEZ sub-decree is defined as follows:

- SEZ refers to the special area for the development of the economic sectors which bring together all industrial and other related activities and may include General Industrial Zones and/ or Export Processing Zones. Each SEZ shall have a Production Area which may have a Free Trade Area, Service Area, Residential Area and Tourist Area.
- It must have a land area of more than 50 ha with a precise location and geographic boundaries.

⁶ http://www.cambodiainvestment.gov.kh/?q=ab_who

⁷ http://www.cambodiainvestment.gov.kh/?q=sez_con

- It must have a surrounding fence (for Export Processing Zone, the Free Trade Area and for the premises of each investor in each zone).
- It must have a Management office building and Zone Administration offices, and all necessary infrastructures must be provided.
- It must have a water sewage network, waste water treatment network, location for storage and management of solid wastes, environment-protection measures and other related infrastructure as deemed necessary.

Most of the agricultural product processing firms in these SEZ belong to the Vietnamese. For example, the Phnom Penh SEZ covers an area of 100 ha with an investment of USD 100 million and this is expected to be operational by 2015.

5.3 Laws Concerning Land

5.3.1 The constitution

Article 44 of the Cambodian constitution stipulates that “All persons, individually or collectively, shall have the right to ownership (as long as it is not in conflict with public interests). All Khmer legal entities or citizens of Khmer nationality shall have the right to own land.” Per definition 51% or more of the shares have to be held by Cambodians.

5.3.2 Land Law

According to the new constitution of 1993 and the Land Law of 2001 five main categories of property on land can be distinguished:

- Private land,
- State public land (all areas need for public services such as roads, river banks, etc.),
- State private land (all other areas owned by the state),
- Communal land and
- Indigenous land.

Land ownership for the investments shall be vested in natural persons holding Cambodian citizenship or in Cambodian Entities. Foreigners are not allowed to own land in Cambodia (Land Law 2001), but only the property and buildings on the land. A company shall be deemed to be of Khmer nationality if the company has a place of business and a registered office in Cambodia and more than 51% of the voting shares of the company are held by a natural or legal person of Khmer nationality. The use of land for investment can be permitted in the form of a concession, with unlimited long-term leases or limited short-term leases (Law on Investment, article 16).



Village workshop

Indigenous communities

Indigenous communities have the right to collective ownership of their lands, which gives them all the rights and protection of ownership as enjoyed by private landowners. The lands of indigenous communities include residential and agricultural land and encompass land actually cultivated and the lands reserved for shifting cultivation. Indigenous communities shall continue to manage their community land according to their traditional customs, pending the determination of their legal status. Once they are registered as legal entities, communities can apply for the registration of their collective title (Land Law 2001, Article 3).

Land leases

There are two types of land leases: a lease for an indefinite period of time and a definite period of time. A lease for a definite period of time includes a short-term lease with an option to renew and a long-term lease for up to 99 years. A long-term lease constitutes a right over immovable properties.

5.3.3 Social Land Concessions (SLC)

A sub-decree on Social Land Concessions (SLC) was established in 2003 to accompany the implementation of the Land Allocation for Social and Economic Development Project (LASED). Social Land Concession (SLC) aims at providing state private land for purposes of settlement and family farming to private families particularly the poor, disabled soldiers, and families of deceased soldiers who have no or not enough land. In promoting sustainable socio-economic development, the partnership between small and large scale plantation holders or economic land concession companies has been pointed out in a speech by Prime Minister Hun Sen as well as in a sub decree on SLC article 3 and sub decree on ELC article 18.

5.3.4 Economic Land Concession (ELC)

In late December 2005, the ELC sub-decree was established, defining a mechanism to grant state private land through a specific ELC contract to a concessionaire to use the land for agricultural and agro-industrial production. This refers to the cultivation of food or industrial crops, animal raising and aquaculture and the construction of facilities for the processing of domestic agricultural raw materials (Sub-Decree No.146 on ELC,

article 2). For an ELC, which can be granted to private or investment companies, it must have been classified and registered in the Land Register as state private land, complying with the necessary legal procedures (Land Law 2001 article.17, Sub-Decree No.118 on State Land Management article. 3 & 21, Sub-Decree No. 146 on ELC article. 2).

In addition, the granted land concession must be exploited within 12 months after issuance of the concession and it will be cancelled or withdrawn if the conditions are not complied with or do not fulfil the conditions stated in the concession charge book (Land Law 2001 article 62). Until September 2008 the Ministry of Agriculture, Forestry and Fisheries (MAFF) was authorised to grant economic land concessions that exceeded 1.000 ha with a total investment value of USD 2.500.000. The Provincial and Municipal Governors were authorised to grant concessions below these limits (Sub Decree No.146 on ELC, article 29). With the Sub Decree No. 131 on Modification of Sub Decree on ELC, dated September 27, 2008, the rights of provincial/municipal authorities to grant ELCs were revoked. Today all responsibilities and authorities in granting ELCs lie with the MAFF.

The concession land cannot exceed 10.000 ha and may only be granted when some additional requirements are fulfilled as follows: (sub decree No.146 on ELC, article 4 & 5)

- A land use plan for the land has been adopted by the Provincial or Municipal State Land Management Committee, and the land use is consistent with the plan.
- Environmental and social impact assessments have been completed with respect to the land use and development plan.
- There are solutions for resettlement issues in accordance with the existing legal framework and procedures. There shall be no involuntary resettlement by lawful land holders and access to private land shall be respected.
- Public consultations have been conducted with territorial authorities and local residents, relating to economic land concession projects or proposals.

Moreover, the proposal for ELC has to be evaluated against criteria that include the promotion of people's living standards, perpetual environmental protection and natural resource management, avoidance or minimisation of adverse social impacts, creation of increased employment and with linkages and mutual support between SLC and ELC. The grant for ELC may be initiated through solicited proposals, where the government seeks expressions of interest in a project, or unsolicited proposals, where an investor proposes a project.

Therefore, foreigners can access land either via Joint Ventures with Khmer legal entities (up to 49%) or they solely acquire land use rights via Economic Land Concessions (ELC). Officially, almost 1 million ha of land were granted as ELC, constituting roughly 5.5% of the Cambodian territory. In 36 out of reported 59 ELC (exceeding the size of 1,000 ha) foreign businesses are already involved.

5.3.5 Sub-decree on State Land Management

A precondition to grant ELCs or SLCs to the concessionaire was introduced with the sub-decree No. 118 on State Land Management, which was adopted in October 2005:

Before a concession can be granted, the land must first be registered in the Land Register and classified as "State Private Land" (Sub Decree No. 118, Article 3 (d), Article 21). If the land has already been classified as state public land, in order to grant it as an economic concession it must be reclassified as "State Private Land" (Land Law 2001, Article 58). The procedures for reclassification are also established in Sub Decree No. 118.

Furthermore, the Sub Decree established the specific authorities and institutions responsible for identifying, (re-)classifying and registering state lands: the provincial and district authorities namely the Provincial/Municipal State Land Management Committee and the District/Khan State Land Working Groups, in which the relevant Commune Chiefs are also represented. In addition, it also provides a basis for inter-ministerial collaboration on determining the use and management of state land and for public comment. Moreover, the issuance of Prakas No. 42 on State

Land Identification, Mapping and Classification in March 2006 provides detailed guidance for the process of state land identification, mapping and classification.

