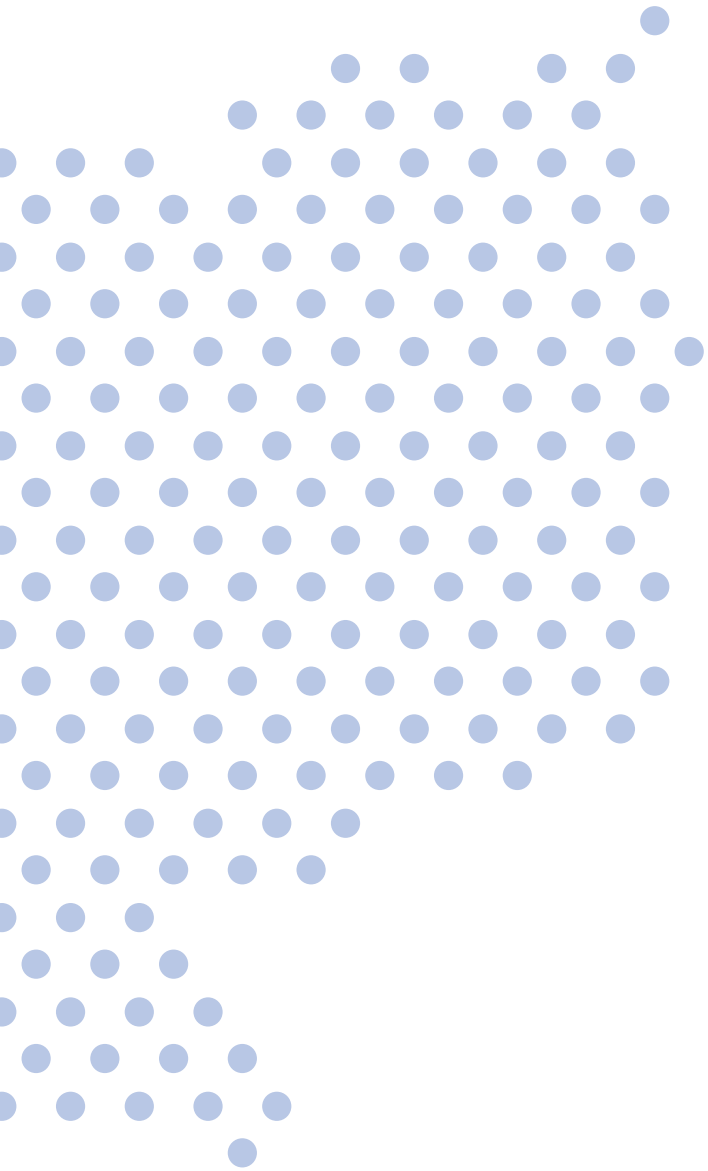
GOING GLOBAL

Series of China's "Going Global"
Global Environmental Institute
Overseas Investment, Trade and the Environment Program Team

Cambodian FDI Policy and Management System: Analysis of Chinese Investments in Cambodia



Series of China's "Going Global"
Global Environmental Institute
Overseas Investment, Trade and the Environment Program Team

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About GEI

The Global Environmental Institute (GEI) is a leading Chinese non-governmental organization (NGO) established in Beijing in 2004. GEI's mission is to design and implement market-based models to solve environmental problems and realize sustainable development in China and overseas. GEI provides policy suggestions to governments and promotes best environmental practices on investment, trade, energy and climate change, biodiversity protection and capacity building. Since its establishment, GEI has been engaging in research and demonstration projects in more than 20 provinces, cities and municipalities in China as well as in Southeast Asian and African countries.

Through its Investment, Trade and Environment project, GEI is dedicated to encouraging and supporting the Chinese government to formulate foreign investment and trade related environmental policies that regulate and guide the environmental conduct of enterprises investing overseas; build up the environmental governance capacity of host countries, including the development of appropriate environmental policies that regulate environmental conduct of investors; and improve the capability of Chinese enterprises to comply with environmental policies and regulations, better manage investment risks and fulfill their environmental and social responsibilities.

GEI has successively pushed forward and participated in the development of *A Guide on Sustainable Overseas Silviculture by Chinese Enterprises* and *A Guide on Sustainable Overseas Forest Management and Utilization by Chinese Enterprises* issued by the State Forestry Administration and the Ministry of Commerce (MOC) in 2007 and 2009 respectively, as well as the *Guidelines for Environmental Protection in Foreign Investment and Cooperation* released by MOC and the Ministry of Environmental Protection in 2013. GEI has also carried out demonstration projects, conducted research and led local capacity building activities on sustainable investment in Laos, Myanmar, Mozambique, Congo (DRC) and other Southeast Asian and African countries.

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Disclaimer

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Preface

Since the Chinese government's pronouncement of a "Going Global" strategy in 2000, Chinese Outward Foreign Direct Investment (OFDI) and international business cooperation has soared. In the past fifteen years, domestic and international bodies alike have acknowledged Chinese enterprises' contributions abroad as they have fortified host-country infrastructure, stimulated local economic growth and increased employment opportunities. Chinese enterprises' have also achieved economic influence as Chinese OFDI has ranked the third in the world for the past three consecutive years. As Chinese firms meet new opportunities and continue to achieve success, however, the expectations for these firms – particularly their standards of corporate responsibility - have risen. Meeting these expectations requires that the Chinese firms improve their sustainable development overseas, establish more harmonious labor relations, and enhance their management of local societal and environmental concerns. Moreover, by addressing these tasks, the 'going-out' process may not only a new lucrative business opportunity for Chinese firms, but may also be a means to strengthen their corporate governance. All in all, through enhanced policy and governance, Chinese enterprises abroad can help balance the economic, social and environmental development of host countries while also achieving their own market success.

In addition to the international pressure, the Chinese Government's 13th Five-Year Plan also emphasizes the mutual benefits and joint development strategies of Chinese companies 'going-out' and gives stronger requirements for globalization efforts. In fact, the government showed initiative and support for national economic and social development by issuing *Vision and Actions on Jointly Building the Silk Road Economic Belt and 21st-Century Maritime Silk Road* on March 28th, 2015. In this way, there is a great opportunity for China' s outward investment and economic cooperation to begin new strategic development.

While the initiative to enhance Chinese investment abroad is positive, the process to transform policy into an operational strategy requires research and on-the-ground analysis. In 2014, Global Environmental Institute (GEI)' s Investment, Trade and the Environment team along with the Chinese Academy for Environmental Planning (CAEP), supported by The Wildlife Conservation Society (WCS) South East Asia Office and Vermont Law School's U.S.-China Partnership for Environmental Law (VLS) launched a series of scoping studies on the Chinese Investment in Myanmar, Laos, Cambodia and Vietnam.

Recognizing the need for research on real cases of Chinese investment abroad, GEI, WCS, VLS and CAEP cooperated extensively on the studies to investigate the decision-making process, challenges and success of Chinese firms in these four Southeast Asia countries. GEI designed the project to be useful for policy makers as the project provides analysis of the investment management system of each country alongside discussion of its environmental policy. Each country section also details case studies of Chinese firms' operations in sectors with potential significant environmental and social impacts, such as hydropower, mining and infrastructure. The main findings of these studies are published as GEI' s Publication Series of China's "Going Global".

The following is *The Cambodian FDI Policy and Management System: Analysis of Chinese Investments in Cambodia*, which is the Cambodian section of the study. This section consists of a thorough country summary, analysis of Cambodia's investment and environmental policies, as well three case studies that highlight the problems and challenges Chinese firms face when investing in Cambodia. The three cases are: the withdrawn logging concession of two Chinese firms, the suspension of Cheay Areng hydropower development, and the Dara Sakor seaside tourism project.

The case studies are supported by extensive first-hand work by the GEI research team. In fact, preparation included conducting interviews with management both over the phone and face-to-face, arranging site visits with local stakeholders, holding community meetings and conducting household surveys. It is duly noted that due to limitations of time, stakeholder access and other complications, this report analyzes the case studies from the environmental and social perspective.

GEI hopes that the project's subsequent "'Going Global' Reports" can be a reference for policy makers and usher in a new era of more responsible Chinese overseas investment.

Global Environmental Institute
July 2016

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Executive Summary

Cambodia lies in the southern part of the Indo-China Peninsula and borders Vietnam, Laos and Thailand. The country covers 180,000 square kilometers of land and is inhabited by a population of 15.14 million people. Perennial warfare and political chaos have thwarted Cambodia's economic development, resulting in the country being among the world's least developed nations. In fact, Cambodia's GDP per capita was USD 1,008 in 2013, ranking it as the lowest of the eleven countries in Southeast Asia that year. Even though this value may be low, however, it is a remarkable improvement. In fact, the country's political and economic capacity has been stabilizing incrementally since the formation of the Royal Cambodian Government in 1993. As such, Cambodia is currently amidst a new phase of peaceful development. The gradual improvements to the new political system, investment policies and relevant institutional arrangements have garnered investors' interest and spurred an emerging foreign investment market: from 2004 to 2014, the annual Foreign Direct Investment (FDI) flow to Cambodia grew from USD 130 million to USD 1,730 million. The impact of FDI on Cambodia's economy is especially evident in the fact that Cambodia's GDP growth rate was the second highest in Southeast Asia in 2013.

Trade between China and Cambodia is largely supported by Cambodia's geographic proximity to China, the country's economic potential and overall positive relations between the two countries. Economic and trade cooperation between the two countries has undergone thorough restoration since the formation of the Royal Cambodian Government in 1993 and, in fact, has achieved rapid development. From 2004 to 2014, Chinese annual FDI in Cambodia increased from USD 30 million to USD 438 million, with interim annual FDI fluctuating above this range. The ratio of Chinese FDI to Cambodia's annual foreign investment flow also fluctuated over this period and the highest ratio reached was 41%. At present, China remains Cambodia's largest foreign investor and there are nearly 1,000 Chinese enterprises conducting investments in the country. State-owned enterprises mainly invest in hydropower, road and bridge construction, mining and other large state projects; whereas private enterprises are usually invested in garments, electro-communication, agriculture, tourism, and catering.

While Cambodia has benefited from rapid economic growth in recent years, this growth does not off-set the impacts of decades of war and stunted economic and institutional development. In fact, Cambodia's environmental laws, regulations and standards are still unsophisticated and the national government is still inefficient and lacks transparency. Despite this overall weak governance capacity, international and civil society organizations are booming in Cambodia with groups actively involved in policy formulation and public advocacy. The combination of these factors creates a complicated investing environment marked with low compliance requirements, strong social demands, and high policy risks. Against such a backdrop, Chinese investment projects involving large-scale land use and resource development including agriculture, forestry, hydropower, and real estate tend to encounter challenges uncharacteristic of a mature and stable investment environment.

One of the many risks facing Chinese investors is the risk associated with policy change. Given Cambodia's developing state, many of its laws and regulations, and administrative procedures are still largely being formulated and improved. For investors, the volatility is problematic as policy change is often equated with an increase in project cost and uncertainty of income. Chinese enterprises investing in forestry experienced this reality first-hand as firms that had been granted forest concessions to harvest trees and lumber mill investors were forced to suspend logging activities to harvest trees in 2001, under a government declaration. This announcement caused losses to Chinese enterprises in USD tens of millions.

An additional serious risk facing investors is Cambodia's weak governance capacity. Currently, laws and regulations are not effectively executed, and environmental and social protection has yet to be fully provided. Against such a backdrop, enterprises tend to be the ultimate bearer of environmental and social risks, as well as reputational and economic losses. An example of this is the Dara Sakor Seashore Resort Project. In this case, the government altered the project's land concession that crossed state-protected borders, but no relevant laws necessitated public participation or information disclosure of environmental and social impact assessment, nor did these laws require disclosure of detailed relocation and compensation information. As such, even though the project's investment, including land use rights, planning, relocation and settlement, environmental impact assessment, etc., was approved and acknowledged by the Cambodian government, and the settlement of relocated residents was led by the local government, the doubts and objections of local community and NGOs were never addressed. Therefore, the project developer UDG felt the direct effects of the weak governance structure and became the target and the ultimate bearer of losses.

A final major concern to investors in Cambodia is the intense political environment and fiercely active political parties, international inter-governmental organizations, and international and domestic non-government organizations (NGOs). Given these organizations' commitment to the country's sustainable development and democratic reforms, they are likely to get involved when large investment projects trigger social controversies. Furthermore, in some cases, political forces have allegedly influenced the debate over project proposals. As explained in Section 6.3 of this study, the suspended Stung Cheay Areng Hydropower Station is one example of a project that faced this particular problem. Even though a study of the project's environmental and social impact is still being conducted and relocation compensation has yet to be decided, Cambodia's accumulated baggage of corruption has already played a role. In fact, the corruption has largely lessened the government's and enterprises' credibility, and spawned strong opposition from residents and NGO groups in the form of road blocks and other actions. These opposition activities gathered wide attention from political leaders and local media, and eventually caused the suspension of the project.

In our investigations, we found that many Chinese enterprises have begun considering environmental protection and Corporate Social Responsibility (CSR) for their overseas investments. However, the concrete work by firms to these ends remains to be seen. In fact, on the whole, enterprises still lack awareness of and capacity for information disclosure, communication with local NGOs and communities, etc. In response, we recommend that enterprises "think outside the box" of domestic operational models, and instead, actively adjust to local complexities and align themselves with international practices.

1) We first recommend that enterprises take environmental and social impact assessments seriously. Along these lines, firms should minimize environmental and social risks and impacts by adopting relevant Chinese environmental standards, or international standards and best industry practices, which are stricter than Cambodian laws.

2) Our second recommendation is to build an information disclosure mechanism that informs the local government, community residents and other stakeholders of project information that bears on their own interests or public welfare. Through this communication mechanism, it will be possible for stakeholders to stay updated on the project and for the opinions and suggestions of relevant government bodies, community residents, NGOs and the media to reach the firm. In this way, the firm will be able to promptly address problems during project execution and solve them via multi-lateral dialogues and consultations.

3) Finally, we recommend transforming the top-down one-way communication model and maintaining friendly relations with the host country's government and officials, community residents, NGOs, the media, and other stakeholders. Along these lines, it is helpful for the enterprise to conduct CSR demonstration projects regarding environmental protection and resident livelihood improvement, or establish a community fund that provides support to the community's development. By engaging in one of these projects, the corporation adds value and benefits to the local community and gains its own social recognition.

1

Introduction to Cambodia

1.1 Geography and Population
1.2 Politics
1.3 Economy
1.4 Chinese Investment in Cambodia

Author of this section: Rong ZHU, Global Environmental Institute.

1.1 Geography and Population

Located about 10 ° above the equator in Southeast Asia, the Kingdom of Cambodia borders the Gulf of Thailand and neighbors Thailand, Laos and Vietnam. Cambodia only covers 181,035 square kilometers, making it a relatively small country compared to most Southeast Asian nations.

The geography within Cambodia has been important to the country's current and future development. One of the crucial elements in the country is the Mekong River, which is the longest river in Cambodia, crossing the country from North to South. The Bassac River is the eastern branch and main distributary of the Mekong and, like the Mekong, it flows to the south, entering Vietnam. Cambodia's Tonlé Sap (Great Lake) is the largest freshwater lake in Southeast Asia and was designated as an UNESCO Biosphere in 1997[1].The Tonlé Sap, the Bassac River, and the Mekong River are all located on Cambodia's central plain, which is surrounded by mountains and plateaus. The plain area covers 75% of the country's total area (Figure 1-1). Due to its tropical climate, Cambodia is densely covered by forests and vegetation - 47.2% of the country is forested[2]. Other than forests, gemstones, iron ore, manganese and phosphate resources are rich in Cambodia. Additionally, the country has relatively easy access to oil, gas and hydropower resources.

Cambodian people rely heavily on the geography of the country for their well-being as well as the nation's future development. According to the World Bank, Cambodia's population was about 15.14 million by the end of 2013[3]. Most of the population lives in the central plain region, especially Phnom Penh and more economically developed provinces around the capital. Phnom Penh's population is 1.5 million, accounting for 10% of the country's total population. Ethnically, 90% of the population is Khmer, 5% is Vietnamese, 1% is Chinese and 4% is others while 90% of the population believes in Buddhism[4] .

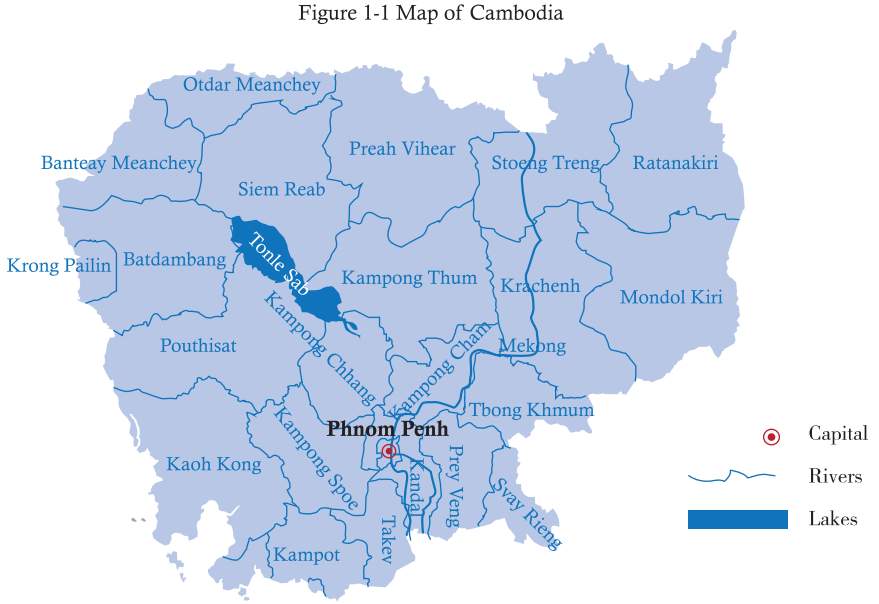
[1] United Nations Educational, Scientific, and Cultural Organization (UNESCO), MAB Biosphere Reserves Directory, Tonle Sap. *Available at* http://www.unesco.org/mabdb/br/brdir/directory/biores.asp?code=CAM+01&mode=all.