As the law is not enforced yet, the systematic mapping, classification and registration of state public and private land in Cambodia has only partially taken place. The land use plans have not been adopted by the provincial or municipal land management committees. Furthermore, the RGC issued a Circular on Measures against Illegal Land Holding to implement Article 18 of the Land Law on February 26, 2007 but the Circular does not deal with ELCs (UN 2007).

5.3.6 Sub-decree on the Mortgage and Transfer of the Rights over a Long-Term-Lease or ELC

This sub-decree No. 114, adopted on August 29, 2007, aims at determining principles, terms and conditions for granting rights to investors through mortgage used as security and transfer of rights over a long-term lease or an ELC in a period prescribed in the long-term lease contract or the ELC agreement (EIC, 2008).

5.4 Interaction with Other Laws

There are some other legal provisions that are relevant to the granting and management of ELCs as follows:

- Forestry Law
- Law on Environmental Protection and Natural Resource Management

Forestry Law

The Forestry Law authorises the granting of forest concessions. The sub-decree on the Management of Forest Concessions states that cancelled or revoked forest concessions shall revert to natural forest protected areas and cannot be converted into an ELC or awarded to other companies.

Law on Environmental Protection and Natural Resources Management

Under this law, environmental impact assessments need to be carried out on all private and public projects and activities. The Ministry of Environment (MoE) should consult with other relevant

ministries in carrying out studies to assess the environmental impacts on natural resources and give recommendations to ensure that the natural resources are preserved, developed and managed in a rational and sustainable manner.

5.5 Institutions

Besides the CDC, which is responsible for all investment projects in Cambodia, agriculture and agro-industries are governed by several ministries. MAFF is the ministry responsible for agriculture development and for overseeing ELCs. The Ministry of Land Management, Urban Planning and Construction (MLMUPC) is responsible for developing the land policy and a regulatory framework for property rights, land registration and taxation. The MoE is responsible for assessing and mitigating potential environmental impacts.

5.6 Conclusion

As explained, an advanced legal framework for the management of land has been developed in Cambodia. To access land use rights, foreign investors must submit their proposals to the Council for the Development of Cambodia, and only the Ministry of Land Management, Urban Planning and Construction (MLMUPC) is

entitled to assign the ELC to investors. But often, the procedures do not obey the legal framework. Other public authorities are acting as legal entities and lease, sell or exchange land, mostly via the Ministry of Economy and Finance (MEF) and the Ministry of Agriculture, Forest and Fishery (MAFF).

Even though a clear procedure is defined, as for instance mandatory environmental and social impact assessments, often the process does not comply with the regulations. It can be observed that the capacities to enforce the rule of law are partly weak and the lack of transparency encourages rent-seeking activities. The OHCHR has stated in its 2007 human rights report that the legal and regulatory framework “...have not been properly implemented and enforced; existing concessions have not been reviewed; and economic concessions have continued to be granted over forested areas and indigenous land in violation of the law.” (UN 2007)

As a consequence, the number of overlapping land use rights for certain plots has increased dramatically, which augment social conflicts and endanger the rights of smallholders and indigenous groups.



Working in rice fields



Selling on the streets

6. Foreign Direct Investments (FDI) in Land

In general, the actual FDI in Cambodia rather than the value of approved FDI projects has grown by an annual average of 19% over the last ten years (CRDB-CDC, 2006). In 2008, approved investments have increased considerably to USD 10.89 billion in which the agriculture sector has attracted up to USD 106.73 million, while tourism and services sector reached up to USD 8.77 billion and USD 1.29 billion respectively⁸.

For the FDI approved in this period, the largest share was from China (23.97%), which in the early years was the source of extensive investment in the field of resource development including rubber and tourism. China is followed by Korea at 10.68%. The other major sources are Malaysia, Taiwan, Hong Kong and Thailand, whose investment comes mainly from the garment industry companies⁸.

For FDI in land, there has been no in-depth comprehensive survey until now to make data available. In general there are investments in land in order to produce food or to produce agro-fuel:

Investments in food

Many FDI projects are going to invest in food production such as rice, cassava, maize, beans etc.

Investments in agro-fuel

Plants which are grown for agro-fuel production include jatropha, rubber and cassava. There is one Korean company that cooperates with Men Sarun Company investing in agro-fuel industry to produce ethanol for export to European countries. The production of agro-fuel is a growing industry as there is a lot of interest from many foreign investors.

There are a number of business models for agro-fuel production and this has encouraged private farmers to produce the jatropha seed on their own agricultural land. The processing plants are operated by the investors who buy the jatropha seeds from the farmers. In the other type of agro-fuel production model, the investors directly purchase land to establish plant nurseries themselves to ensure consistent supply and quality of jatropha seeds.

This part will show the recent trends of FDI using the existing model of ELC and the new proposals being made by some of the countries:

6.1 Characterisation of FDI in Land

6.1.1 Existing investments via Economic Land Concession (ELC)

The RGC has leased out good agricultural areas for large plantations for periods of up to 99 years according to Sub-Decree “Economic Land Concessions”. It is reported that over 943,069 ha of land, which is about 5.2% of the country’s total land area, has been granted since the early 1990s to private companies for agro-industrial plantations (UN 2007, WORLD BANK 2008b). The smaller ELCs, which were granted at provincial levels, have been excluded from these statistics since the information on the numbers and ownership has not been publicly posted (UN 2007). Besides these, several concessions have been allocated to the military on lands that were ceded to them in 1994 for security reasons (WORLD BANK, 2008).

⁸ http://www.cambodiainvestment.gov.kh/?q=ii_fdi_trend



Working on rice fields

The following table gives an overview about FDI in land in Cambodia:

Table 2: FDI in Land in Cambodia, overview (Dec. 2006)

Kind of investment	in ha
in agro-fuel	91,200
in wood	108,368
in cash-crops	31,406
in food	66,400
FDI in land in total	297,374

Source: <http://www.maff.gov.kh/elc/>

According to the homepage of the MAFF, 30 concessions were given to foreigners by the end of 2006. No update has been made since then⁹. These ELCs are for nearly 300,000 ha, of which 108,368 ha are for wood production, making it the most important type of investment. There are three foreign companies investing in agro-fuel, which counts for 91,200 ha. Most of the companies are going into food production (66,400 ha).

⁹ The main homepage of the MAFF says it's under construction.

The following table provides more detailed information about FDI in land in Cambodia:

Table 3: FDI in land in Cambodia (Dec. 2006)

Company name	Country	Plant	
Cambodia Haining Co Ltd.	China	agro-industry as palm oil, sugarcane, acacia, and pig feeding	
The Green Rich Co Ltd.	China	Oil palm, fruit tree & acacia	
Oryung Construction (CAM) Co Ltd.	Korea	Rubber plantations	
Tai Nam (K) Ltd.	Vietnam	Cassava, rubber & cashew	
30/4 Gialani Company Ltd.	Vietnam	agro-industrial crops, animal husbandry	
Tai Nam BPM Ltd.	Vietnam	Cassava, rubber & cashew	
Kimsville Corp.	China	Cassava, Cashew, apple, and fruit	
Henan (Cambodia) Economic and Trade Development Zone	China	Agricultural crops	
Cambo Victor Investing and Developing Co Ltd.	China	Corn, bean, Soya bean, rice, cassava and peanut	
China National Corporation for Overseas Economic Cooperation Laostar Development Co Ltd.	China	Agro-industrial crops such as maize, vegetable and rice	
Cambodia C.J. Corporation Ltd.	Korea	Cassava (for agro-fuel)	
Cambodia C.J. Corporation Ltd.	Korea	Cassava (for agro-fuel)	
Golden Land Development Co Ltd.	Taiwan	Agro-industrial crops	
Chrystal Agro Co Ltd.	Thailand	Cassava and agro-industry plantation	
Koh Kong Sugar Industry Co Ltd.	Thailand	Sugar Cane	
Global Agricultural Development (Cambodia) Co Ltd.	USA	Indigenous Teak	
Green Island Agricultural Development (Cambodia) Co Ltd.	USA	Indigenous Teak	
GG World Group (Cambodia) Development Ltd.	China	agro-industrial crop plantation as teak and cashew	
Grand Land Agriculture Development (Cambodia) Co Ltd.	China	Indigenous trees as teak and trincomalee wood	
Phou Mady Investment Group	China	Acacia, teak, trincomalee wood, and other plantation crops	
Asia World Agricultural Development (Cambodia) Co Ltd.	China	Indigenous teak	
Great Asset Agricultural Development (Cambodia) Limited	China	Pistacia chinensis Bunge	
Great Wonder Agricultural Development (Cambodia) Ltd.	China	Pistacia chinensis Bunge	
Wuzhishan LS Group Co Ltd.	China	Indigenous Pine (pinus mercusii)	
Plantation Agricultural Development	USA	Pistacia chinensis Bunge and other trees	
Real Green Co Ltd.	Thailand	Cassava & agro-industry	
Pelin Group Agricultural Development (Cambodia) Co., Ltd	not known	Pistacia Chinensis Bunge and other trees plantation	

Source: <http://www.maff.gov.kh/etc/>

The table only contains ELCs provided by the government. There is no information available about concessions below 1000 ha given on the province level. And, unfortunately, the list has not been updated since December 2006. All concessions given later are not in the list¹⁰.

¹⁰ Also, those ELCs are not listed which are illegally provided.

	Size (in ha)	Location	Contract signed
	23000	Aural & Phnom Srouch district, Kompong Speu province	23.08.1998
	60200	Koh Kong district, Koh Kong province	25.11.1998
	6866	Andong Meas District, Rattanakiri Province	04.04.2006
	7560	Snuol District, Kratie Province	18.09.2006
	9380	Oyadao District, Ratanakiri Province	26.04.2005
	7600	Keo Seima district, Mondulkiri Province	18.09.2006
	3200	Phnom Srouch district, Kompong Speu province	24.10.2000
	4100	Phnom Srouch district, Kompong Speu province	29.07.1999
	28500	Aural & Phnom Srouch district, Kompong Speu province	23.08.1998
	8000	Phnom Srouch district, Kompong Speu province	26.09.2000
	3000	Phnom Srouch district, Kompong Speu province	15.11.1999
	5000	Phnom Srouch district, Kompong Speu province	20.04.2001
	4900	Phnom Srouch district, Kompong Speu province	05.03.2004
	8000	Samrong District, Uddor Meanchey Province	17.07.2006
	9700	Sre Ambil district, Koh Kong Province	02.08.2006
	9800	Sambo district, Kratie Province	15.03.2006
	9583	Sambo district, Kratie Province	15.03.2006
	5000	Stung Treng district, Stung Treng province	18.05.2005
	9854	Se San district, Stung Treng province	23.01.2006
	9854	Se San district, Stung Treng province	24.01.2006
	10000	Sambo district, Kratie Province	15.03.2006
	8985	Sambo district, Kratie province	11.08.2006
	9231	Sambo district, Kratie province	11.08.2006
	10000	O'Reang district, Mondulkiri province	30.12.2005
	9214	Sambo district, Kratie Province	11.08.2006
	8000	Samrong District, Uddor Meanchey Province	09.06.2006
	8847	Konmom District, Rattanakiri Province	11.08.2006

6.1.2 Recent Foreign Direct Investment Proposals by Country

China

China may have a lot of land, but much of the arable land is rapidly being converted to industrial use, thereby forcing tens of millions of its farmers to move to the cities looking for work. In the first half of 2008, China's Ministry of Agriculture has had a policy of encouraging domestic firms to acquire land through leasing or purchasing abroad for growing food as well as to assure its long-term supply of soybean (GRAIN 2008). China took the lead in investment in Cambodia in 2008 with a total investment of USD 4.3 billion, which equals 40.14% of the total FDI in Cambodia (CAMBODIA INVESTMENT BOARD 2008). In addition, China gave a loan of USD 601 million to Cambodia last year. The Chinese projects were in a wide range of sectors, including garments, hydropower and agribusiness¹¹.

Several Chinese companies are involved in projects in the agro-industry sectors, although the full extent of their involvement and the number of concessions awarded in recent years is unclear. (RUTHERFORD ET AL. 2008).

Korea

In August 2008, the Korean government reported that they had surveyed farmland in Mongolia, Laos and Cambodia for growing food (GRAIN 2008). In 2008, South Korea's total investment in Cambodia was USD 1.2 billion which is equal to 11.39% of the total FDI and almost double the amount of USD 828 million in 2007¹² (CAMBODIA INVESTMENT BOARD 2008).

In addition, at the end of 2008, the first ethanol factory in Cambodia was established with investments by Korean companies to produce agro-fuel from cassava flour. The MH Bio-energy Group of South Korea will provide 192 jobs for local workers and encourage farmers to plant more cassava while the company itself has invested in growing cassava on 8,000 ha of land in Kampong Speu Province. The company with an investment

of USD 40 million has already opened two branches in Kampong Cham and Battambang Provinces to purchase cassava from farmers. The factory will buy a minimum of 30,000 tons of cassava from local farmers to convert it into ethanol. This shall be exported on the international market as agro-fuel¹³.

Vietnam

Vietnam, the world's second-largest producer of rice, plans to lease Cambodian farmland near their border for growing rice and exporting it to Vietnam. But according to instructions issued by the Ministry of Interior (MoI), leasing of land along the border with a foreign country is not allowed unless it has already been demarcated with concrete markers. But Vietnamese officials have stated that Vietnam imported about one million tons of rice from Cambodia last year and this accounts for about one-sixth of Cambodia's total annual rice production¹⁴. Furthermore, Vietnamese companies are planning to grow rubber on an area of 30,000 ha in addition to over 30,000 ha that has already been planted in Kratie Province.

Kuwait

The Ministry of Trade, Economy and Finance of the Gulf Cooperation Council (GCC) released a joint recommendation that encourages the GCC members to have joint cooperation or a common fund to produce food abroad in Southeast Asia, Brazil and other Arab nations to supply the GCC market (GRAIN 2008). In addition, a programme manager for environment research at the Gulf Research Centre, said that this was a useful strategy "for the Gulf countries that could not guarantee their food security due to the lack of water resources and arable lands even with their current modern technology"¹⁵. In this regard, the Kuwait government had signed a bilateral agreement with the Cambodian government to lease Cambodian agriculture farm land to produce rice for the Kuwaiti market. Cambodia will, in return, get a USD 546 million loan¹⁶. In addition, Kuwait has signed agreements to provide technical support

11 <http://khmerization.blogspot.com/2009/02/china-top-investor-in-cambodia-in-2008.html>

12 <http://www.phnompenhpost.com/index.php/2009031924869/Business/SKorea-expands-presence.html>

13 <http://ki-media.blogspot.com/2008/11/cambodia-inaugurates-1st-ethanol.html>

14 <http://www.phnompenhpost.com/index.php/2009022624417/Business/Vietnam-aims-to-lease-land-for-rice-crops.html>

15 <http://www.nation.co.ke/oped/Opinion/-/440808/522672/-/42t0s1/-/>

16 <http://ki-media.blogspot.com/2008/08/kuwait-loans-cambodia-546-mln-plans.html>

for the building of a hydro-power plant, irrigation systems and road construction in Cambodia and will also have direct flights to Cambodia to boost tourism.