[2] United Nations Food and Agriculture Organization (UNFAO), Cambodia Forest and Information Data 2011.

[3] World Bank, Cambodia Data, 2013.

[4] United States Central Intelligence Agency, The World Fact Book: Cambodia. *Available at* https://www.cia.gov/library/publications/the-world-factbook/geos/cb.html.

Figure 1-1 Map of Cambodia



1.2 Politics

Modern-day Cambodia is a constitutional monarchy with legislative powers shared amongst the bicameral Parliament of Cambodia, which consists of a lower house (the National Assembly) and an upper house (the Senate). The country's political climate is quite dominated by increasingly active political parties, with the primary parties being the Cambodian People's Party, which is the current ruling party, the Cambodian National Rescue Party, and the FUNCIPEC Party. The Cambodian People' s Party has been managing the nation's administrative affairs since 1993 and Prime Minister Hun Sen, of the Cambodian People's Party, is the current leader.

Cambodia officially declared independence from France in 1953 after 90 years of colonial rule. The six decades from 1953-1993 were fraught with civil wars, the Khmer Rouge regime, border conflicts and political and military instability. The United Nations Transitional Authority in Cambodia was established in 1992 after the signing of the Paris Agreements, and Cambodia's constitutional monarchy was restored in 1993. Since then, Cambodia has experienced one of the most peaceful times in its history.

With the institution of the constitutional monarchy, Cambodia began a period of political and economic reform driven by the above-mentioned three political parties and intergovernmental organizations. United Nations agencies, the International Monetary Fund, World Bank, Asian Development Bank and other intergovernmental organizations have significantly impacted Cambodia's development by providing economic development plans, funds, technical support, and programs as well as participating in Cambodia's economic and social development.

During the political and economic reform, much of the funds and technological support provided by intergovernmental organizations have been utilized in the development of Cambodian civil society. A large wave of non-government organizations (NGOs) has been established since 1993, and as of 2015, Cambodia had 1,728 registered NGOs, 575 of which were foreign[5].

NGOs in Cambodia can generally be divided into five categories based on their services and functions: these five categories are organizations to promote democracy and human right; development organizations focusing on education, health, loan and other development projects; organizations with focuses on research and other analytical work and advocacy activities covering various development issues; supportive organizations focusing on human resource and organizational development training activities; and community-based organizations[6].Overall, the involvement of the international agencies has benefited Cambodia by promoting democratic reform as well as implementing NGO public services where the government's work was insufficient.

[5] Council for the Development of Cambodia, The Cambodia NGO Database. *Available at* http://cdc.khmer.biz/ngo/index.asp.

[6] Asian Development Bank, Civil Society Briefs: Cambodia. *Available at* http://www.adb.org/publications/civil-society-briefs-cambodia.

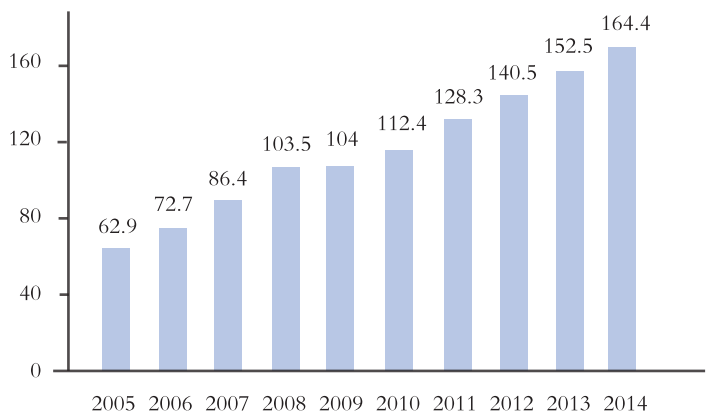
1.3 Economy

The decades of political instability following the era of French Colonialism severely damaged the Cambodian economy. In fact, Cambodia is still recognized today as a least developed country by the United Nations Conference on Trade and Development (UNCTAD). Since its establishment in 1993, the Royal Government of Cambodia has been determined to reconstruct Cambodia's economy with a market-oriented focus. One major step forward for economic development was Cambodia's officially joining the World Trade Organization (WTO) in 2003. Following its entry into the WTO, from 2005 to 2014 Cambodia's GDP grew on average by 11.3%, a rate that equals an increase of USD 6.3 billion to USD 16.4 billion[7].Annual GDP since 2005 can be seen in Figure 1-2. While this GDP growth is promising, Cambodia's GDP per capita remains low relative to its neighboring countries. As such, there is still a long way to go in terms of development.

[7] United Nations Conference on Trade and Development. UNCTADstat Data Center. *Available at* http://unctadstat.unctad.org/wds/ReportFolders/reportFolders.aspx?sCS_ChosenLang=en.

Figure 1-2 Cambodia' s GDP, 2005-2014

Unit: Billion USD

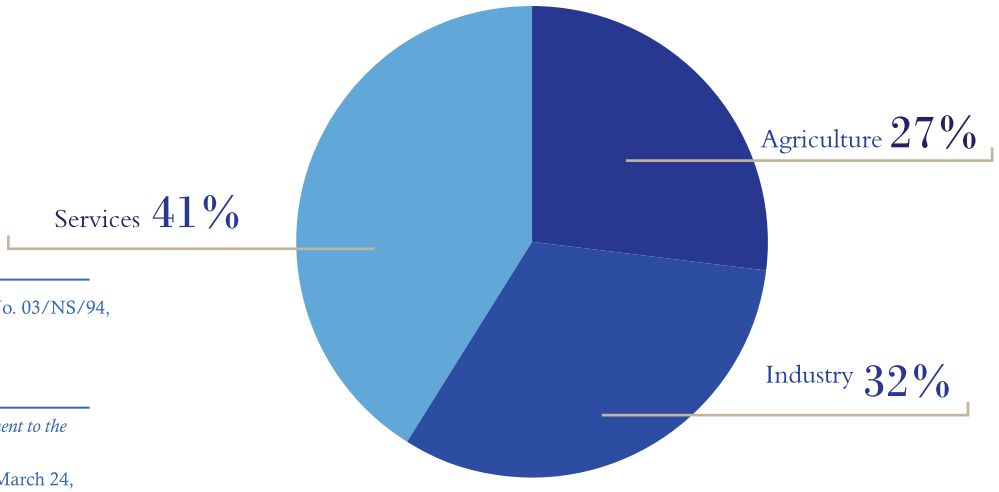


Data Source: UNCTAD STAT

Cambodia's GDP growth is largely driven by the service, agricultural and industrial sectors. The service sector is the largest contributor to GDP, accounting for 41% of total GDP, followed by industry with 32%, and agriculture with 27%, according to the World Bank (Figure 1-3)[8].The service sector includes trade, transportation, telecommunication, tourism and catering businesses, while the industrial sector mainly includes textile, footwear and construction industries.

[8] Cambodia. World DataBank. The World Bank.2013. *Available at* http://databank.worldbank.org/data/reports.aspx?source=2&country=KHM&series=&period=..

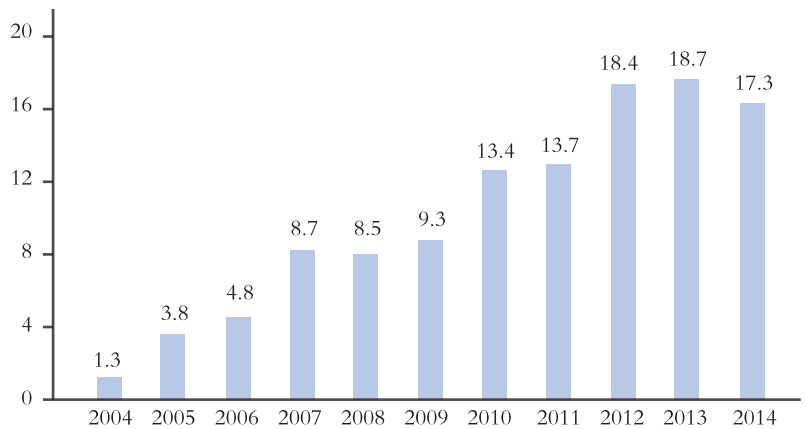
Figure 1-3 Cambodia's GDP by Sector, 2012



In addition to entering the WTO, encouraging foreign investment was one of the government's most important economic development strategies. The process of encouraging foreign investment began in 1994 with the issuing of *The Law on Investment*,[9] which was later amended in 2003[10]. With the increasing stability of the new regime and gradual improvements to the investment process, Cambodia has become an attractive emerging market. In fact, since 2003, foreign investment into Cambodia rose sharply from USD 131 million in 2004 to USD 1,730 million in 2014 (Figure 1-4)[11].

Figure 1-4 FDI Flow to Cambodia, 2004-2014

Unit: Million USD



Data Source: UNCTAD STAT

China, South Korea, and Malaysia are all major foreign investors in Cambodia. According to the Cambodia Development Council (CDC), from 1994 to 2013 the Cambodia Investment Board (CIB) approved a total of USD 9,301 million of Chinese investments (not including investments in Special Economic Zones, SEZs), and this accounts for 35.3% of foreign investments (not including SEZ investments) approved by CIB during the same period (Figure 1-5)[12].

[9] *Law on Investment*, No. 03/NS/94, August 5, 1994.

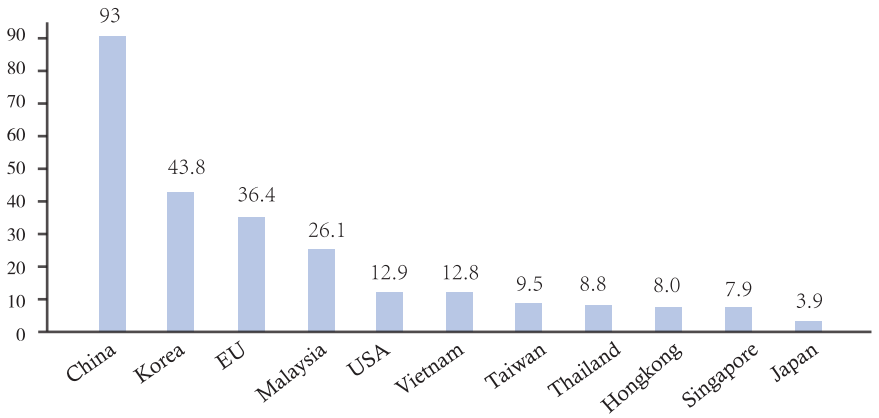
[10] *Law on the Amendment to the Law on Investment*, NS/RKM/0303/008, March 24, 2003.

[11] Cambodia, Foreign direct investment flows. UNCTADstat Data Center. United Nations Conference on Trade and Development. *Available at* http://unctadstat.unctad.org/wds/ReportFolders/reportFolders.aspx?sCS_ChosenLang=en.

[12] Suon Sophal, Council for the Development of Cambodia, Cambodia Case on Ensuring Inclusive and Sustainable FDI in the Natural Resource, November, 2013. *Available at* http://www.unescap.org/sites/default/files/fdildc-cam.pdf.

Figure 1-5 CIB-Approved Foreign Investment by Country, 1994 - June 2013

Unit: Billion USD



1.4 Chinese Investment in Cambodia

China and Cambodia have maintained a close cultural and commercial relationship since the establishment of the new Cambodian government in 1993. In 2006, China and Cambodia signed several bilateral agreements and a "Comprehensive Partnership of Cooperation" treaty. In 2010, China and Cambodia established a strategic cooperative partnership during Prime Minister Hun Sen's official visit to China. With the establishment of these cooperative agreements, bilateral trade between China and Cambodia increased greatly, from USD 19 million in 1993 to USD 2.9 billion in 2012 [13]. Between 2004 and 2014, China's direct investment flows to Cambodia increased from 30 million USD to 438 million USD (Figure 1-6), making China Cambodia's largest foreign investor. The highest ratio of Chinese FDI to Cambodia's annual foreign investment flow over this period reached 41%.

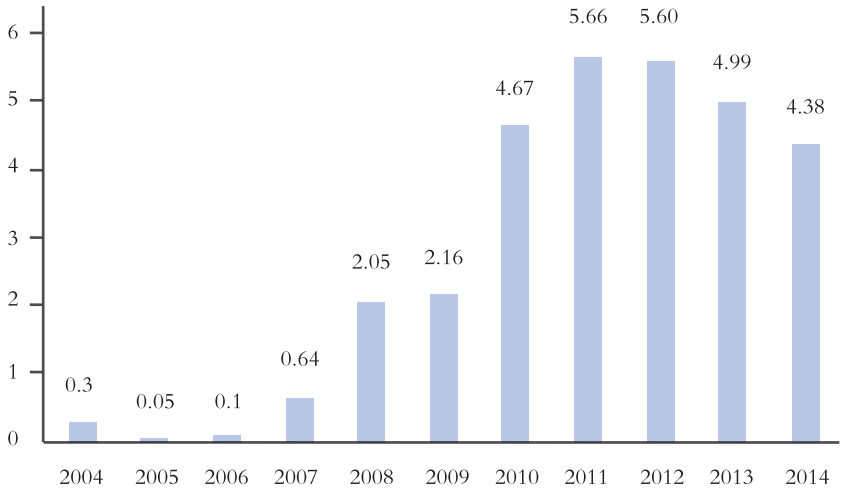
[13] Chen Liangcai, "Cambodia-China Economic Cooperation Development and Opportunity" , Post-graduate Dissertation, Minzu University of China, May 2014.

By the end of 2014, Cambodia had approximately 1,000 Chinese state-owned enterprises (SOEs) and privately funded firms. Generally speaking, Chinese SOEs are mainly investing in hydropower, infrastructure construction, mining and other large-scale projects of national significance, while private Chinese enterprises are mostly investing in the garment, electronic communications, agriculture, tourism and catering industries. The garment sector has attracted the largest number of Chinese investors, with more than half of Chinese investments made in the garment industry from 1994 to 2010 (Figure 1-7). In 2012, China was the largest investor in the Cambodian garment sector with a total investment of USD 121 million. Chinese garment investment was followed by Taiwan at USD 112 million and Korea at USD 70 million[14].

[14] "Cambodian Garment Exports Likely to Grow in 2013: GMAC" , The Southeast Asia Weekly, April 18, 2013.

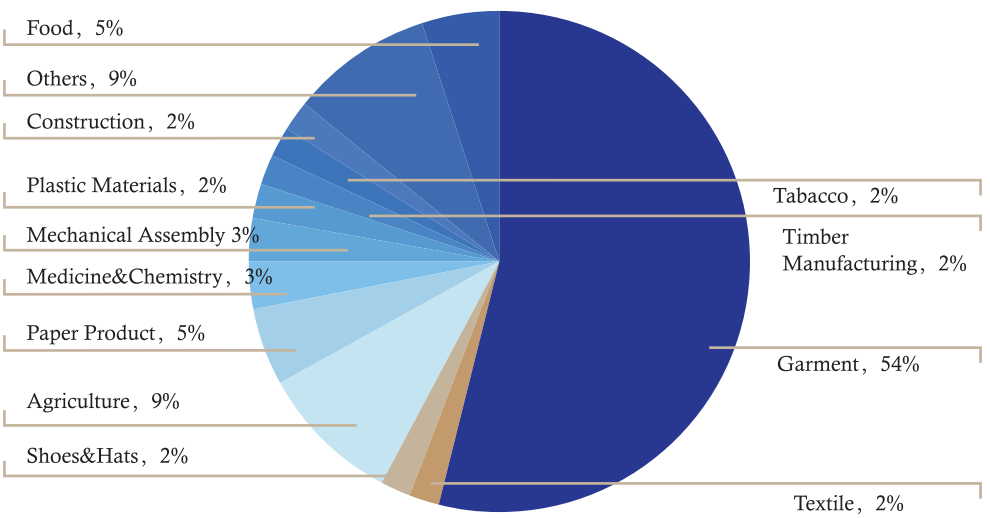
Figure 1-6 Chinese Foreign Investment Flow to Cambodia, 2004-2014

Unit: Billion USD



Data Source: *PRC Ministry of Commerce*, 2014 Statistical Bulletin of China's Outward Foreign Direct Investment

Figure 1-7 Chinese Investments in Cambodia by Sector, 1994-2010



2



Investment Management Department & Registration

2.1 Investment Management Department
2.2 Investment Registration Procedure

As seen in the previous section, the flow of foreign investment into Cambodia has risen steadily ever since the country transitioned to a market-based economy in 1993. Much of this rise can be attributed to the favorable climate the Government of Cambodia has tried to create in order to encourage more investment. This section provides a brief overview of Cambodia's legal framework and institutional arrangement for reviewing and approving foreign investment projects.

2.1 Investment Management Department

In 1994 the Government of Cambodia passed the *Law on Investment*,[1] which was later amended in 2003.[2]It also passed several Sub-Decrees, the most recent of which is *Sub-Decree No. 111 on the Implementation of the Law on Investment*.[3] Taken together, these laws and regulations establish the legal and institutional framework for investment projects in Cambodia.

The Council for the Development of Cambodia, CDC[4]

The *Law on Investmen*t established the Council for the Development of Cambodia (CDC), which is the institution responsible for evaluating, approving, and supervising all investment activities in Cambodia, including foreign investment projects.[5]

The CDC's functions include the following: [6]

- Provide information for potential investors
- Review investment applications and grant incentives
- Monitor completed investment projects
- Provide public support and service during project implementation
- Organize the Government-Private Sector Forum, a bi-annual platform that enables the private sector to participate in policy dialogue with the government

[1] *Law on Investment*, No. 03/NS/94, August 5, 1994.

[2] *Law on the Amendment to the Law on Investment*, NS/RKM/0303/008, March 24, 2003.

[3] Sub-Decree No. 111/ANK/BK on the Implementation of the Law on Investment, September 27, 2005. (Hereinafter "Sub-Decree No.111")

[4] Council for the Development of Cambodia. "Investment Application Procedures." *Available at* http://www.cambodiainvestment.gov.kh/investment-scheme/investment-application-procedures.html.

[5] *Law on Investment*, Art. 3.

[6] Sub-Decree No. 147/ANK/BK on the Organization and Functioning of the Council for Development of Cambodia, December 29, 2005, Art. 10. (Hereinafter "Sub-Decree No. 147").

In an effort to further promote development and foreign investment, the Government of Cambodia passed a Sub-Decree in December 2005 to introduce Special Economic Zones to Cambodia.[7] At the same time, the Government re-organized the CDC into three primary branches: the Cambodian Investment Board (CIB); the Cambodian Rehabilitation and Development Board (CRDB); and the Cambodian Special Economic Zone Board (CSEZB).[8] The CRDB coordinates and manages aid coming into Cambodia.[9] The CIB mainly focuses on investment projects that are not located within a special economic zone, while the CSEZB is responsible for developing, evaluating and monitoring investment projects in the special economic zone.[10] CDC has eight specific departments, as detailed in Figure 2-1 below.

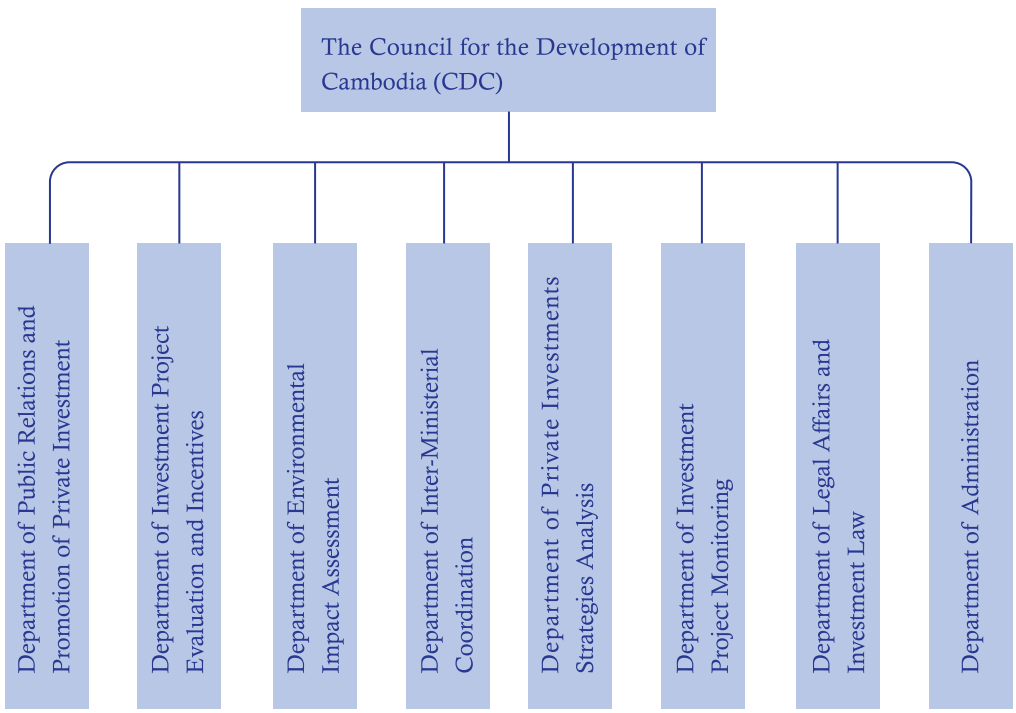
[7] Sub-Decree No. 148/ANK/BK on the Establishment and Management of Special Economic Zones, December 29, 2005.

[8] Sub-Decree No. 147, Art. 2.

[9] Sub-Decree No. 147, Art. 4.

[10] Sub-Decree No. 147, Arts. 5-6.

Figure 2-1 CDC Structure



In addition to the functions listed above, the national-level CDC is responsible for directly reviewing applications for projects that involve an investment of between USD 2 - 50 million, project located in Special Economic Zones, and projects that span provincial borders.[11]

[11] Sub-Decree No.17/ANK/BK on the Establishment of Sub-Committee on Investment of the Provinces-Municipalities, February 9, 2005, Art. 6.

The Council of Ministers[12]

In order to add a layer of review for potentially sensitive or significant projects, Sub-Decree No. 147 established certain categories of investments that the CDC must submit to Cambodia's Cabinet, known as the Council of Ministers, for approval. Such investments will have one of the following characteristics:[13]

[12] Sub-Decree No. 147, Art. 11.

[13] *Ibid.*

- Requires investment capital USD 50 million or more;
- Involves politically sensitive issues;
- Involves the exploration and the exploitation of mineral and natural resources;
- May have negative impact on the environment;
- Has long-term development strategy;
- Involved in infrastructure concession.

Provinces/Municipalities Investment Sub-Committees (PMIS)[14]

In Phnom Penh and the provinces, the CDC is organized into sub-national committees referred to as Provincial/Municipal Investment Sub-Committees (PMIS), which act as "One-Stop Service" providers for investment project applicants. Each respective PMIS is responsible for registering and managing investment projects within their area that are less than USD 2 million.[15]

The relationship between CDC, PMIS and Cambodian government is organized in the following two ways. First, the CDC oversees the PMIS. As overseer, the CDC formulates procedures and rules as well as provides professional training for PMIS. Additionally, PMIS is required to submit monthly reports about local investments to CDC. Second, the CDC and PMIS are integrated with the Cambodian government on three levels. On the first level, the CDC chairman is the Prime Minister of Cambodia, and the PMIS chairmen are provincial or municipal governors. On the second level, CDC reports to the Royal Government with investment summaries. Finally, while the Executive Vice Chairman of PMIS is a representative from CDC, the other two vice chairmen are the first provincial vice governor and the second provincial vice governor.

Other Management Departments

After projects have registered with CDC or PMIS, they then must also obtain certificates or licenses from the government departments relevant to their project type. For example, a plant construction project registered at the Ministry of Commerce [16]will also require an economic land concession certificate from the Ministry of Agriculture, Forestry and Fisheries; a certificate of mineral resources development from the Ministry of Energy and Mines; and an environmental impact assessment evaluated and supervised by the Ministry of Environment. Finally, if an investment project has tax benefits, the investor will also need to register at the Ministry of Economy and Finance.

[14] Sub-Decree No.17/ANK/BK on the Establishment of Sub-Committee on Investment of the Provinces-Municipalities, February 9, 2005.

[15] Sub-Decree No. 17, Art. 3.

[16] KPMG Cambodia, Ltd., "Investing in Cambodia," 2013. *Available at* https://www.kpmg.com/SG/en/IssuesAndInsights/ArticlesPublications/Documents/Tax-CT-Investing-in-Cambodia.pdf.

2.2 Investment Registration Procedure

The steps for project registration are fairly straightforward. The investor submits an application to the CDC or PMIS as the case may be, after which the CDC/PMIS will issue a Conditional Registration Certificate (CRC) to the investor within three working days. The CDC/PMIS will clearly indicate any additionally required government departments on the CRC so that investors can correctly apply for their administrative licenses. The CDC/PMIS will also assist investors in the process of submitting applications to each relevant department.

Once investors receive CRC from relevant departments, CDC/PMIS can then issue Final Registration Certificate (FRC), which indicates that investors have the right to carry out investment activities in Cambodia. If investors have not received FRC within 28 working days after receiving CRC, CDC/PMIS will still issue FRC to investors. Throughout the process, investors should continue applying for the various necessary permits and licenses from relevant government departments.

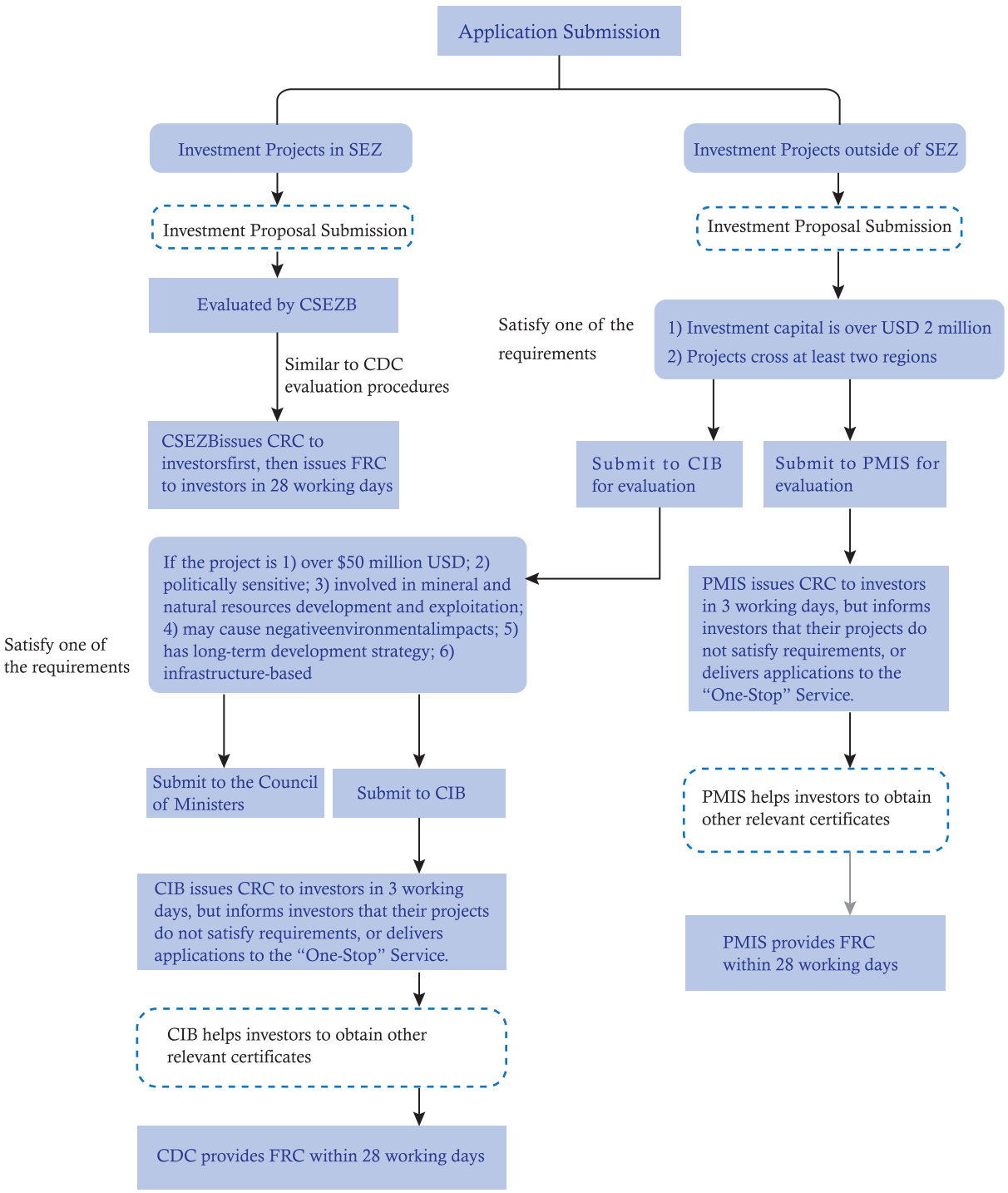
There are a couple of noteworthy points regarding the application review process. First, the CDC or the PMIS has the right to postpone the registration of specific investment projects with potential environmental hazards. Second, projects are processed in the "One-Stop Service" mechanism monitored by CDC/PMIS.[17] However, projects in the "Special Economic Zone" related to clothing, footwear and other conventional investments do not have to be evaluated by "One-Stop Service." Third, according to the CDC website, it is generally difficult for the CDC/PMIS to issue a CRC in three working days.[18] Registration and approval procedure for various kinds of investment projects is depicted in Figure 2-2. [19]

[17] Sub-Decree No. 111, Art. 6.

[18] Council for the Development of Cambodia, "Investment Application Procedure." *Available at* http://www.cambodiainvestment.gov.kh/investment-scheme/investment-application-procedures.html.

[19] Sophal, Suon, "Cambodia: FDI and Government Policy" [PowerPoint Slides]. *Available at* http://www.adbi.org/files/2012.10.09.cpp.sess3.3.suon.cambodia.fdi.pdf

Figure 2-2 Investment Projects Registration& Approval Procedure



3

Environmental Requirements for Foreign Investors

3.1 Environmental Management Departments
3.2 Environmental Law & Regulation
3.3 Cambodia's Environmental Impact Assessment System

Authors of this section:
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The Cambodian government's efforts to promote and increase foreign direct investment have contributed a great deal to the growth of Cambodia's economy over the last two decades. However, like all development, foreign investment projects often carry risks of environmental pollution and degradation, as well as social risks associated with the potential impacts of these projects on local residents. In order to contribute to the healthy and sustainable development of Cambodia, it is imperative for investors to be aware of these risks and of the various laws and regulations that are designed to manage them. The following section provides an overview of the institutions responsible for Cambodia's environment and natural resources as well as Cambodia's environmental legal framework.

3.1 Environmental Management Departments

The Ministry of the Environment (MOE) holds authority to implement and enforce Cambodia's environmental laws. However, other government ministries also play a large role in environmental protection and natural resource management, especially in the context of foreign investment projects. The Royal Government of Cambodia formally established the MOE in January 1996, granting it with "the competence of leading and administering the domain of Environment of the Kingdom of Cambodia." [1] Nearly a year later, the Government issued *Sub-Decree No. 57 on the Organization and Functioning of the Ministry of the Environment*, which again reaffirmed that the MOE is the agency that leads and manages the "environmental fields" in Cambodia.[2]

[1] *Law in the Establishment of the Ministry of the Environment*, NS/RKM/0196/01, January 24, 1996.

[2] Sub-Decree No. 57/ANK/BK on the Organization and Functioning of the Ministry of the Environment, September 25, 1997, Art. 2

According to Sub-Decree No. 57, MOE' s main responsibilities include: developing environmental policies and National and Regional Environmental Action Plans; instituting a system to assess the environmental impacts of all proposed projects (environmental impact assessment, or EIA); advising other government ministries on sustainable management of natural resources; administering Natural Protected Areas, as designated by law; compiling natural resource inventories; collecting environmental data and preparing annual reports on Cambodia' s environment; and protecting and promoting environmental quality and public health standards through pollution prevention.[3]

[3] Sub-Decree No. 57, Art. 3.

Additionally, the 1996 *Law on Environmental Protection and Natural Resource Management* (LEP) granted the MOE various specific enforcement powers. For example, the MOE may collaborate with relevant ministries and require polluting facilities to install and use monitoring equipment and to submit monitoring records.[4] The MOE may also carry out inspections of sources or facilities that "cause effects to the quality of the

[4] *Law on Environmental Protection and Natural Resource Management*, NS/RKM/1296/36, November 18, 1996, Art. 14. (hereinafter "LEP").

environment." [5] In instances where a violation has occurred, the MOE may order the responsible party to cease the offending activity, cease all activities until the offense is corrected, and/or immediately remediate any environmental damage that has occurred.[6] Additionally, in certain circumstances the MOE may require that the responsible party pay a fine, go to prison, or both.[7] It should be noted that maximum penalty amount under the LEP is fifty million riel (approximately USD12,336) and/or five years in prison for offenses that cause "harm to physical body or human life, private or public property, [or] environment or natural resources of the State.[8] Other offences carry lesser penalties under the LEP.[9] Such low penalty amounts could potentially create a situation where it would be more economical to violate the law and pay the penalty rather than take measures to abate the pollution or discharge at issue.