With this policy, the Cambodian government expects to receive benefits of about USD 3 billion in agricultural investment in return for providing millions of ha in land concession. According to government officials, these leases would run between 70 and 90 years¹⁷.

Qatar

Qatari Prime Minister Sheik Hamad bin Jassem bin Jabor al-Thani visited Cambodia in April 2008 to offer technology in exchange for arable land. During the visit he announced plans to invest USD 200 million in Cambodian agriculture. The Qatari government has made a deal with the Cambodian government to acquire Cambodian farmlands for rice production and export it to Doha for which Cambodia, in return, would receive technical assistance (GRAIN 2008). Qatar is discussing a USD 20 million joint venture to lease 10,000 ha of rice growing land in Stung Treng province as stated by Mong Reththy¹⁸.

6.2 Case Study: Dong Nai Kratie Aphivath Caoutchouc Co., Ltd¹⁹

Dong Nai is a Vietnamese company specialising in agriculture and development. The company began its investigation on available land in the north-eastern province of Cambodia, namely Kratie Province: a few years ago before it received the official approval on land for rubber plantation in 2008.

The land area was reported to be cleared forest land that lost its benefits. The contract was signed on July 4, 2008 with the Ministry of Agriculture, Forestry and Fisheries as representative of the RGC. Dong Nai started cultivating rubber in 2008. Dong Nai, by itself, found the available state public land in Kratie Province and asked the RGC to convert it to agriculture.

The project

- The total land area granted is 2,502 ha, of which 335 ha has to be preserved (natural water bodies, and semi-evergreen and evergreen forests).
- The area has been converted from public state land to private state land.
- The agreed concession contract is valid for 70 years but the RGC reserves the right to take back the land from the company if they do not invest or do not follow the conditions set in the contract.
- The production of fresh rubber will be mainly exported to Vietnam and other countries, some parts are designated for local processing.
- The production scheme is a monoculture rubber plantation, according to the master development plan of the company agreed with RGC. In the first year, approximately 400 ha of land are to be cultivated.
- Tax has to be paid on the final export product of rubber.
- The rent for land leasing ranks from USD 0 to 10 per ha. RGC will not take a land leasing fee in the first three years.
- The company is committed to participating in forest conservation through re-plantation on the granted land area that lost its natural resources and forests.
- Currently, the company is constructing lodges for workers as well as a company site office and road access.
- After 6 years (i.e. in 2014), the company plans to collect roughly 296 tons per annum from 370 ha of land being cultivated.

Due to the fact that the agreement contract has just been signed, it is too early to assess the technology transfer to local farmers and workers. However, this particular requirement is defined in the contract agreement for agriculture investments.

The area

The concerned land area consists of typical forest land which is under threat of clearing for private occupation and increasing slash and burn for Chamka rice cultivation (state public land). No settlements have been located within the area.

17 http://www.ft.com/cms/s/0/2506f3c6-b72e-11dd-8e01-0000779fd18c.html?nlick_check=1

18 <http://khmerization.blogspot.com/2009/03/middle-east-targets-land-energy-deals.html>

19 Dong Nai Kratie Aphivath Caoutchouc Co., Ltd (Project Document, 2008)



Motives of the company

- An increase in the price of rubber in the regional and global markets.
- Kratie Province has good soil conditions suitable for rubber production.
- Availability of cheap labour.
- Participation in poverty reduction, especially in rural areas.

Motives of the RGC

- The development of the agricultural sector is defined in the government's rectangular strategy, national poverty reduction strategy (NPRS) and national strategic development plan (NSDP).
- Creation of job opportunities
- Tax collection on production (from year 3)
- Land leasing fees
- Gaining experience from other country in rubber cultivation.

Integration of villagers

Based on sub-decree No. 146 on Economic Land Concession, the company is required to take into consideration the local livelihood. Therefore, in the master development plan of the investment, it is suggested that needed infrastructure facilities are to be equipped on land for the benefits of not only company workers, but also local villagers who live in or near by the concession land (access road, health care centre, school building, etc.). These facilities have not yet been built by Dong Nai, but the company only started its operation last year.

6.3 Examples of conflicts

1. CIV Company

This case was reported by Voice of America (VOA) on March 11, 2009²⁰. Nearly 300 protesters stopped five bulldozers from clearing farmland and pushed past armed security guards of a private developer in Snuol district, Kratie Province. The villagers, the Steang minority group, reported that around 500 ha of farmland had been destroyed by CIV Company. But the company owner said he had rights to the land. He was granted concession of 1.000 ha in 2007 for rubber plantation, but the company started clearing the land in February 2009. During that time, the guards cocked their rifles but did not fire and finally the representatives of the villagers and CIV Development Company made a deal: CIV decided to offer the villagers a total of 480 ha to end the conflict.

2. Chan Thon Development Company

According to the Kohsantepheapdaily newspaper, on March 12, 2009²¹, the Chan Thon Development Company (993 ha) and Green Development Company (998.6 ha) land were granted land along the National Road No. 69 which will be developed into a highway in Preah Vihea province. The companies prohibited local villagers from getting into the companies' territories. 80 families claimed that they were living in this area since 1998 and in 2007 they saw these two companies putting the sign poles in the areas they had cultivated. The military guards of the companies threatened to shoot them.

²⁰ <http://www.voanews.com/khmer/2009-03-11-voa2.cfm>

²¹ http://www.kohsantepheapdaily.com.kh/khmer/land12_03.htm

7. Driving Factors of FDI

7.1 From the investors point of view

Foreign corporations are frequently among the investors in large agriculture, hydropower and mining projects in Cambodia. Such projects are normally medium- to long-term investments whose lifetimes are measured in decades. Sometimes a corporation invests, based on its research, simply with the expectation of financial gains; but other times a corporation, especially if it is a state-owned enterprise (SOE) or semi-governmental enterprise, is also implementing its government's policies and strategies.

Several important differences between the profit-seeking corporations and the policy-driven corporations making foreign investments can be observed in Cambodia:

- Policy-driven corporations may benefit more frequently from direct government support in securing a project through government-to-government negotiations or interventions.
- Policy-driven corporations may also have an easier time of securing project financing, especially when it is provided entirely or in part by a state-owned bank or financial institution.
- Policy-driven corporations may sometimes make investments that appear less financially sound or profitable but that are actually in the national interest. Still, in the end it is the profit motive that drives all of the investments; it is just that when a policy-driven corporation is investing some of the profit may accrue to its government in the form of national security, economic development, international goodwill, etc., rather than in financial returns.