Other government ministries also have responsibilities related to the management of natural resources. As a general matter, all agencies must consult with the MOE before "issuing a decision or undertaking activities related to the preservation, development, or management of the use of natural resources." [10] More specifically, the Ministry of Agriculture, Forestry and Fisheries (MAFF) is responsible for the management of forests that are not located in protected areas, which are managed by the MOE.[[11] The Ministry of Water Resources and Meteorology (MOWRAM) is in charge of managing water resource-related economic development activities,[12]while the Ministry of Industry, Mines and Energy (MIME) is responsible for making policies and developing strategies for energy, mining, industry and power sectors.[13] In addition to their own responsibilities, these agencies also interact and cooperate with the MOE on various other issues, most notably with regard to environmental impact assessment, which is discussed in more detail in the next section. There is also a considerable degree of overlap among these agencies' respective areas of jurisdiction, including "land tenure administration, coastal and marine resource management, wildlife conservation and protected area management." [14] It is also important to note that as a practical matter in Cambodia, formal institutional arrangements and titles may not always reflect the actual power or authority that agencies or persons hold. Personal relationships with leading politicians, nepotism, and corruption influence the actions that agencies and their leaders take.[15]

The Council for the Development of Cambodia (CDC) also plays a role in environmental management by monitoring the potential environmental impacts of the investment projects subject to its approval. To this end, the CDC has an environmental impact assessment unit, which categorizes and manages projects based on the extent of their environmental impact.[16] Applications to the CDC for approval of investment projects must contain information on the project's environmental impacts.[17] In the application process, both the CDC and the PMIS have the right to delay issuing the Conditional Registration Certificate (CRC) to projects they deem a potential environmental hazard.[18] If a project is delayed, it is delivered to the CDC/PMIS "One-Stop Service" for further evaluation. Finally, if a proposed project involves mineral or natural resource development or exploitation, or may cause significant negative environmental impacts, CDC must deliver the application to Cambodia's Council of Ministers for assessment and approval.[19]

[5] LEP, Art. 15.

[6] LEP, Art. 20.

[7] LEP, Art. 21-23.

[8] LEP, Art, 22.

[9] LEP, Art. 21.

[10] LEP, Art. 10.

[11] *Law on Forestry*, NS/RKM/0802/016, July 30, 2002 Art. 3; Protected Areas Law, NS/RKM/0208/007, February 15, 2008 Art. 4.

[12] *Law on Water Resources Management*, June 29, 2007, Art. 5.

[13] *Law on Mineral Resource Management and Exploitation*, NS/RKM/0701/09, July 31, 2001.

[14] European Union Delegation to Cambodia, *Country Environment Profile: Royal Kingdom of Cambodia*, April 2012, pg. 25. *Available at* http://eeas.europa.eu/delegations/cambodia/documents/publications/country_env_profile_cam_april_2012_en.pdf.

[15] *Ibid.*

[16] Sub-Decree No. 147 on the Organization and Functioning of the Council for Development of Cambodia, Art. 10.

[17] Sub-Decree No. 111 on Implementation of the Amendment to the Law on Investment, Schedule II.

[18] Sub-Decree No. 111, Art. 6.1 (d).

[19] Sub-Decree No. 147, Art. 11.

3.2 Environmental Law & Regulation

In the last two decades the Kingdom of Cambodia has developed a relatively robust framework of environmental laws and regulations. Unfortunately, implementation and enforcement generally remain weak, which can sometimes present an obstacle for enterprises seeking to minimize the socio-environmental impacts of their investments. This section provides a brief overview of Cambodia's environmental legal framework, followed by a closer look at Cambodia's Environmental Impact Assessment (EIA) system.

Cambodia's Constitution lays out the state's general obligations with regard to the environment and natural resources: "The State shall protect the environment and balance of abundant natural resources and establish a precise plan of management of land, water, air, wind, geology, ecological system, mines, energy, petrol and gas, rocks and sand, gems, forests and forestry products, wildlife, fish and aquatic resources." [20] The Constitution also guarantees certain rights to Khmer citizens that are relevant in the environment and natural resource management context. For example, Article 44 states that land may not be confiscated unless the confiscation is in the public interest and just and fair compensation is paid, which is especially relevant for projects that require resettlement. Article 39 guarantees "Khmer citizens" the right to file claims against "state or social organs" for breaches of law, which theoretically could serve as a basis to file a case against the state for improper approval of an EIA report. Articles 31 obligates the Kingdom of Cambodia to respect human rights as stipulated in various international human rights instruments, while Article 35 guarantees the right of Khmer citizens to "participate actively in the political, economic, social, and cultural life of the nation."

As mentioned earlier, Cambodia adopted the *Law on Environmental Protection and Natural Resource Management* (LEP) in 1996. The LEP is a brief law at about five pages, but it provides the general framework for environmental protection and pollution prevention in Cambodia. In addition to laying out the broad requirements for EIA[21] and public participation and access to information,[22] the LEP directs the MOE on cooperating with other ministries on natural resources management,[23] establishing pollution prevention requirements,[24] establishing an Environmental Endowment Fund,[25] and on penalties.[26]

With regard to pollution prevention requirements, the MOE promulgated a number of Sub-Decrees on issues such as air and noise pollution,[27] water pollution,[28] and solid waste management.[29] The Cambodian Government also passed several other laws dealing with the environment and natural resources management, including the *Law on Mineral Resource Management and Exploitation*,[30] the Law on *Water Resources Management*,[31] the *Protected Areas Law*,[32] the *Law on Forestry*,[33] and the *Land Law*.[34]

Investors should be aware of and comply with all relevant requirements and regulations when they plan and when they conduct investment activities.

[20] *Constitution of the Kingdom of Cambodia*, September 21, 1993, Art. 59.

[21] LEP Art. 6-7.

[22] LEP Art. 16-18.

[23] LEP Art. 8-11.

[24] LEP, Art. 12-13.

[25] LEP, Art. 18.

[26] LEP Art. 20-25.

[27] Sub-Decree No. 42/ANRK/BK on Air Pollution Control and Noise Disturbance, July 10, 2000.

[28] Sub-Decree No. 27/ANRK/BK on Water Pollution Control, April 6, 1999.

[29] Sub-Decree No. 36/ANRK/BK on Solid Waste Management, April 2, 1999.

[30] *Law on Mineral Resource Management and Exploitation*, NS/RKM/0701/09, July 13, 2001.

[31] *Law on Water Resource Management*, June 29, 2007.

[32] *Protected Areas Law*, NS/RKM/0208/07, February 15, 2008.

[33] *Law on Forestry*, NS/RKM/0802/016, July 30, 2002.

[34] *Land Law*, NS/RKM/0801/14, July 20, 2001.

3.3 Cambodia's Environmental Impact Assessment System

The Environmental Impact Assessment (EIA) process is a "universally recognized strategy for sustainable development." [35]EIAs "often are the chief and most comprehensive means for assessing the potential environmental and social impacts of large-scale development projects in countries where environmental safeguards are weak due to deficiencies in regulation, enforcement, or both." [36]The EIA process offers foreign investors the opportunity to constructively engage with government regulators and impacted communities to ensure that potentially adverse socio-environmental impacts of their projects are identified and managed before they create damage or conflict.

Cambodia first established its EIA system in the 1996 LEP, with the objective to "assess the environmental impacts of all proposed projects prior to the issuance of a decision by the Royal Government." [37] Three years later the Cambodian Government issued Sub-Decree No. 72 on Environmental Impact Assessment Process (EIA Sub-Decree),[38] which was itself followed by several Prakas, or guidelines, later issued by the MOE. As discussed in more detail below, several other laws and guidelines also contain EIA requirements.

Although taken together these laws, regulations, and guidelines establish a fairly robust EIA framework, compliance with EIA requirements in Cambodia has been weak. In 2012 the deputy director of MOE's EIA Department stated that from 1999 to 2003 essentially no projects conducted required EIAs, and from 2004 to 2011 only 110 out of nearly 2,000 projects conducted an EIA.[39]It has been observed that a number of factors influence the inadequate implementation of EIA in Cambodia, including: implementation of EIA too late in the project development process (thereby negating its value as a planning tool); underestimation of adverse social and environmental impacts; lack of coordination among government agencies and clarity with respect to their responsibilities and authority; resource and capacity limitations; insufficient public participation; and a simple lack of political will.[40] Moreover, the MOE, which under the LEP is nominally in charge of the EIA process, has is in fact remained a relatively powerless agency in natural resource matters.[41]

Beginning in 2012 Cambodia started drafting a comprehensive new EIA law.[42] If adopted, the new law could very well fix many of the issues with Cambodia's current EIA system. Until that time, the requirements of the 1996 LEP and the 1999 EIA Sub-Decree still apply, as discussed below.

[35] Jesse Moorman & Zhang Ge, Promoting and Strengthening Public Participation in China's Environmental Impact Assessment Process: Comparing China's EIA Law and U.S. NEPA, 8 Vt. J. Envtl. L. 281, 284 (2007).

[36] Jennifer C. Li, *Environmental Impact Assessments in Developing Countries: An Opportunity for Greater Environmental Security?*, 1, Found. for Envtl. Sec. & Sustainability (USAID, Working Paper No. 4, 2008). *Available at* http://www.fess-global.org/workingpapers/eia.pdf.

[37] LEP, Art. 1.

[38] Sub-Decree No. 72/ANK/BK on Environmental Impact Assessment Process, August 11, 1999. (hereinafter "EIA Sub-Decree").

[39] Simon Lewis & Khuon Narim, "Few Companies Conduct Environmental Studies," Cambodia Daily, Nov. 5, 2012. *Available at* www.cambodiadaily.com/archives/few-companies-conduct-environmentalstudies-6288.

[40] Li, at 6-7.

[41] *Ibid.*, at 12.

[42] William J. Schulte & Ashlee Stetster, *On the Path to Sustainable Development: As Assessment of Cambodia's Draft Environmental Impact Assessment Law*, Cambodia L. & Pol'y Journal, Vol. 3, December 2014. *Available at* http://cambodialpj.org/.

Cambodia's EIA System

The 1996 LEP nominally requires an EIA for every proposed project in the country, whether public or private in nature.[43] Other sector-specific laws also containrequirements for EIAs, including the *Protected Areas Law*,[44]the *Law on Forestry*,[45]and the *Law on Mineral Resource Management and Exploitation*.[46] Further, the LEP requires that all investment project applications, including foreign investment projects, submit their Initial Environmental Impact Assessment (IEIA) or EIA, as the case may be, to both the MOE and the CDC for review.[47]

[43] LEP, Art. 6.

[44] *Protected Areas Law*, Art. 44.

[45] *Law on Forestry*, Arts. 4 & 19.

[46] *Law on Mineral Resource Management and Exploitation*, Art. 11.

[47] LEP, Art. 7.

Process

The LEP states that as a general matter EIAs are required for all proposed projects in the country. An Annex to the 1999 EIA Sub-Decree contains a list of the types of projects and their thresholds that require an IEIA.[48]The list is broken down into the following broad categories: industrial (including mining, metal industries and hydropower), agriculture (including forest concessions, projects impacting forest-covered lands, and logging); tourism; and infrastructure.[49]

[48] EIA Sub-Decree, Annex I.

[49] *Ibid.*

The project sponsor must submit its IEIA to the MOE and the Project Approval Institution simultaneously.[50]According to the annex to the 2009 *Guidelines for Initial and Final Environmental Impact Assessment*, the IEIA is "a study on the social, physical and biological environment in the study area, and is based mainly on existing data."[51]If upon review of the IEIA the MOE determines that the proposed project will have "serious impacts to the natural resources, ecosystem, health or public welfare," then it may require the project sponsor to conduct a full EIA report.[52] A full EIA report must be based on "primary data gathered in and around the project site." [53]

[50] *Ibid.*, Art. 14.

[51] Open Development Cambodia, "Environmental Law and Impact Assessments." *Available at* http://www.opendevelopmentcambodia.net/briefing/eia/.

[52] LEP, Art. 8.

[53] Environmental Law and Impact Assessments, supra note 90.

The 2009 *Guidelines* provide more detail on the required contents of the full EIA report:

Project overview
Methodology and scope of the study
Summary of the relevant legal framework
Full project description and action plan
Description of existing environmental resources (including physical, ecological and socio-environmental resources)
Detailed information on the results of public consultation
Environmental impact mitigation measures
Environmental management plan (EMP)
Economic analysis compared with environmental costs
Conclusions and recommendations[54]

[54] *Ibid.*.

The 2009 Guidelines do not specifically require project sponsors to include information on issues such as project alternatives (including the "no action" alternative), indirect or cumulative impacts, climate change, or public health and social impacts.[55]

Certain large-scale projects may be required to conduct a full EIA without going through the IEIA process. In either case, once the full EIA report is complete the project sponsor must submit the report to the MOE and the relevant Project Approval Institution simultaneously.[56]Under the EIA Sub-Decree, the MOE has exactly 30 days to review and provide findings and recommendations to the project sponsor and the Project Approval Institution on an IEIA or EIA, as the case may be.[57] Crucially, if the MOE does not provide any findings and recommendations to the project sponsor and Project Approval Institution within the required 30 days, then the Project Approval Institution may assume that the IEIA or EIA comply with the requirements of the EIA Sub-Decree.[58] If the MOE does provide findings and recommendations on the EIA reports, the EIA Sub-Decree directs the Project Approval Institution to "consider" them before ultimately approving the project.[59]

Once the project's EIA report is approved by the MOE either by default or through affirmative approval, the Project Approval Institution may approve the project after consideration of the MOE's findings and recommendations, and the project may commence after the project sponsor "acknowledges" the MOE's recommendations.[60] However, while the LEP and EIA Sub-Decree seem to assume that EIAs must be completed prior to project implementation, it should be noted that there appears to be no explicit prohibition on beginning construction prior to completion of the EIA process.

Once a project commences, the EIA Sub-Decree authorizes the MOE to monitor the project and take "appropriate measures to ensure [the] Project Sponsor will comply with the Environmental Management Plan (EMP) during project construction, implementation, and closure." [61] If the MOE finds that the project has failed to properly implement the project's EMP, the MOE may issue a "stop work order" and "report and file a complaint against any Project Sponsor found in violation of [the Sub-Decree]." [62]While these provisions do provide some measure of authority to the MOE to monitor projects and enforce EIA requirements, they are generally inadequate to ensure EIA compliance. The Draft EIA Law currently under development in Cambodia seeks to address these inadequacies by establishing an EIA Unit within MOE witch explicit authority to monitor and investigate projects through demands for documents and information, on-site inspections (including taking samples for investigation), and meetings with Boards of Directors and administrators of development projects to review compliance.[63]The Draft EIA Law also would require project sponsors to prepare quarterly and annual Environmental Monitoring Reports to the MOE's EIA Unit, with the annual reports being made available to the public on request and both on the MOE's website and a website created by the project sponsor.[64]

Under the current EIA regime, project sponsors that fail to disclose or misrepresent information during the EIA review process, or that fail to properly implement their approved EMPs or otherwise violate any provision of the EIA Sub-Decree will potentially be subject to penalties contained in Chapter 9 of the LEP.[65]

[55] Although neither the LEP nor the EIA-Sub Decree or 2009 Guidelines require a social impact analysis, such an analysis is required by the *Protected Areas Law* (Art. 44), the *Law on Forestry* (Art. 4 &19), the *Law on Mineral Resource Management and Exploitation* (Art. 11), and Sub-Decree No. 146 on Economic Land Concessions (Art. 4).

[56] LEP, Art. 16.

[57] LEP, Arts. 15 &17.

[58] LEP, Art. 18.

[59] LEP, Art. 4.

[60] LEP, Art. 20.

[61] EIA Sub-Decree, Art. 4.

[62] EIA Sub-Decree, Arts. 28 & 30.

[63] *Draft Environmental Impact Assessment Law. Available at* http://www.opendevelopmentcambodia.net/pdf-viewer/?pdf=download/law/5th_Revision_EIA_%20Draft_Law_Eng.pdf. .

[64] *Ibid.*

[65] EIA Sub-Decree, Art. 29.

Public Participation and Information Disclosure

Public Participation is "a cornerstone of the EIA process" that "promotes equitable and informed choice, leading toward better and more acceptable social and environmental outcomes." [66]Cambodia's Constitution, the LEP, the EIA Sub-Decree, and other laws require public participation in environmental decision-making processes, including EIA.However, Cambodia's current lack of specific standards or procedural requirements has seriously hampered effective implementation of public participation processes and information disclosure requirements.

The 1996 LEP and the EIA Sub-Decree state that they "encourage" the participation of the public in environmental decision-making generally and in EIA processes specifically.[67]The *Protected Areas Law* and the *Law on Forestry* also require public participation in various matters pertaining to the management of forests and protected areas.[68]A Sub-Decree also explicitly requires public participation in the Economic Land Concession process.[69]However, a prerequisite to meaningful public participation is access to reliable information about the project, including the EIA itself. With regard to information disclosure, the LEP only directs the MOE to "provide information on its activities." [70] The *Protected Areas Law* "encourages" "local communities, indigenous ethnic minority communities, and the public and civil society" to "participate fully" in access to information.[71] The *Law on Forestry* is the only law that specifically requires that the EIA for any project that may adversely impact forest resources be released to the public for review.[72]

The LEP directs the MOE to develop a Sub-Decree with detailed procedures for "participation of the public and access to information pertaining to the environmental protection and management of natural resources." However, these procedures have not yet been issued.[73]It is therefore unclear which stages in the EIA process the public should be engaged in, what methods should be used to notify the public, how broad an audience the project sponsor should attempt to reach, what specific information must be disclosed, or to what extent the project sponsor must incorporate or respond to comments received from the public during the process. The draft EIA law under development seeks to address some of these issues by inviting public participation during the scoping phase before the EIA is submitted to the MOE for review, during the EIA review period, and during post-construction monitoring.[74] The draft EIA law also requires the project sponsor to ensure that the public receives sufficient information to participate fully in the EIA process.[75] In the absence of more specific requirements, project sponsors, the MOE, and other cooperating ministries are essentially left to their discretion to fulfill the spirit of "encouraging" public participation and providing for the disclosure of relevant information during the EIA process.

[66] United Nations Environment Programme, *Environmental Impact Assessment and Strategic Environmental Assessment: Towards an Integrated Approach*, at 28 (2004). *Available at* http://www.unep.ch/etu/publications/textONUbr.pdf.

[67] LEP, Art. 16; EIA Sub-Decree, Art. 1.

[68] *Protected Areas Law*, Arts.4, 17, 18, 21, & Chapter IV; *Law on Forestry, Arts*. 4, 6, & 19.

[69] Sub-Decree No. 146/ANK/BK on Economic Land Concessions, December 16, 2005.

[70] LEP, Art. 16.

[71] *Protected Areas Law*, Art. 21.

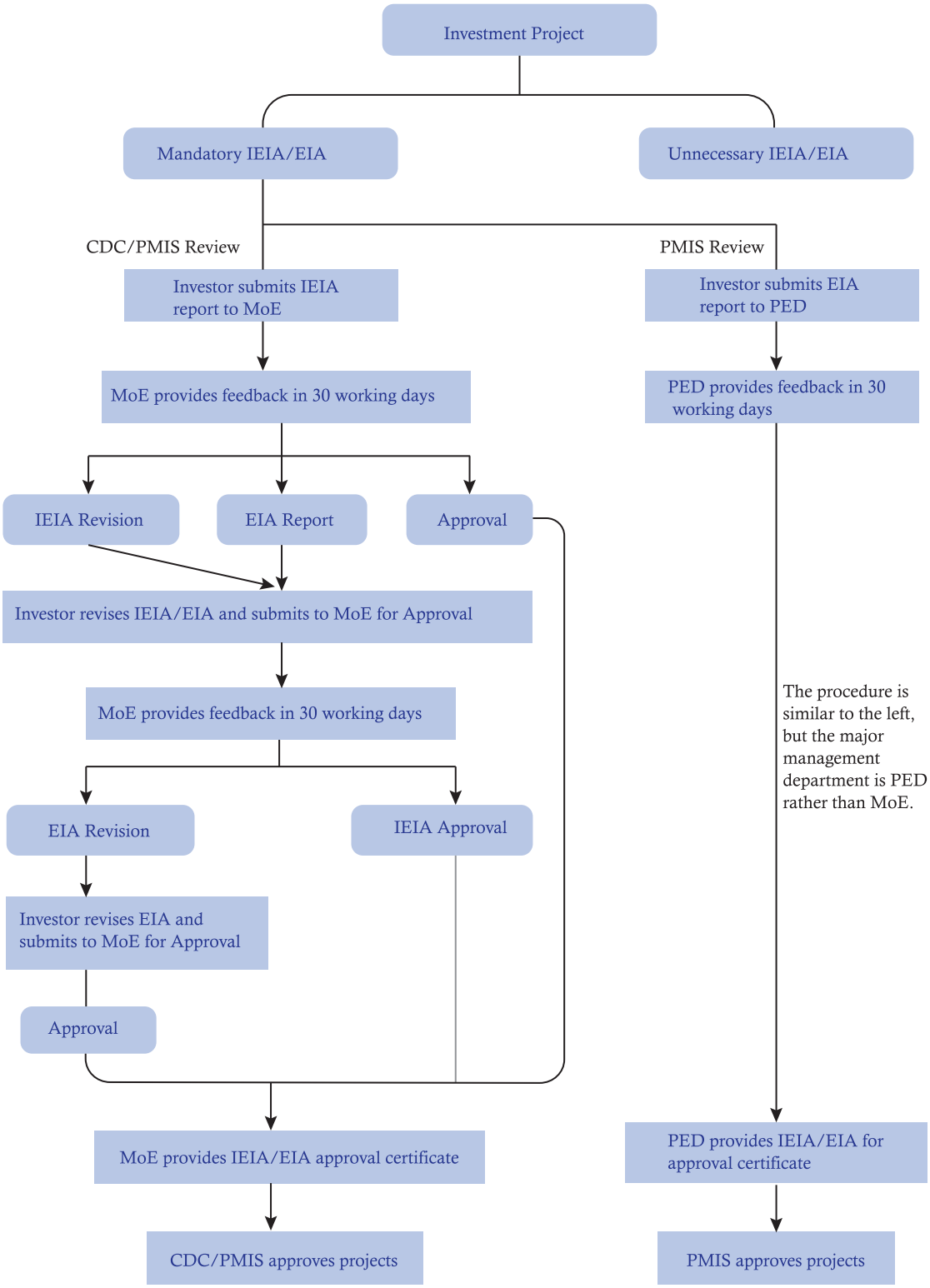
[72] *Law on Forestry*, Art. 4.

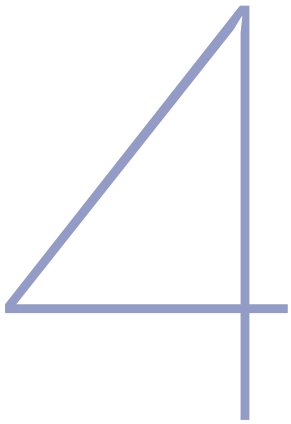
[73] Qi Gao, A Procedural Framework for Transboundary Water Management in the Mekong River Basin 212 (2014).

[74] *Draft EIA Law,* Art. 30.

[75] *Ibid*.

Figure 2-3 EIA Review Process of Investment Projects





Overview of Cambodia's Forestry Sector and Case Studies of Chinese Investments

4.1 Cambodian Forest Resource
4.2 Cambodian Timber Industry 30
4.3 Case One: SOE, Forest Concession
4.4 Case Two: SOE, Forest Concession
4.5 Case Three: Private Company, Economic Land Concession
4.6 Analysis and Recommendations for Companies

Author of this section: Guo GE, Chinese Academy of Forestry.

With the new government's impetus to open up Cambodia's economy in 1993, the nation's forestry sector also received increased attention as the government implemented the timber concession system. The system was meant to enable foreign investors to cut and process Cambodian timber, but ineffective forest management systems and government supervision resulted in serious overharvesting, illegal logging, and rampant illegal timber trade activity. In attempts to standardize forest management and avoid further harm, Cambodia repeatedly updated its forestry policies over the years. For example, in November 1996, the government imposed an export ban on logs and timber. In 2001, the government declared that all enterprises that had been granted timber concessions must cease all logging.[1], [2] Then, in order to meet domestic demand for timber, in 2003 the Cambodian government approved private planting projects by granting Economic Land Concessions (ELCs).[3] However, over the next several years, ELCs caused land issues. In 2012, the government stopped authorizing new ELCs, conducted inspections of existing ELCs projects, and withdrew ELCs that were not in accordance with the planting agreement(s).[4]

Chinese investors have been actively involved in Cambodian timber since the opening of the market in 1993. Chinese investment in the Cambodian timber industry consists of two stages. First, in the 1990s, Chinese state-owned enterprises (SOEs) purchased timber rights through forest concessions. Much of this production focused on veneer production. Rosewood was also a popularly harvested timber variety given its high value in the international market. With the halt of foreign concessions in 2001, however, the Chinese companies were forced to curtail their activities.

As the price of rosewood in the international market soared around 2003, a large number of private Chinese enterprises rushed into Cambodia for the valued timber. These enterprises invested mainly in small sawmills and ELC plantations. However, these investments quickly ran into problems. While some of the companies had the funds to continue their ELC investment plans to plant rubber timber and teak, many lacked the funds and only harvested valuable timber on the secured ELC land. In some cases, these enterprises that lacked funds to implement their ELC investment plans would reach out to other investors to purchase the plantation rights or collaborate on new planting. Since the change of ELC policies in 2012, the government started to revoke ELCs from enterprises that did not carry out their investment plans, thus imposing significant pressure to companies that did not secure additional funding through other investors.

[1] PRC State Forestry Administration, "Forestry in Cambodia." *Available at* http://www.forestry.gov.cn/portal/main/map/sjly/sjly44.html. (Chinese).

[2] United Nations Food and Agriculture Organization (UNFAO), *Cambodia Forestry Outlook Study, Asia-Pacific Forestry Sector Outlook Study II*, 2010. *Available at* http://www.fao.org/asiapacific/resources/forestry-outlook/en/.

[3] *Ibid.*

[4] Cambodian Center for Human Rights, Cambodia: *Land in Conflict An Overview of the Land Situation*, December 2013. *Available at* http://cchrcambodia.org/index_old.php?url=project_page/project_page.php&p=report_detail.php&reid=104&id=3.

4.1 Cambodian Forest Resource

Cambodia is a land historically rich in forest resources. In 1965, the total forest coverage was measured at 73%.[5] However, in recent years forest resources have suffered enormously from large-scale deforestation and farming as well as insufficient management skills and knowledge. In fact, in 2014, the forest coverage rate had dropped to 47.7%,[6]with a total forest area of 8.66 million hectares. Cambodia currently has 1.49 million hectares of protected forest, [7] which is 8.2% of the total land area.

Cambodian forests consist mostly of evergreen forest, semi-evergreen forest, deciduous forest, flooded forest, mangrove forest, forestry plantation and bamboo, and the type of forest varies throughout the country. The northeast is majorly covered by tropical lowland deciduous dipterocarp while northern and western regions of Cambodia are largely covered by evergreen forest (canopy density: 10% - 40%). The mountainous areas near the Gulf of Thailand and the western Mekong River areas largely support the medium-altitude forest canopy (canopy density: >40%). Rarely are southern and central Cambodia covered by forests (Figure 4-1).

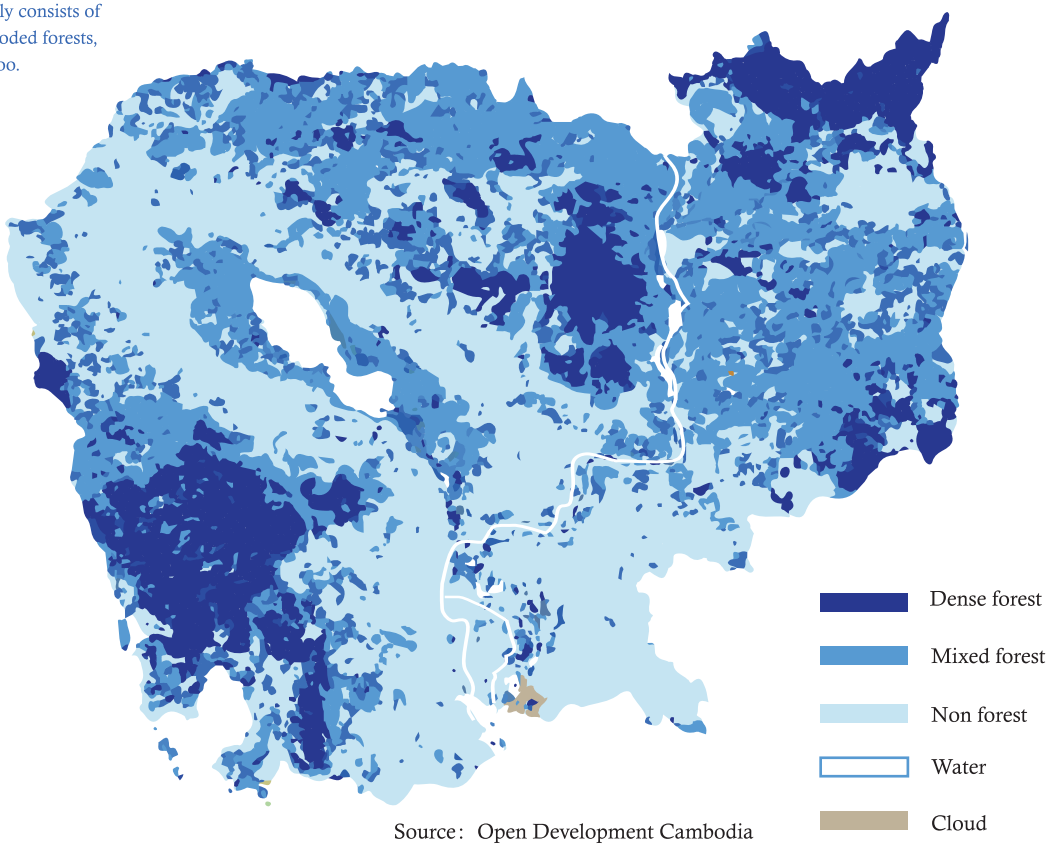
[5] United Nations Food and Agriculture Organization (UNFAO), *Cambodia Forestry Outlook Study, Asia-Pacific Forestry Sector Outlook Study II*, 2010. *Available at* http://www.fao.org/asiapacific/resources/forestry-outlook/en/.

[6] Open Development Cambodia, "Forest Cover." *Available at* http://www.opendevelopmentcambodia.net/briefing/forest-cover/.

[7] Ung Sam Ath, Khun Vathana. *Country report: Cambodia, Forestry Administration, Ministry of Agriculture Forestry and fisheries.* JAPAN-ASIA REDD SEMINAR. 2008.3. *Available at* https://alpymforestry.files.wordpress.com/2013/04/cambodia_forest.pdf.

[8] A 'dense forest' includes evergreen semi-evergreen forests and a 'mixed forest' mainly consists of deciduous forests, flooded forests, plantation and bamboo.

Figure 4-1 Cambodian Forest Distribution Map[8]



Source: Open Development Cambodia

4.2 Cambodian Timber Industry

In addition to its high variety of forest types, Cambodia is famous for having more than 300 different types of high-value timber. These timber species include Siam rosewood, rosewood, padauk wood, *millettialaurentii, terminalia, xyliaxylocarpa,* Myanmar eggplant, *lagerstroemia speciosa* and *dipterocarp* as well as other valuable tropical timber species. The forest products from these many species can be divided into three categories based on their utilization: construction-use timber, fuelwood and non-timber forest products, which include rattan, bamboo, resin, medicinal plants, and honey.

The establishment of the new Royal Government in 1993 brought great change to Cambodia's forest industry. The first major change was the implementation of the Forest Concession,[9] a policy which allowed the government to gain foreign exchange earnings by selling forest resources. Through granting Forest Concessions, the government began renting specific logging areas to foreign enterprises with the conditions that: 1) enterprises had timber rights during the lease term; and 2) enterprises should also agree to pay the stumpage tax in accordance with the agreement (stumpage rate is measured in a cubic meter). From 1994 to 1998, many foreign investment enterprises from Taiwan, Malaysia, Indonesia and other countries entered Cambodia. During this period, the Royal Government granted timber rights to 33 enterprises spread across a total 7.64 million hectares of forests.[10]Most of the companies granted timber rights were international lumbering and wood processing giants, such as Samling International and Kingwood.

The Cambodian forest management system remained largely undeveloped at this time. As such, the implementation of forest concessions has largely led to over-logging, illegal logging and even an illegal timber trade. Over-logging and illegal logging have not only destroyed forests and biodiversity but also threaten the livelihoods of indigenous people living on concession lands.[11]These issues received widespread attention from intergovernmental organizations, the Cambodian government, and civil society. Determined to solve these problems, the Royal Government began cooperating with the World Bank, United Nations Food and Agriculture Organization (UNFAO), United Nations Development Program (UNDP) and other international organizations to establish forest management policies. These efforts resulted in the establishment of National Steering Committee to Manage and Execute Forest Management Policy of Cambodia in 1996. This Committee would be largely responsible for leading the national forestry policy reform.[12]

The Committee was active in its first years of operation. In 1996, the Committee announced that Cambodia would officially ban exports of logs and sawn timber as of November 30 that year.[13] However, over-logging and illegal logging continued in Cambodia. In 1997 and 1998, the average annual log harvesting volume in Cambodia

[9] Fraser Thomas & Partners, *Cambodian Forest Concession Review Report*, April, 2000. *Available at* http://www.mekonginfo.org/assets/midocs/0002904-environment-cambodian-forest-concession-review-evaluation-of-the-draft-report-and-recommendations-for-follow-up-action.pdf.

[10] *Ibid.*

[11] I*ndependent Forest Sector Review: the Forest Sector in Cambodia*, April 2004. *Available at* http://twgfr.org/download/Study%20Reports (2)/1-Independent%20Forest%20Sector%20Review-April%202004.pdf.

[12] Hang Sun Tra & Arvid Sloth, *Review of International Forest Policy Development and Cambodia's Role, Involvement and Potential Benefit*, April 2007. *Available at* http://twgfr.org/nfp/Docs/Publication/Policy%20analyses/Paper%20on%20Forest%20Policy%20Status%20in%20Cambodia.pdf.