The governments of some of Cambodia's neighbouring countries (i.e. China, Thailand and Vietnam) and several more distant countries (i.e. the Arab States, Japan and Korea) are among the foreign governments looking to secure sources of vital energy and natural resources inside Cambodia. Most policy-driven corporate investments appear to come from China. The land of the Arab States may contain very valuable hydrocarbon resources, but most of the land is arid and cannot produce the food needed to feed their populations, especially now that immigrant workers greatly outnumber their native peoples. Japan and Korea are much smaller countries in size than China, but they are heavily populated and have highly-developed industrial complexes; and they do not have enough arable land to grow the food necessary to feed their people, nor does their land provide the mineral and energy resources to sustain their industries. These investor countries can provide the management, technology, capital resources and markets needed for large-scale agriculture, hydropower and mining developments.

National governments and corporations seeking agricultural concessions in foreign countries are not a new development, but the large increase in interest in Cambodia from foreign investors in the past few years has put them in the spotlight. There appear to be several main reasons for the high level of interest:

- First, the recent world food crisis followed closely by the financial crisis have prompted wealthy countries that lack the resources to produce their own food at home to try to secure land concessions in foreign countries so that they can
 - (i) gain more control over agricultural production for their own markets;
 - (ii) reduce the cost of those products by eliminating some or all of the middlemen.

- Second, wealthy countries that lack the resources at home to produce adequate amounts of strategic industrial crops to feed their own industries are similarly trying to secure land concessions in foreign countries.
- Third, corporations are seeking lucrative agricultural investments overseas, especially with regard to the recent upsurge in interest in agro-fuels, etc.

7.2 From the recipients point of view

The Prime Minister of Cambodia, in his address to the Cabinet on September 26, 2008, reaffirmed the RGC's long-term strategy that is based on the four fundamentals of the "Rectangular Strategy":

The core of the Rectangular Strategy is good governance, and it has four strategic rectangles, each of which has four sides or components. The strategic rectangles are:

- (i) enhancement of the agriculture sector,
- (ii) further rehabilitation and construction of the physical infrastructure,
- (iii) private sector development and employment, and
- (iv) capacity building and human resource development.

With regard to the agriculture sector strategic rectangle, "The Royal Government continues to place priority on increasing agricultural productivity and diversification as well as promoting agro-industries." Land concessions are mentioned in the discussion of

Side 1 to improve agricultural productivity and diversification, and

Side 2 to continue land reform and clearing of mines.

In the first case, "The Royal Government will foster partnership between small landholders and large-scale agricultural farms or corporations, and between economic and social land concessionaires, especially those involved in agro-industries such as rubber plantation in accordance with the Strategic Plan for the Development of rubber, cashew, and sugarcane." And in the second case, "The Royal Government will review and regularly monitor the economic land concessions to ensure that they conform to the agreed upon priorities and to make them active as well as to avoid unproductive holding of land." So, the government is reaffirming its commitment to further develop rubber and other plantation crops, while concomitantly resolving abuses of the economic land concession system.

The Prime Minister also identified 17 challenges facing RGC, of which some are related to the issue of land concessions as the fifth and sixth challenges:

- the increasing concentration of land holdings among the wealthy,
- the growing population of landless and land poor people,
- the inefficient use of economic land concessions (granted for agriculture),
- illegal claims on state land, and
- widespread conflicting land claims.

RGC is reaffirming its commitment to address all of these issues to improve social equity, economic efficiency and sustainable natural resources management.



Rice Field

8. Opportunities and Risks of FDI in Land in Terms of Sustainable Development in Cambodia

8.1 Economic Opportunities and Risks in General

- + Foreign investment in agriculture can result in productivity increases with the introduction of improved crop varieties, culture techniques and equipment.
- + Land concessions can be an instrument for the commercialisation of agriculture and therefore a chance for a long-term strategy to reduce poverty in rural areas in Cambodia. Market access can lead to a stable cash income for farmers, which is not the case in subsistence farming. A lot of rural development projects financed by ODA (Official Development Assistance) are looking for these options to see it as a starting point for a value chain development. Precondition for this positive development is the access to land for farmers and their farming management skills.
- On the other hand, some agricultural concessions may result in negative impacts and outcomes. The following are examples raised in the recent literature and media, many of which are interrelated.
 - The scale of agricultural concessions is worrying – private companies are aiming to take over more than 800,000 ha of land in Cambodia – especially due to the lack of transparency and non-participatory processes. (WRM BULLETIN 137)
 - Plantations have increased poverty by displacing entire rural communities, destroying crucial livelihood resources and preventing the access of communities to natural resources on which they traditionally depend. (WRM BULLETIN 137)
 - Rubber plantations have taken over some forested areas that were used by local communities, thus depriving them of access to essential non-timber forest products (NTFPs) that they need for food, medicines, construction materials and cultural rites. (WRM BULLETIN 134)
 - Some wealthy people in Cambodia are speculating by buying out small farmers to assemble large parcels of land, in hopes of selling them for large profits to a concessionaire.
 - Plantations may encroach on protected areas or displace farmers, who then encroach on protected areas, or they may fragment other ecologically important areas, or they may pose risks for catchments and river systems. (WWF, 2007)
 - Many rubber (and other) plantations have been established without first determining the suitability of the land, sometimes resulting in reduced yields and poor profits, and substantial losses for associated smallholders. (FUJITA 2007)
 - The Royal Government of Cambodia does not have a comprehensive inventory or data base of previously awarded land concessions and as a result, overlapping or conflicting concessions are sometimes awarded, and there is leakage of concession income that should accrue to the government.
 - The government does not have the resources to monitor concessions, and audits have shown that concessions frequently exceed the boundaries in their contracts.
 - Legal prohibitions against cutting natural forest to establish plantations are sometimes ignored because the government does not have the capacity or incentive to monitor concessions. (HUNT 2007)

- Small farmers converting to rubber cultivation may suffer hardship or lose their land when their resources are not adequate to tide them over during the seven years it takes before new rubber trees can be tapped. (GRAIN 2008)
- Small farmers converting to commercial agricultural crops under contract farming arrangements may suffer from periodic price fluctuations in the international market. (GRAIN 2008)
- In a legal environment that lacks a strong framework of contract law, contract farming agreements can be ignored with impunity by farmers when the market price exceeds the contract price and by buyers when the market price falls below the contract price.
- There have been cases of investors receiving agricultural land concessions, removing the valuable timber under the guise of clearing the land for the plantation, and then abandoning the concession in a highly degraded state.

8.2 Opportunities and Risks at a macro-economic level

+ **Employment opportunities**

There is significant increase of local employment opportunities. Wages were offered more or less equal to USD 100 per month which is more or less equal to urban wage rate. Also, it is estimated that the production of agro-fuel will bring employment opportunities to the country.

+ **Transportation system**

In fact, local roads were improved due to the need to flow company goods and products. Local villagers living nearby benefit from these improved road conditions. On the other hand, in some areas the roads were damaged by heavy loaded trucks, especially in the rainy season.

+ **National trade balance**

Export to foreign countries has increased overtime, especially to China. Wood and wood products present the largest export rates, constituting 47 % of total exports to China and value added at USD 24.09 million and

rubber the second largest export rate (21.6 % of the total export) with a total value to USD 11 million in 2007. Considerable amounts of rubber were also exported to Vietnam for processing and re-export to China. Other major export products are cotton and clothing products, essential oils, fish and crustaceans and live animals. These developments show that investments in agricultural export-oriented production like rubber, palm oil and cassava lead to an increase in export revenues and thus have a positive impact on the national trade balance.