[13] PRC State Forestry Administration, "Cambodian Forestry." *Available at* http://www.forestry.gov.cn/portal/main/map/sjly/sjly44.html. (Chinese).

exceeded 4 million cubic meters and some forests were victim to severe over-logging.[14] In 1999, as suggested by the Cambodian government, twelve logging enterprises announced their decision to give up their concessions to a total 2.3 million hectares of cleared concession lands.[15]

In the following years, the Cambodia government increased its efforts to manage forest concessions. In 1999 and 2000, the Committee released *Cambodian Code of Practice for Forest Harvesting* and Sub-Decree on Forest Concession Management, respectively, to provide details for the implementation of timber rights.[16] Then in 2001, in an effort to further control the illegal logging and illegal timber trade accompanying forest concessions, the Cambodian government required all concessionaires to suspend timber logging activities and to develop Forest Concession Management Plans (FCMPs). Then finally, in 2002, the Cambodian government promulgated the *Law on Forestry*, which specified requirements for FCMPs. According to the *Law on Forestry*, FCMPs shall contain three elements: 1) long-term management plan for the entire forest concession; 2) annual operational harvesting plans for each couple level; and 3) block management plans for each annual harvest. All FCMPs are requested to include an Environmental and Social Impact Assessment. While it is required that FCMPs be approved by the Ministry of Agriculture, Forestry & Fisheries (MAFF), other plans could be evaluated by the Forestry Administration (FA).[17]

While the forestry policy reform dramatically affected Cambodia's timber industry, the changes also came with challenges. In fact, all of the concessionaires' FCMPs have yet to receive governmental approval. This delay can be attributed to several factors. First, the evaluation team continued to make many changes to the assessment standards and procedures, including suddenly introducing EU's Sustainable Forest Management Standards and Forest Stewardship Council (FSC) certification. Second, in 2006, the World Bank announced a temporary withdrawal from Cambodian forestry affairs. Third, the Cambodian government was unwilling to prematurely cancel any of the 30-year logging licenses or logging right concessions signed with enterprises between 1994 and 1998. As such, a deadlock persisted between the forces causing deforestation and the new sustainable forest management.[18]

Domestic demand for Cambodian timber continued to rise in the face of the timber concessions. To meet this demand, the Cambodian government began approving private forestry planting projects called Economic Land Concessions (ELCs) in 2003.[19]ELCs are deforested, thin forests and degraded lands, with some in fact being the original forest concession areas approved by the government. By signing an ELC with the Cambodian government, investors can acquire the right to develop forest plantations. Six years after the implementation of ELCs, Cambodia had gained 47,000 hectares[20]of private forestry plantations of *eucalyptus, acacia, jatropha* and rubber tree varieties. In addition to private forestry plantations, local forestry bureaus, military and NGOs also managed timber areas suitable for economic purposes, namely, community forest plantations and plantations. As of May 2012, ELCs no longer were granted and the audit of issued ELCs began. For concessionaires who did not carry out investment activities as promised in ELC agreements, the government would rescind their ELCs.[21]

[14] United Nations Food and Agriculture Organization (UNFAO), *Cambodia Forestry Outlook Study, Asia-Pacific Forestry Sector Outlook Study II*, 2010. *Available at* http://www.fao.org/asiapacific/resources/forestry-outlook/en/.

[15] Fraser Thomas. *Sustainable Forestry Management Project*. Asian Development Bank (TA-3152-Cam). Ministry of Agriculture, Forestry and Fisheries, General Directorate of Forestry, Royal Government of Cambodia. Phnom Penh, Cambodia: GFA-AGRA, NZDEC. 2002.

[16] *Cambodian Code of Practice for Forest Harvesting*, July 1999; Sub-Decree No. 05/ANK/BK on Forest Concession Management, February 7, 2000.

[17] *Law on Forestry*, Article 18. 2002.

[18] Fraser Thomas & Partners, *Cambodian Forest Concession Review Report*, March, 2000. *Available at* http://www.mekonginfo.org/assets/midocs/0002904-environment-cambodian-forest-concession-review-evaluation-of-the-draft-report-and-recommendations-for-follow-up-action.pdf.

[19] United Nations Food and Agriculture Organization (UNFAO), *Cambodia Forestry Outlook Study, Asia-Pacific Forestry Sector Outlook Study II*, 2010. *Available at* http://www.fao.org/asiapacific/resources/forestry-outlook/en/.

[20] *Ibid*.

[21] Ethan Harfenist, "The Economics of ELCs," The Phnom Penh Post, July 5, 2015. *Available at* http://www.phnompenhpost.com/national/economics-elcs.

4.3 Case One: SOE, Forest Concession

Project Background

Company A[22] is a state-owned Enterprise (SOE) managed by the State Council of the People's Republic of China (PRC) and was within the first batch of China's "going out" enterprises. Hoping to achieve the dream of "industry saves the nation," Company A established China's largest plywood factory in southern China in the early 1980s. The search for raw materials soon became international, however, as raw materials were monopolized by Malaysia and India. In the 1990s, Company A considered many sources for the raw materials including Africa, Papua New Guinea, Malaysia, Indonesia, Madagascar, Thailand, and Cambodia which was ultimately chosen as the source. The decision to choose Cambodia required extensive research and is largely considered a noteworthy 'breakthrough' for international investment investigation and analysis.

In early 1994, Company A obtained a plywood factory and timber rights in Cambodia totaling 136,000 hectares by purchasing shares from a Thai company. The area of the plywood factory covers 90,000 square meters, and the total investment was USD17 million.

In August 1996, Company A and the Cambodian government signed a 30-year investment agreement which included Company A's Forest Concession and Forest Timber License to log tropical forests at the intersection of the Stung Treng province and Kratie provinces along the west bank of Mekong River.

In addition to the investment agreement, Company A was enthusiastic about gaining timber rights because the logging area has a tropical climate as well as high commercial return, high timber stock volume, and diverse wood species. With investigation and further analysis, Company A decided to pursue their timber right. Within the year, they had successfully achieved the timber right, invested money, produced timber and made profits. However, Company A's concession is partly located in the core zone of Prey Lung forest, an environmentally sensitive area with high conservation value. As a result, this logging site's location in such a sensitive area has made it the source of controversy over the years.

Operational Process

In 1998, just two years into Company A's timber rights, the Cambodian government unilaterally raised stumpage tax from the agreed USD 14/cubic meter to USD 54/cubic meter. The Cambodia Timber Industry Association (CTIA) required that corporations boycott the increased tax by halting timber production. While Company A at first followed CTIA's requirements, other enterprises secretly paid the tax to the government in order to continue producing timber. Feeling industry pressure, Company A acquiesced to the industry trend and accepted the government's unilateral tax increase.

[22] Under the author's request, the names of the enterprises in the case studies have been withheld.

However, in 2001, the Cambodian government required all concessionaires to suspend timber logging activities and to develop FCMPs. Company A developed and submitted its FCMP to the government on time. The firm even modified their FCMP multiple times under specific instructions of Forest Administration (FA) in accordance with the review of World Bank expert panel. The FCMP was eventually recommended by experts and submitted to MAFF for approval but as of yet, none of the concessionaires' FCMPs, including Company A's, have been approved.

As such, Company A has had its logging activities halted since 2001. This lack of operations equates to a large amount of unrecovered investment and tremendous financial losses. In order to survive in Cambodia, Company A tried on operating plantations, constructing loading docks and exchanging its timber rights and licenses.

1) Plantation Project

In September 2005, Company A submitted a proposal to MAFF to cooperate with the FA to plant 15,000 hectares of forests in the eastern side of the concession area along the Mekong River. According to the company's investigation, this area had about 46,000 hectares of wasteland suitable for plantation. Although the plantation project would require a large amount of investment, Company A hoped it would initiate locals to plant forests and other crops, create local job opportunities, restore timber production and prevent illegal logging activities in the area.

Company A's plantation proposal was received very well by MAFF and in May 2006, the FA held a special meeting to discuss the cooperation with Company A. The outcomes of this meeting were fairly successful as Company A and FA agreed on the plantation plan and submitted the proposal to MAFF for the final confirmation. However, Company A stipulated in their proposal that, if the plantation project was approved, Company A's timber right would be re-instituted. MAFF has not yet decided if the timber right could be re-instituted to Company A and as such, the project has yet to move forward.

2) Import and Export Containers & Loading Dock Project

Company A's second project was the plywood factory, which the company had invested and built in 1994. Due to a lack of raw material however, the factory had been out of commission since 2001. Company A submitted a proposal to high-level Cambodian officials to approve using the factory for an import and export container & loading dock project. By using the factory in this way, Company A would be able to make profits during the timber logging prohibition period. However, this project never moved forward as Company A is still waiting for approval.

3) Timber Rights Replacement Project

Company A has repeatedly contacted officials of MAFF and FA asking if the government would consider restarting logging projects. These efforts have been in vain as the officials have only answered that the possibility to reopen logging projects is minimal. Moreover, Prime Minister Hun Sen has publicly stated multiple times that Cambodian government' s decision to attract foreign investors to log forests in Cambodia was a great mistake. Most international organizations are also cautious and opposed to deforestation and logging activities.

Therefore, if Company A continued to pursue timber rights, these efforts would be in vain. As such, it was recommended that Company A change tactics and attempt to replace timber right with other rights that could more realistically be achieved.

Company A attempted to negotiate with the government to modify the original investment agreement. In these negotiations, Company A was willing to abandon the timber rights and re-plan the forest concession by dividing the total area into three parts: a biological protection area, a forest plantation, and community forestry area. However, the government has not provided any clear feedback and thus, the project remains in the discussion stage.

The purpose of all these practices is to make an inventory of existing assets and increase the value of enterprise assets. Although Company A has many competitive advantages, namely owning rich forest resources, having favorable development conditions and adequate fund and maintaining harmonious relations with locals, as this case study has demonstrated, Company A's efforts in Cambodia were ultimately fruitless as it was simply unable to implement its project. All in all, Cambodia's unique political and social factors play a decisive role in the project's success and failure.

Plantation and Timber Right Replacement Plans Unrealized

Company A's timber concession covers an area of 136,000 hectares at the juncture of Stung Treng and Kratie.



In 2001, Company A stopped harvesting upon the requirement of the Cambodian government, and as a result it also suspended patrol and management of the felling area. In 2004, there were 1,056 households living around the area, altogether 5,679 inhabitants in total. In 2005, according to Company A's investigation of the felling area and its surrounding forest land, forests to the east of the preserved felling area were partly destroyed due to illegal harvesting, burning and aggressive tree clearance.





In 2005, Company A proposed to MAFF (Ministry of Agriculture, Forestry and Fisheries) a plantation plan, which intended to plant trees within the 46,000 hectares of wasteland, from the eastern boundary of the felling area to the Mekong riverbank. The planned plantation area totaled 15,000 hectares. If MAFF agreed to the plan, the Company hoped its timber rights could be guaranteed by the government. To make a detailed plan, the Company and the Forestry Administration jointly organized forest investigations and community consultations, and found that the local government and residents were supportive of the plantation project, because they thought the plan would boost the economy and improve their own livelihoods.

However, MAFF did not reply in terms of the timber right requirement, so the plantation plan was killed in its infancy.

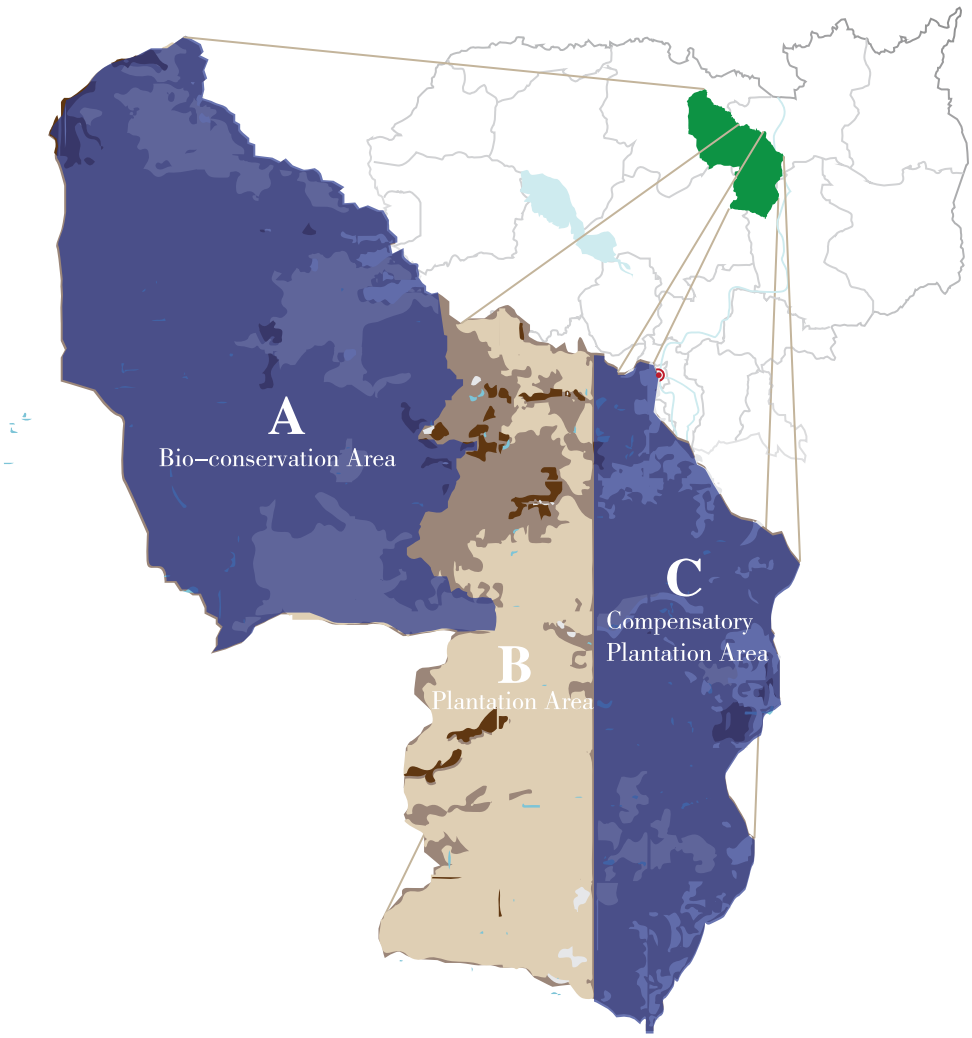
By the end of 2007, households living around the felling area had increased to 2,340, with a total of 8,345 inhabitants. During the investigation in 2007, the company found illegal logging and aggressive land clearance also occurred within the area. In 2008, the company proposed a replacement plan, hoping to re-initiate the timber rights with operation and cultivation rights to the forest, through formulating a new project plan and investment agreement. Importantly, the company met with the State Forestry Administration of China several times when designing the plan.

The replacement plan re-divided the original felling area into three parts:

1) 83,000-hectare biological diversity conservation area, which permits environmentally friendly tourism and research projects;

2) 99,000-hectare degraded forest restoration and plantation area, 53,000 hectares of which are within the original felling area - as compensation for converting the original felling area into a conservation area, the government would granted 46,000-hectare government forest, which extends from the eastern boundary of the original felling area to Mekong riverbank, to be used as land for plantation;

3) Land for special uses management. Company A categorized land into water conservation zone, non-wood forest products collection zone, community forestry land, etc. and planned to determine the acreage and management approach based on field investigation and community consultation. According to the plan, the replaced rights would remain valid for 70 years.



By working with China's State Forestry Administration, Company A hoped to not only gain government support but also to be featured as a pilot for implementing the SFA's *Guide on Sustainable Overseas Silviculture by Chinese Enterprises*. The guide is largely a means to promote Chinese enterprises' sustainable forest management practices overseas, and to build host counties' confidence in Chinese overseas silviculture business. As a pilot, Company A would have the chance to introduce the requirements and standards set by the Chinese government to the Cambodian government and therefore gain favor for their replacement plan. Nevertheless, Company A's replacement plan was not adopted and all business activity remains suspended.

Note: Global Environmental Institute has participated in exchanges between Company A and State Forestry Administration of China, on choosing the replacement plan as a pilot under the *Guide*. This part is based on the *Proposal for Timber Right Replacement Project* provided by Company A during the exchanges.

Project Risks

1) Politics and Policy Risks

The first risk that the company faced when entering Cambodia in 1994 was Cambodia's politics. In fact, the close relationship between Company A's Cambodian stakeholders and some senior officials caused conflict for heads of the government. The negative effects were so significant that the Cambodian government secretly granted Company A's land to a Taiwanese company in 1995. Fortunately for Company A, through negotiations between the Chinese and Cambodian governments, the land was finally returned to its possession in 1996. Nevertheless from 1995-1996, Company A had to close operations and incur a great financial loss.

The reform of Cambodian national forestry policy that suspended all logging activities in 2001 was a disruptive change. In fact the new policy not only resulted in the end of Company A's operation but it also posed new requirements and forced the company to take on new projects. Specifically, Company A had to invest resources to draft FCMP and ESIA reports and design new projects and programs that would meet requirements of the new policy. Moreover, as project finalization and government feedback on the submitted proposals have yet to be received, Company A is experiencing irreparable loss.

2) Environmental Risks

Company A's efforts to cooperate with NGOs was also unsuccessful. Company A claims to have attempted to extensively communicate with NGOs and other social groups regarding agreements to plan sensitive areas for biological protection and community forestry development. The primary hindrance to NGO cooperation is the location of Company A's concession in the core zone of Prey Lung, a highly environmentally sensitive area with high conservation value. For this reason, many intergovernmental agencies and NGOs criticize Company A's operation and production. Without the support of these agencies, approval for alternative projects from the Cambodian government is all the more unlikely.

Strategy and Response to Risks

1) Reliance on the Chinese Government

Many of Company A's shareholders have a background in Chinese SOEs, a connection that leads to favorable relationships with the Chinese Government. In its workings with the Cambodian government, Company A's utilization of its connection to China proved very useful. In fact, Company A relied upon this connection during its negotiations to regain the land given to the Taiwanese company by the Cambodian government. Additionally, the long-term friendly relations between China and Cambodia minimized Company A's political risk when they first invested in Cambodia. Finally, the connection to the Chinese government also increased the likelihood for Company A's long-term presence in Cambodia.

2) Reliance on China's Chamber of Commerce and civic groups

China's Chamber of Commerce and other Chinese-funded groups were also actively involved in Company A's coordination and operation in Cambodia. Specifically, these groups provided a channel for Company A to reach to local merchants and promoted Company A's products and sales.

3) Actively Collaborate with Environmental Agencies

Company A was diligent to cultivate a positive image of Chinese enterprises' responsibility in Cambodia. In fact, during the field investigation of the ESIA, Company A was in contact with local Cambodia environmental organizations and even invited experts from the World Bank Group to participate. While drafting the ESIA report, Company A also conducted field research to understand local communities' opinions and concerns and included the findings in the company's management plan. The field research findings served as reflections of an independent third party and demonstrated the fairness of the project. The experts at the World Bank Group expressed that they appreciated the final ESIA report.

4) Share Benefits with Communities

Company A also made efforts to share benefits of their project with the community. While in operation, Company A hired nearly 1,200 local logging workers – a number that increased to 1,500 workers at peak time. Moreover, during the development process, the company voluntarily paid each worker USD 10/cubic meter and donated USD 3.50 /cubic meter to the provincial development fund managed by the provincial government. The company also used parts of the profits to pave roads and construct bridges for local communities. For these reasons, the company and the projects were highly supported and welcomed by the locals and the government.

Lesson

Policy risk is always the most significant factor to consider when enterprises invest abroad.

4.4 Case Two: SOE, Forest Concession

Company B[23] was a large-scale integrated state-owned enterprise (SOE) that, in the 1990s, had a container and wood floor production and processing capacity of more than 150,000 cubic meters. In 1998, they decided to invest in the Cambodian timber industry so to form a "produce - supply - sell" timber production operation chain that would break the Malaysian and Indonesian monopoly.

Company B had two key connections that eased the initial investment process: these two connections were a local mogul and a Chinese central SOE. In fact, with a local mogul's help, Company B quickly obtained timber rights for 315,000 hectares of forest in Koh Kong and Pursat Provinces. Soon thereafter in 2000, Company B acquired a supplementary wood-processing factory in Sihanoukville Province and finally began processing wood in 2001. The factory mainly produced special plywood for containers, normal plywood, advanced decorating floor and local sawmills. Importantly, Company B is a subsidiary of a large Chinese central SOE, which mainly manufactures containers. The connection to its parent company proved to be a great advantage as Company B was financially supported by the central SOE which in turn, provided strong market demand from China.

Even though Company B's original advantage of working with the powerful local mogul expedited gaining timber rights, it ultimately raised many risks and created several problems. Most of the complications arose from the fact that Company B blindly relied on the local mogul without fully understanding the land prior to signing the agreement. In fact, through a later investigation, Company B discovered that the real forest stock volume fell far below the seller' s descriptions. As a result, the company had to cut an original investment plan of USD 300 million to USD 25 million because the real forest resource could not meet the original development plan for timber production and the funds to construct an international dock, hospitals, schools and other projects in Koh Kong Province.

[23] Under the author's request, the names of the enterprises in the case studies have been withheld.

In its first years, Company B invested tremendously in forest investigation and protection, resource planning, plant construction, factory pre-construction, timber logging and factory operations. However, a sudden change of forestry policy trapped Company B in 2001 and the company had to stop its operations for the long-term. To exacerbate Company B's situation, the local mogul ceased to be helpful making Company B' s payment for naught.

To fight against the change in forestry policy, Company B submitted a proposal to replace timber rights with other benefits. This proposal received government approval. As a result, Company B gained permission to engage in forest tourism, begin projects aimed to reduce emissions from deforestation and forest degradation (REDD projects) and plantation. Company B is currently considering to either launch a new REDD project or to transform the whole area into a nature reserve. Thus far, Company B has reached a preliminary agreement with a third-party to transform the area.

Lesson

Enterprises should carry out comprehensive investigations and studies before starting a new investment project. In this way an enterprise can thoroughly gauge the real situation before making any decisions or investments. Moreover, enterprises should not depend on local moguls for achieving long-term success.

4.5 Case Three: Private Company, Economic Land Concession

Company C[24] is a private Chinese enterprise that began launching projects in Cambodia in 2005 focused on manufacturing telecommunications equipment for China. In 2007, Company C invested in Cambodia's rosewood industry due to the rising price in China's domestic rosewood market. Company C invested in two areas of natural secondary ELC in Stung Treng Province covering an area of 7,000 and 7,200 hectares, respectively. This purchase was supposedly made by friends and the investment totaled USD 800 million.

Overall, Company C's research into their investment was insufficient. In fact, it was only after they purchased their land that they hired a professional agency to conduct a field investigation. This investigation would find too late that the land did not have any rosewood at all, that the wood in the area was worthless and called "rubbish wood." As such, their plan to make profits by logging rosewood and selling to China failed before it even began. In reaction, Company C planned to plant rubber trees, but they could not supply the money needed for the initial investment for the rubber cultivation. Finally, after building some wood mills, Company C stopped operation as it was no longer able to support its projects in the long-term. Company C now faces a risk that its purchased lands will be taken back by the Cambodian government.

In attempts to help its position in Cambodia, Company C was hoping to communicate with local communities, NGOs, and other relevant parties. However, these plans also failed due to Company C's precarious financial situation and overall weak management capacity. Company C is seeking fund from a third- party enterprise to develop projects and continue its plantation plan.

Lesson

Enterprises should not blindly invest in unfamiliar fields, as consequences can result in major financial loss. Instead, it is recommended that enterprises first, conduct in-depth investigations and studies; second, generate a real understanding of local situations; and then make decisions on investment projects. As demonstrated by Company C, enterprises are likely to face higher risks by depending on relationships rather than scientific facts.

Private enterprises should also be careful about financial risks: once the capital strand breaks, the whole project will fail. It is also recommended that investors evaluate their financial capacities before investing in specific projects.

[24] Under the author's request, the names of the enterprises in the case studies have been withheld.

4.6 Analysis and Recommendations for Companies

As the three case studies demonstrate, SOE and Chinese private enterprises can generate competitive advantages by working with the Chinese government but these advantages do not address all potential problems. In fact, these advantages are jeopardized by an SOE's institutional inflexibility and bureaucratic rules during the decision-making process. On the other hand, while private enterprises have relatively more flexibility and more efficient decision-making procedures, many firms face limited funding resources and policy restrictions. Moreover, it is difficult for private enterprise to survive if they experience financial dilemmas. Given these threats, it is understandable that most Chinese SOE and private enterprises have all experienced political, policy and environmental risks when they invest in Cambodian forestry industry.

Political and Policy Risks

Before and during the process of investment, enterprises are advised to have a strong awareness of the local industry and governance to prevent external political and policy changes from affecting their entire investment. As demonstrated by the case studies, Company A and B's investments were fundamentally uprooted due to a sudden change of Cambodia's forestry policies. Company A and B's failures in Cambodia exemplify that despite Cambodia's relatively stable political situation, rapid economic development, and close tieswith China, , the country's national and local policies were still easily changed due to a wide variety of factors. In fact, Cambodia's environmental laws and regulations, as well as its management system, are influenced by donor countries and international organizations. This web of influence will lead to constant changes of forestry policies and creates great risk for investors.

Because it is difficult for enterprises to mitigate political and policy risks, it is increasingly crucial for a corporation to integrate risk prevention into its investment strategy. In the case of Cambodian investment, examples of corporate risk prevention strategy could include hiring professional lawyers or experts who are familiar with Cambodian laws and relevant international regulations; consulting legal and policy experts to interpret existing regulations and future policy trends before making any decisions; finally, establishing a communication department or position that maintains good communication channels with government authorities. With such a strategy in place, enterprises are better positioned to handle problems if or when they occur. Specifically, in the event of a policy change or political problems, enterprises can then discuss solutions with the authorities that would mitigate risk.

An alternative method to a corporate strategy would be for the company to their projects as 'inter-governmental cooperation.' Under this classification, the enterprise would receive support from Cambodian government and would also minimize their political and policy risks.

Environmental Risks

In recent years, Cambodia's forest coverage rate has decreased and because investment in timber projects mostly occurs in natural forest area, the fact is this rate will continue to decrease. Moreover, both logging concessions and ELC plantation projects negatively impact the environment, especially biodiversity. As a result, investment projects in Cambodia's forestry sector have drawn much attention and have been placed under high supervision.

Despite Cambodia's turbulent timber industry, which requires extremely cautious investing, Chinese enterprises in the past have not done their due diligence and as a result have run into serious problems. There are five primary mistakes made by the Chinese enterprises when looking to invest in Cambodian timber. First, many Chinese enterprises, especially private enterprises, have not invested sufficient time, energy and resources to understand their projects' feasibilities. Second, many investments proceed through the introduction of an acquaintance, who may or may not be trustworthy. Third, the Chinese enterprises have unwisely always invested money before conducting their investigation into the land and environment. Fourth, the Chinese enterprises have largely lacked professional and technical knowledge. Fifth, some of the Chinese enterprises do not consider assessing projects' environmental and social impacts before or after project implementation period, thereby creating great social and environmental risks. Given the severity and frequency of these mistakes, NGOs and political forces usually criticize and tarnish the reputations of Chinese enterprises in ways that may cause financial loss.

Recommendations

To reduce and avoid investment risks caused by environmental problems, enterprises should conduct ESIA[Do you mean IESIA? If so, this acronym needs an introduction] in accordance with the legal framework and carry out the government-approved activities and the development plan. It is also recommended that enterprises promote ecological protection, minimize any negative environmental and social impacts caused by project implementation.

Specific measures to be taken to those ends include:

1) Conserving the environment while progressing on projects. Enterprises can protect the environment throughout their investment by strengthening ecological protection during project implementation process, reducing large-scale deforestation and burning in mountain areas, and establishing natural forest shelterbelt by using environmentally -friendly technical measures;

2) Following environmental protection regulations. Corporations should improve their publicity on ecological protection and diligently comply with rules and regulations to protect wildlife resources within the region;

3) Maintaining economic perspective. While investing and implementing their project, corporations must maintain a balance between regional ecological protection and economic development, bearing in mind that economic development remains vital to ensuring stable regional ecological health;

4) Promoting transparent communications. Enterprises should broaden communication channels, increase publicity and reach out to local communities in an effort to generate understanding and support for their activities.

5

Overview of Cambodia's Tourism Sector & Case Study of Chinese Investments

5.1 Tourism Development in Cambodia
5.2 Chinese Investment in Cambodia's Tourism Sector
5.3 Case Study: Dara Sakor Seashore Resort Project
5.4 Analysis and Recommendation for Companies

Authors of this Section: Lin JI, the Global Environmental Institute; Feng Long, Chinese Academy for Environmental Planning.

A neighbor to China's southwest, Cambodia offers a lush and rich environment for China's outward foreign investment. Thus far, China has seized opportunities within the Cambodian market: by the end of 2014, China had an accumulative investment to Cambodia of over USD 10 billion and has consistently been Cambodia's top investor. The most notable sector has remained the tourism sector, which received 42% of Cambodia' s total foreign direct investment (FDI) approvals from 1998-2009.

Among all Chinese funded tourism development projects in Cambodia, the Dara Sakor Seashore Resort Project is by far the largest. It has raised grave concerns in terms of its scale, location, and environmental impact. Overall Dara Sakor's problems result from its massive size - largest in terms of investment amount and project scale amongst its peers - and its location, which overlap parts of a national park. For these and other reasons, opposition and protests by villagers have been reported for years.

This case study of the Dara Sakor Seashore Resort Project was designed to:

1) Gather firsthand information on the environmental and social aspects of the project;

2) Understand current challenges;

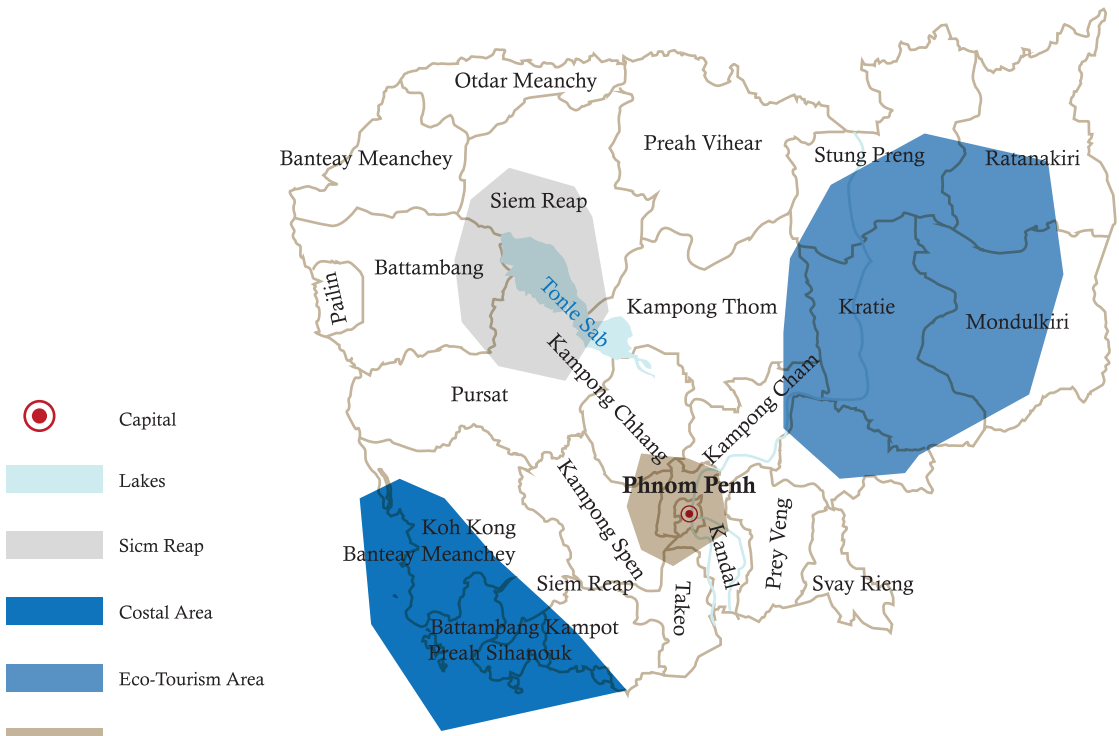
3) Explore potential solutions. Firsthand information was gathered during a September 2015 field visit during which researchers interviewed local communities as well as the general manager-level staff of Union Development Group (UDG), the project developer, in Cambodia. Using the firsthand information, this case study project strives to contextualize the opinions and actions of different stakeholders as well as present analysis and suggestions for how Dara Sakor and other projects should proceed. Future projects could also expand upon this research: as UDG is a private company, doing a comparison with cases of state-owned enterprises (SOEs) overseas investment could offer intriguing juxtapositions.

5.1 Tourism Development in Cambodia

Cambodia is a country with abundant natural resources and world renowned historical sites. The country has two world heritage sites: the 12th century Angkor Wat Temple and the 11th century Preah Vihear Temple, 1,300 tourist attractions, including some 100 natural sites, 1,161 cultural and historical sites, and 40 recreational sites.[1] The country's tourism resources can be divided into four geographical areas: Phnom Penh and its surroundings in the southeast, Angkor complex of temples in Siem Reap and surroundings in the northwest, the eco-tourism area in the northeast, and the coastal area in the southwest (Figure 5-1).

[1] Ek Rithy, 柬埔寨吸引外商直接投资优惠政策之探究 (Probing into Cambodia's Preferential Policies to Attract Foreign Direct Investment), 《世界经济研究》, 2007 (12). *Available at* http://d.wanfangdata.com.cn/periodical/sjjyj200712015. (Chinese.)

Figure 5-1 Cambodia Tourism Map



Source: Ministry of Land Management, Urban Planning and Construction of the Royal Government of Cambodia.