- On the other hand, many foreign investors currently import tools and machinery not available in Cambodia, which is predicted to deteriorate the national trade balance (see also in HANSEN AND TOP 2006).
- + Also, it is expected that the local production of agro-fuel would be a benefit by reducing imports of fossils fuels and pressure on reserves of foreign currency.

+ **National budget**

The national budget can benefit from the increasing taxes of an improved economy. But the easiest way to generate national income is by collecting the rent for the land concessions. As mentioned above, the normal rent is about USD 0 to 10 per ha annually. With nearly 1 million ha of land concessions, this could create a significant part of the national budget (if the investors have to pay the rent).

+ **Production**

There is reported positive growth of production.

8.3 Opportunities and Risks at micro level

- **Access to land**

Many people lost their agricultural land to the market in exchange for bait. In addition, the access to land among indigenous people is negatively affected by large scale agro-industrial investment through ELC.

+ **Labour wage rates**

Wage rate for unskilled labour in construction and agricultural sector has increased from approximately 5,000-7,000 Riels per day – wage paid for female workers was reported to be slightly lower than male workers – before 2008 to nearly double (appr. 7,000-10,000 Riels per day) with an average of 8,500 Riels/day (equal to USD 2.0 per person per day) (MAKATHY 2008).

It is worth noting that in the provinces where several ELCs were granted, concessionaires faced difficulties in finding labourers. Therefore, many labour forces were brought from provinces where there is less FDI in land (Svay Rieng, Prey Veng, Takeo and Kampong Cham)²².

+ **Health and Education**

Resulting from increased wage rates, it is believed that there will be a significant improvement in nutrition with an amelioration of health conditions.

It was noticed that some foreign companies constructed school buildings and health centres in the area where they received granted land for agro-industrial investments. The facilities mainly aim at serving the needs of farm workers and to some extent local villagers who were living nearby the area. But the constructed facilities were very few in general.

- ± There is no clear evidence that FDI investments in land contributed to better education in the area. Some reasons are:
- According to the World Bank only 10% of the total land granted through ELC is under production. Large land areas are still left vacant (SOPHÁS 2009).
 - Concession areas are usually located in remote places with scattered families. Due to poverty, many children drop out of school and join the family's earning activities. Education appears to be secondary in daily expenses.

- **Quality of Jobs / capacity building / knowledge transfer**

There is little effort being made to provide technical capacity to farmers, for example in breeding, using of seeds, developing soil conditions, using fertilisers, etc by private investors. The majority of the farmers still rely on customary cultivation practices (and a rain-based cultivation practice). The private companies provided on-the-job trainings mainly to the heads of section/or heads of group of workers. Since unskilled workers were not targeted, these workers retained old customs and traditions.

- + Some positive impacts were reported in an increase in cultivation know-how among local farmers (small- and medium-scale farmers who were interested in commercial agriculture, for example in Siem Reap, Battambang, Banteay Meanchhey, Ou Dor Meanchhey and Kampong Speu provinces): in seeding, watering, increasing marketing survey knowledge based on information transferred from farmers to farmers on their products and market prices for products and to some extent market trend. But these impacts did not directly result from knowledge transfer from FDI in land–projects rather than the exchange of knowledge among farmers interested in supplying products to foreign companies.

- **Rural livelihood**

With the sharecropping system introduced by companies, local villagers lost their opportunities to collect NTFPs and cultivate their land. The point is that villagers were asked to only take care of production for the companies and sell the product only to the companies (usually there were no written contracts). They had to give up other activities in order to take care of investor's plantations. As a result, local villagers could not afford to feed their children and families. Furthermore, the job is on a seasonal basis with irregular income.

- There is an increasing concern about the limited access to natural resources, causing the loss of important income sources (SOPHAL ET AL. 2002B).
- Some cases of forced displacement were reported in some villages. Farmers who had their land located in the ELC area were requested to leave with compensation. However, the offered price was far below the land market price.²³ In some cases, concessionaires fenced around the land leaving no alternative for villagers but to sell the land at any price given by the concessionaires²⁴.
- As with any large land concession, new perennial tree crop plantations tend to displace local farmers and villages or to drastically change the lives and livelihoods of those who remain, including their traditional social and cultural practices as well as their agricultural practices and livelihood systems. Rubber and eucalyptus for instance usually have a 7 year growth period to first harvest. This is an important issue for interested smallholders to consider before they invest in a plantation or enter into contract farming arrangements. Alternative incomes and cash flow management are important to avoid early hardships. As oil palms start to produce fruits within 3-4 years, the issue of smallholder alternative incomes and cash flow planning is not as critical as it is for those involved with rubber or eucalyptus.

On the other hand, the main problem in the region is, that traditional livelihood systems are not working anymore because:

- The cultivation of upland rice has a very low land and labor productivity.
- The village farmers need cash income. They have to pay for basic needs and services (e.g. electricity, clothes, medical treatment).

Therefore the most important process going on in these villages is the commercialisation of agriculture. FDI in land can help some households to be lifted out of poverty entirely by the wages provided by profitable commercial ventures. The

more attractive option seems to be a contract farming arrangement. Outgrower schemes (smallholder contract farming with input and service packages for the smallholder) linked to concessions have the most positive impacts for rural farmers.

Investment and infrastructure development stimulate the local economy and also provide the government with much needed revenue that can in theory be reinvested back into the country for broader development. Profitable and fair investors who provide decent wages would help alleviate poverty by providing a higher income and improve the livelihood compared to the subsistence farming.

The transition from subsistence to market oriented and commercial agriculture can therefore be a long-term strategy for poverty reduction in rural areas and can provide the opportunity of rural development. Fast growing commodity markets provide farmers with new market opportunities. Especially rubber is a very smallholder friendly crop with a high price transmission between world market price and farmgate price as best practices from successful countries like Thailand and Indonesia show. Nevertheless farmers become more vulnerable to market risks such as price and demand fluctuations. To minimise this vulnerability, farmers need land use rights and more access to market information and support to overcome the challenges of commercialisation (such as a lack of participation in contract farming and farming skills and long waiting periods before the first harvest, etc.)

- **Socio-cultural conflicts**

- A great risk to indigenous communities' land rights has been the tendency to provide ELCs without consideration if they include or overlay indigenous communities' lands. As reported by many studies, providing investors with ELCs has had detrimental impact both on access to traditional lands for cultivation as well as on access to NTFP (EWERS ANDERSEN ET AL. 2002).
- Large-scale land investment granted to foreign companies has led to dominant control of fertile land by foreigners, more land concentra-

²³ These cases were reported in newspapers and radio stations, but no official data are available.

²⁴ Interview with an officer of MAFF 2009

tion, inequitable land distribution and caused an increasing of the landless population. Many local villagers migrated to urban areas for non-agricultural jobs. There are an increasing number of vulnerable groups affected by ELCs in the north-eastern provinces of Cambodia (WWF 2008).

In general, there is a lack of accountability and transparency, an increase in rent-seeking behaviour, a lack of local consultation and weak law enforcement. Conflicts between companies and local villagers living in or nearby the concession lands have been reported almost every day on the local news. Villagers are not well-informed about boundaries of concession lands. They did not even know who won the concession contracts in the areas. In most of the cases, large land areas were granted on lands where villagers were living and cultivating for years. The concessionaires then began to clear the land and kicked off the villagers who were cultivating on the lands and fenced the whole areas (UN 2007).

+ Gender issues

There is a significant increase in the role of women in local labour. More and more women get employed, not only in the industrial sector in the capital, but also in the agricultural sector due to the increase in demand for cassava in the region, especially from Thailand and Vietnam. Besides, women's labour wage was generally cheaper than men's (unskilled labour).

8.4 Risks on the Environment

Biodiversity

Cambodia is in the situation where efforts are being made to preserve and protect the natural environmental resources. Numerous laws, policies and regulations are to be established. The first ever law that was established in 1996, two years after the United Nations run-election in 1994, was the "Environmental Protection and Natural Resources Management (1996)". The second law called "The Protected Area Law" was established in 2008. However, a number of important sub-decrees and regulations are required in order to implement the laws. Similarly, there is an acute shortage of baseline data at national level on patterns of changes and the changes to biodiversity, fauna and flora caused by human activities and large-scale agricultural development. Therefore, it is difficult to confirm the impacts of FDI on biodiversity and greenhouse gas emissions. There are concerns that especially the increasing illegal logging activities are detrimental to the natural environment. These activities are quickly and directly changing the function of land, affecting animal species and biodiversity.

It is important to know that the three major tree crops being grown in Cambodia are not native to Asia, and they all come from different continents: the para rubber from South America, eucalyptus comes from Australia, and the oil palm from Africa.

Given that all three tree crops are normally cultivated in large-scale monoculture plantations, the disruption to the local ecological systems is severe. The monocultures drastically reduce the biodiversity within and near their boundaries, and they also serve as barriers to the normal migratory and dispersal patterns of endemic fauna and flora in surrounding areas. These exotic species are not part of the normal local food chains, and so they provide little or no nutritional support for much of the endemic fauna. They also may not meet other habitat requirements of the endemic fauna. Most of these plantation trees are either clones

with no genetic diversity, or they are propagated from a small number of parental stocks and thus have very limited genetic diversity. This presents a significant risk because a pathogen may have the potential to destroy entire plantations.

Eucalyptus plantations present a serious fire risk due to the relatively large amounts of oils the trees contain and also due to the slow deterioration of their fallen leaves which provide good tinder to support the rapid spread of a fire. Eucalyptuses also are frequently criticised because they can reduce groundwater in already dry areas.

Oil palm plantations are controversial for various reasons. Palm oil mill effluents also have a very high biological oxygen demand (BOD) and thus present a serious danger to nearby rivers and lakes.

Soil erosion

There is no clear evidence or concrete conclusion of the studies undertaken on impacts of FDI on soil fertility, erosion and local water resources.

However, there is notice of physical changes of the appearance of water flow and quality of water in the rivers from upstream, which is possibly caused by logging. Increasing illegal logging activities are a cause for concern for soil erosion.

Also, a monoculture of tree plantations with clear cut at short intervals and without a stable forest cover are likely to increase the risk of soil erosion, especially during the establishment phase (HANSEN K. ET AL. 2006).

Impacts on protected areas (national parks etc.)

The conservation areas of Cambodia are subject to numerous and diverse threats. A study conducted by the WORLD BANK on Cambodia's conservation area system reveals that Cambodia's conservation area has long faced diverse ranges of direct and indirect threats to their viability. Threats stem from utilisation of the resources, habitat loss due to agricultural and infrastructure development, and hunting for the illegal wildlife trade. Very little of Cambodia's rich natural forest estate is primary forest, despite the extensive forest coverage. Most has been influenced by past uncontrolled resource use, current shifting cultivation, logging, and other exploitation. Extensive areas of lowland deciduous forest have been heavily modified by long histories of deliberated burning.

The national conservation areas are concentrated in more remote areas, but the degree of human activity is variable, and no conservation area has been untouched. (WORLD BANK 2008b)

As Cambodia recovers from decades of conflict, the spread of economic activities and change of land use have been increased rapidly. These changes are having major impacts on local livelihoods, national development plans and opportunities for conservation and management of biodiversity and natural resources. The extended forests of Cambodia are under direct threat from several factors such as unsustainable harvesting, selective logging of high-value species, and permanent conversion of forest to agricultural lands, creation of new settlements and demands from neighbouring countries and shifting cultivation. (CAMBODIA ENVIRONMENT MONITOR, WORLD BANK 2008b)

8.5 Risks and Opportunities for Food security

Most of the rural people earn their living from multiple sources, for example natural resources (forests and fishing) and wage labour. Large-scale agro-industrial plantations in Cambodia may have negative impacts on local livelihoods as well as food security. Nowadays, agro-fuel industry is in some cases regarded as a threat to the world food security (RURAL 21, 2008).

National policy on food security

In 2008, a Strategic Framework for Food Security and Nutrition in Cambodia 2008-2012 (SFFSN) was established. This program has also been integrated into the NSDP. The SFFSN will help to guide the efforts of the RGC and the development partners in this regard. The long-term vision of SFFSN is the achievement of food security and adequate nutrition for the people of Cambodia, especially among the most vulnerable. This vision is consistent with the agreed aims of the Millennium Development Goals (MDGs) and the Cambodia Millennium Development Goals (CMDGs).

Also, the government's strategy addresses the need to enhance the agriculture sector to promote agricultural products in the country. Increasing agricultural production is the crucial part to enhancing the economy and helping the poor get

out of poverty. A key-issue is the capacity development of labour skills.

According to MAFF, rice production has increased significantly to 6.7 million tons in 2007-08 with a surplus of 2.5 tons. While the price of foods increased, especially rice, MAFF's policy was not-to-export rice.

Measures taken to avoid hunger

In 2008, because of the food crisis, the RGC in cooperation with multi-donors (FAO) established a food security program. It aims at supporting the 37.4% of population who live below the poverty line, in which 20% of them are vulnerable groups²⁵. This was accompanied by the ADB emergency food assistance project 2008 (USD 17.50 million loan and USD 17.50 million grant). The aim of the project was to provide assistance to countries hit hard by the food price rise. The expected impact is a reduced vulnerability of food-insecure households in Cambodia.

Influence of FDI in land projects on food security

In general, the impacts of FDI in land can be very different and people sometimes are positively but in other cases very negatively affected:

a) Positive impacts:

- Local employment opportunities are improved, important especially for those who had no land for cultivation. The wage paid has significantly contributed to improving their daily living condition (first of all the food supply). An additional strategy to increase food security for rural labourers would be to invest in livestock or in vegetable gardens around their houses.

- The second positive impact was the improved access roads in the locality built by investors. Better roads facilitate transportation and reduce transport cost. Local villagers get easier access to markets and market information.

b) Negative impacts:

- Conflicts about land are rising at an alarming level: Limited access to common natural resources reduces the possibility of NTFPs collection which normally generates basic income to those who live next to the resources. A study conducted in four provinces namely Kampong Thom, Kratie, Monduliri and Pursat shows how much poor and medium households depend on the use of NTFPs. The study reveals that on average poor households are gaining 42% of their livelihood from forests (annually appr. USD 280/HH) and medium households 30% or USD345/HH annually (HANSEN K. ET AL. 2006).

Due to a lack of investigation, it is not clear what the net effect of FDI in land projects respectively will be. Impacts of FDI, especially on food production and on food security, are unlikely to occur over a short-term period.²⁶

Competition between food and agro-fuel production?

Agro-fuel production (mostly jatropha) is unlikely to be cultivated on areas which are used today for food production. Small- and medium-scale farmers are hesitating to participate in contract farming models to produce jatropha. One reason is the long period until the first harvest, another is that these farmers heavily depend on their small plots of land (1-3 ha, sometimes even below 1ha) for rice production in order to feed their families. Tree plantations mostly are established on former forest lands.



Rice field

25 Interview made with Food Security Expert, FAO-Multidonor Partnership Program (FMPP), June 2009.

26 Officer of MAFF, June 2009

9. Links between FDI in land and concepts/ support strategies of development cooperation to promote rural development

9.1 Role of development aid

The role of development aid is changing in Cambodia. Whereas in former years an important income source, this has changed in recent years: The tremendous increase in private sector FDI in Cambodia has led to a situation where the amount of FDI is considerably larger than the volume of ODA. That means from a governmental point of view the importance of ODA is decreasing and in cases of conflicts between private sector and donor projects with other objectives (e.g. biodiversity), probably the larger project will be given preference.

It is of utmost importance that the donor community, individually and as a group, is aware of this changing environment and realises the need to reassess how to do business in Cambodia.

As there are both positive and negative aspects of FDI, the donors need to actively keep abreast of the FDI projects and proposals. The donors should assist the government in anticipating FDI trends and their potential impacts in order to develop appropriate measures for issues and problems raised by FDI. They should then assist the government where it is needed and not adequately covered by the FDI.

As stated above, FDI projects are primarily concerned with opportunities to either make a profit or to secure access to resources that are needed in the investor's home country. Since they are generally not very concerned with most aspects of the host country's development agenda, there remains a clear mandate for the donors to continue supplying ODA especially in support of programmes to reduce poverty, develop social infrastructure, promote good governance and government reforms, and build government capacity in many areas. However, the donors as a group should continuously search for ways to

engage foreign investors in those programmes whenever possible. The donors together with the government also should continuously look for opportunities to develop synergies between their development programmes and activities and the foreign investment projects (TUCKER 2009).

9.2 Conclusions and recommendations

Although the RGC has elaborated a legal and regulatory framework in terms of awarding land concessions, it still lacks its proper implementation and still some questions are not yet treated.

The following questions seem to be of main importance:

- How to strengthen institutions and to enforce their accountability in order to improve management of state land including the protection of biodiversity?
- How to secure land (use) and ownership rights of farmers and indigenous people and how to improve their participation in the allocation process of land concessions, in order to get a win-win-situation?
- How to avoid or at least reduce rent-seeking behaviour?

Legal and Institutional Reforms

First of all, an appropriated legal frame has to be developed to tackle these questions:

- Participation is a fundamental right of persons who might be affected by reallocation of land (whether in form of FDI or not). This includes several rights such as being informed in advance, getting access to key project documents, assembling and being able to speak out at forums, to register as a potentially aggrieved party to qualify for compensation, etc.

- **Information Policy:** Transparency in the whole process is the key. Therefore, a law has to be implemented to define precisely what kind of information about FDI in land projects (should be valid also for domestic land reallocation projects) has to be made public and how (preferably to include geographic coordinates, SEIAs, resettlement plans, compensation programs, etc.). In this context a national database of land concessions should be established including all pertinent information (geographic coordinates, use rights and negotiation rights conferred, concession period and conditions for extension or renewal, schedules of taxes and fees, etc.) This would require that concessions be surveyed prior to granting and registration, so the minimum requirements and responsibility for the survey also must be clearly delineated.
- **Legal frame for Contract Farming models:** Cambodia needs to develop a body of contract law. Contracts today are lacking important information such as rules about abrogation. Often, contracts are based entirely on the good will and understanding of mutual need among the parties, which clearly is not adequate for large-scale commercial enterprise.
- **Anti-Corruption Legislation:** There is a strong need to reduce the influence of corruption in the process of awarding land concessions. An appropriated anti-corruption law has to be established and implemented, together with an independent institution to fight against corruption.
- **Land Reform:** The land titling and registration program has to be continued to ensure existent land use and land property rights of farmers and communities, not only to improve security of these land rights but also to increase access to credits etc.

Public Information and Participation Programs

Effective and timely public information programs are needed to keep directly affected and other concerned individuals aware of the issues and pending actions related to investment projects in their areas.

- **Government Agency Websites.** The establishment and regular maintenance and updating of government websites that are open to the public is an important mean of public information. Most ministries already have websites, but there is wide variation in the types, timeliness and usefulness of information provided, and in the frequency of updates (remark: the homepage of the MAFF has been under construction for months).
- **Interest Group Websites.** Websites can provide important services and a forum to create transparency in the field of foreign direct investments, as the example of LaoFAB in Laos shows:
 - First, it provides free access to a constantly growing and searchable collection of technical reports in a digital format;
 - Second, it provides an online forum where interested persons can correspond with their peers on agriculture-related issues; and
 - Third, it provides a service to keep interested members informed of recent news items relevant to the sector.

Similar internet-based forums should be supported in Cambodia and other countries as well.



Land for Sale

FDI National Database

The establishment of national databases of land concessions, including geographic coordinates, presumes that there is the capacity to accurately survey each concession. The use of GPS/GIS systems should be institutionalised and geo-referenced databases should be used to document key sites and activities for all projects. This requires many current field level staff being familiar with GPS/GIS systems and government offices being linked through reliable local area networks and rapid internet connections. This is an area where the introduction of donor requirements to use GPS/GIS systems to routinely document project implementation would lead the government to take action.

FDI Screening, Monitoring and Enforcement

The RGC needs to efficiently implement the regulatory framework of screening proposed FDI projects in order to reject those that are not in the national interest. All approved FDI projects have to be regularly monitored to ensure that they meet the terms and conditions of their agreements. In the initial phase, donor assistance can help to guide and hasten the development of the regulatory framework and to support their effective implementation.

Protected Area System

The protected areas are subject to encroachment and to redefinition by the establishing authority. The whole Protected Area System needs to be strengthened in order to improve conservation of biodiversity and important cultural and historical sites. Development cooperation can essentially support the activities of the government to ensure the integrity of the protected area systems (supporting research and development programs, implementing monitoring and enforcement systems, creating public awareness, etc.)

Independent Studies

Independent studies will help to increase transparency. It is important that Cambodia continues to develop programs in support of independent research that can examine and report on issues associated with FDI in land. Donors could support independent research institutions by various means such as providing budgetary support, providing staff and equipment and by commissioning the institutions to do specific studies.



Rice field



Transportation

Capacity Building

For all the activities including the development of new institutions, specific know-how is necessary. Capacity building programs remain essential to develop an adequate pool of local talent to fill these demands. Donors and governments should jointly identify critical areas where capacity is lacking and focus on assistance there. From our point of view, critical areas for capacity building at present would likely include legal professions, information systems, resource economics, environmental sciences and natural resource management.

Unified Action

Because the annual ODA provided to Cambodia is now much less than the annual private sector FDI, it is more important than ever for the donors to pool their efforts and resources to develop unified development programs that have a better chance of making the desired impact. A framework for collective action already has been established in some areas. However, even there the donors still have much to do to really unify their disparate programs. There has been little progress, for example, toward the goals of alignment and harmonisation of donor support for certain programs or projects.

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