However, it is just within the past fifteen years that Cambodia has turned its tourism advantages into an economic strategy. The focus on tourism heightened after the civil wars ended in the 1990s. In this era of peace, Cambodia was able to begin socio-economic reconstruction with strong support from the international community.[2]Then the 2004 elections and rapprochement of the majority parties ushered in a new stability that enabled tourism and other similar endeavors. Then, to further boost the appeal of traveling to Cambodia, Cambodia's Ministry of Foreign Affairs and International Cooperation launched an Electronic Visa in 2006.[3]Greatly easing the convenience for prospective tourists, Cambodia's electronic visa was one of the first in the world and quickly greatly benefitted the nation's tourism industry. In fact, from 2005 to 2014, the number of international tourists increased threefold from 1.4 million to 4.5 million[4](Figure 5-2). Currently, the country's visa requirement index ranks 15th among the 139 countries as nationals from 179 countries can enter Cambodia visa-free or apply for visa on arrival[5] (Figure 5-3).

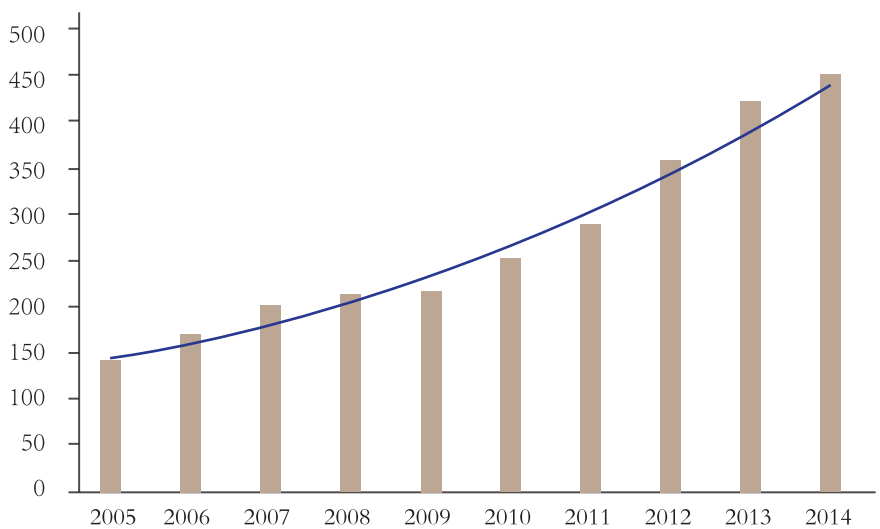
[2] Vannarith Chheang, *Tourism development in Cambodia: Opportunities for Japanese companies*, 2011, pg. 13. *Available at* http://www.ide.go.jp/English/Publish/Download/Brc/pdf/02_ch1.pdf.

[3] Kingdom of Cambodia, Ministry of Foreign Affairs and International Cooperation, "About E-Visa." *Available at* https://www.evisa.gov.kh/About.aspx .

[4] Statistics and Tourism Information Department, Ministry of Tourism of the Royal Government of Cambodia, *Tourism Statistics Report*, August 2015. *Available at* http://www.tourismcambodia.org/images/mot/statistic_reports/tourism_statistics_august_2015.pdf.

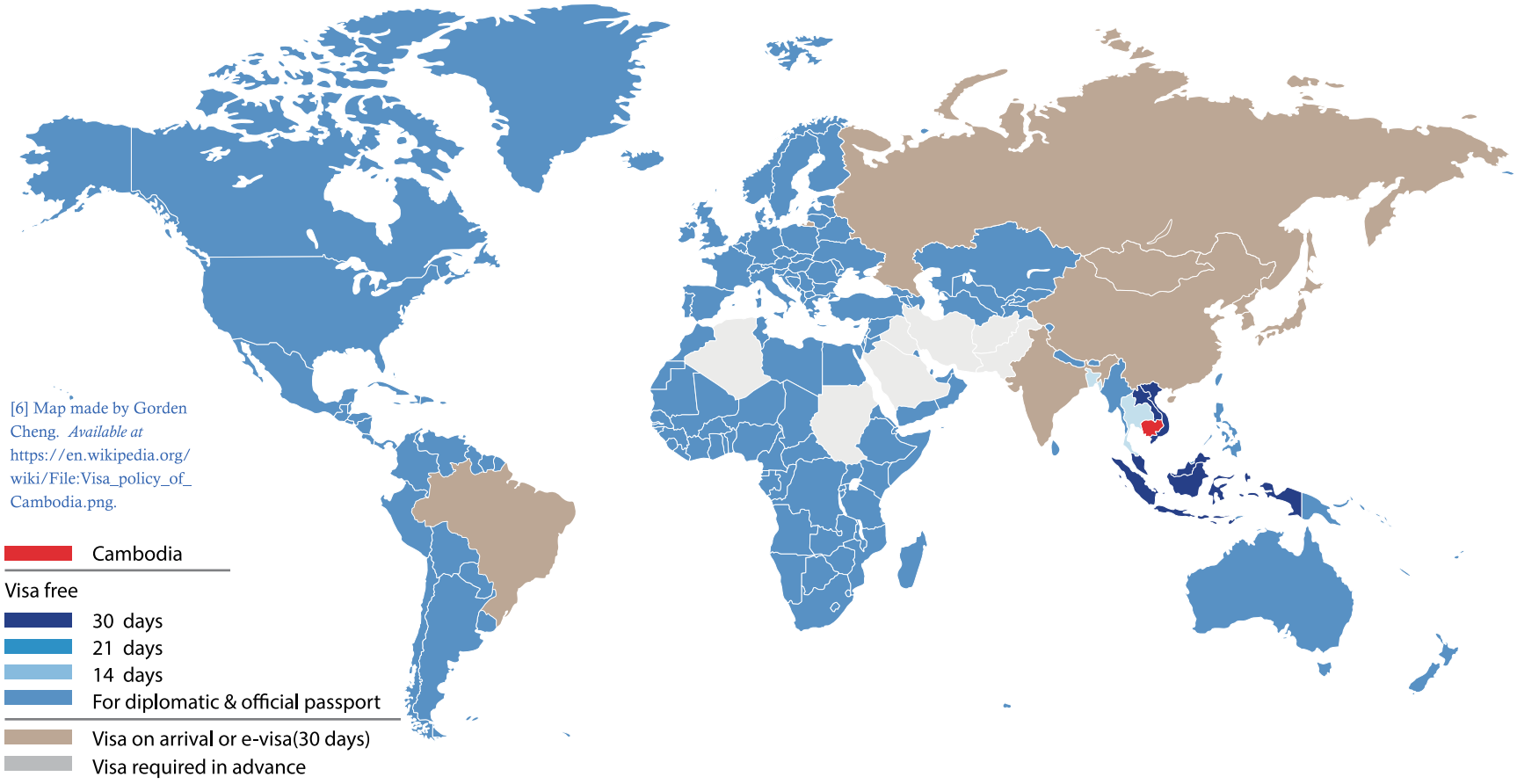
[5] World Economic Forum, *The ASEAN Travel & Tourism Competitiveness Report 2012*, pg. 11. *Available at* http://www3.weforum.org/docs/WEF_TTCR_ASEAN_Report_2012.pdf.

Figure 5-2 International Tourist Arrivals to Cambodia



Source: *Tourism Statistics Report*, Ministry of Tourism of the Royal Government of Cambodia.

Figure 5-3 Visa Policy Map of Cambodia[6]



[6] Map made by Gorden Cheng. *Available at* https://en.wikipedia.org/wiki/File:Visa_policy_of_Cambodia.png.

As a result of these developments, the tourism industry joined the agricultural and garment industries as one of the three largest sectors of the Cambodian economy. For instance, in 2014, tourism alone generated revenues of USD 2.74 billion [7] and contributed almost 30% to Cambodian 2014 Gross Domestic Product (GDP).[8]Given tourism's massive economic payback, the development of the sector has consistently been among Cambodia's top national development priorities. Best said by the Cambodian government itself, "tourism is a 'green gold,' which creates job opportunities, increases people's income, boosts the economic growth and generates more income to the state." [9]Several key policies have contribute to the country's booming tourism development including the National Strategic Development Plan (2014-2018), which promotes tourism as one of the six priority areas that will sustain the country's growth and diversification,[10] the Cambodia Tourism Development Strategic Plan 2012-2020; and Cambodia Tourism Marketing Strategy 2015-2020.

The primary challenges facing tourism industry development include poor infrastructure and facilities[11]as well as the lack of diversity in tourism destinations.[12]The country's resources are due to undergo increased stress as it is estimated that Cambodia will receive 7.5 million foreign visitors a year by 2020,[13] a 67% increase from that of 2014. This increase equates to a supply gap of 30,000 hotel rooms. [14] Moving forward, the tourism industry intends to address this and other such problems by attending to poor infrastructure and facilities, increasing destination options and generating green tourism. [15]`

[7] Ministry of Tourism of the Royal Government of Cambodia, Statistics and Tourism Information Department, *Tourism Statistics Report*, August 2015. *Available at* http://www.tourismcambodia.org/images/mot/statistic_reports/tourism_statistics_august_2015.pdf.

[8] World Travel and Tourism Council, "WTTC Data Gateway." *Available at* http://www.wttc.org/datagateway/. Total contribution consists of GDP directly generated by the Travel &Tourism industries plus the indirect and induced contributions, including the contribution of capital investment spending.

[9] Sophirom Khan, "Tourism Development Strategic Plan 2012-2020 Launched," Agence Kampuchea Presse, Phnom Penh, September 21, 2012. *Available at* http://www.akp.gov.kh/?p=24724.

[10] Ministry of Planning of the Royal Government of Cambodia, *Guidelines for formulating National Strategic Development Plan* (2014-2018), April 2013. *Available at* http://www.mop.gov.kh/Home/NSDP/NSDP20142018/tabid/216/Default.aspx.

[11] Asian Development Bank, Cambodia: *Diversifying Beyond Garments and Tourism*, November 2014.

[12] Ministry of Planning of the Royal Government of Cambodia, "Guidelines for formulating National Strategic Development Plan (2014-2018)," April 2013. *Available at*

[13] "Cambodia Develops New Tourism Strategy," Mekong Tourism, August 13, 2015. *Available at* http://www.mekongtourism.org/index.php/2015/08/13/cambodia-develops-new-tourism-strategy/.

[14] Poch Voleark and Ek Rotha, "Tourism Management in Cambodia" , Presentation at the 5th Asia/Pacific Executive Training Program on Tourism Policy and Strategy, Ministry of Tourism of the Royal Government of Cambodia. *Available at* http://dtxtq4w60xqpw.cloudfront.net/sites/all/files/pdf/cambodia.pdf.

[15] In Thoeun, "Management of Tourism Development in Cultural and Natural Heritage Sites in Cambodia" , Presentation at the Symposium Mainstreaming Sector Policies into Integrated National Sustainable Development Planning: Enhancing Sustainable Tourism, Urbanization, Resource Efficiency, Biodiversity and Environmental Protection, Tehran, Iran, October 14-16, 2014. *Available at* https://sustainabledevelopment.un.org/content/documents/12059Thoeun.pdf.

5.2 Chinese Investment in Cambodia's Tourism Sector

Tourism's great influence on socio-economic development made it the Government's preferred sector for foreign investment. In fact, the Cambodian Government specifically lobbied for Chinese investment into the sector. The reliance on China dates back to the 1950s when Cambodia gained independence from France and Norodom Sihanouk became the leader of Cambodia. Sihanouk was keen to establish beneficial relationships with China and his activities set the course for six decades of good relations. These solid ties between the two governments strongly encouraged Chinese investors to seek out Cambodia and for many years, China was consistently the top investor. Chinese investments gradually expanded from small-scale manufacturing companies to medium- and large-scale resource development companies. In the past two decades, investments expanded to the energy, mining and tourism sectors.[16] By the end of 2014, China had a total investment in Cambodia of over USD 10 billion. The tourism sector remained the most notable as from 1998-2009, tourism had 42% of Cambodia's total approved foreign direct investment , 60.7% of which were Chinese (Figure 5-4).[17],[18]

In addition to foreign investment, the Chinese tourists themselves are a major market for Cambodia. The number of Chinese tourists increased fourfold from 2009 to 2014 (Figure 5-5) and is expected to increase to about 2 million visitors per year by 2020.[19] To manage this large demand, the government has taken several strategic steps in terms of real estate, services, and finance. First, to appeal to the potential real estate buyers, Cambodia passed a law in 2010 allowing foreigners to buy condominiums in towers above the first floor of approved buildings.[20]Second, to appeal to the preferences of Chinese tourists, the Cambodian Government increased high-end accommodation and Chinese language services. Finally, in recent years, the Cambodian Prime Minister has approved relevant ministries to consider allowing Chinese tourists to use Chinese yuan in Cambodian street markets.[21]

[16] *See generally*, Hossein Jalilian, ed., *Assessing China's Impact on Poverty in the Greater Mekong Subregion*. 2013.

[17] "Cambodian, Chinese companies ink two business deals" , Xinhua Finance Agency, December 15, 2014. *Available at* http://en.xinfinance.com/html/Economies/Trade/2014/19148.shtml.

[18] *Ibid.*

[19] "Ministry of Tourism makes strategic plan to attract Chinese tourists" , Ankor News, October 19, 2015. *Available at* http://angkor-news.com/front/detail/9678.

[20] Chris Horton, "Giant Development in Cambodia Hinges on Chinese Buyers" , The New York Times, May 6, 2014. *Available at* http://www.nytimes.com/2014/05/07/realestate/commercial/giant-development-in-cambodia-hinges-on-chinese-buyers.html?_r=0.

[21] "Chinese arrivals to jump to 2M by 2020" , The Phnom Penh Post, October 19, 2015. *Available at* http://www.phnompenhpost.com/business/chinese-arrivals-jump-2m-2020.

Figure 5-4 China's Fixed Asset Approvals in Cambodia in Selected Sectors, 1998-2009
(% of Total FDI Fixed Asset Approvals in Each Sector)

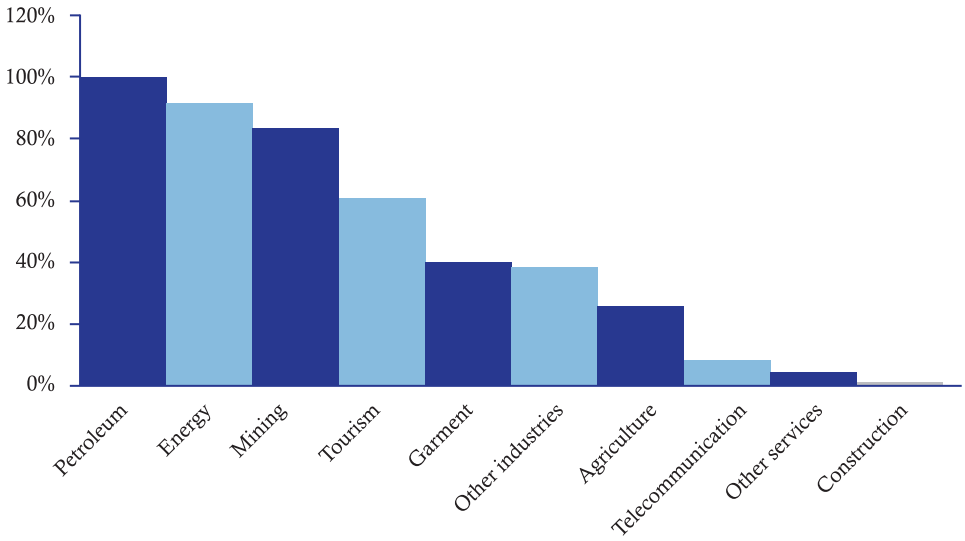
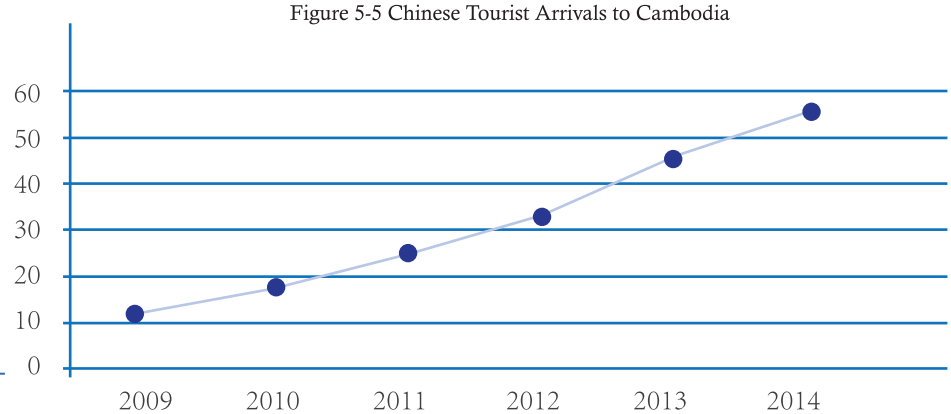


Figure 5-5 Chinese Tourist Arrivals to Cambodia



Source: Tourism Statistics Report, Ministry of Tourism of the Royal Government of Cambodia.

Chinese investment in Cambodia is largely within the tourism sector. Although a breakdown of subsectors of tourism with Chinese investment is not available, it is evident from preliminary research that most investments focus on services development and property development. One such project is China International Travel Service (CITS)'s development of travel packages for Chinese that promote travel to Cambodia and the establishment of its duty-free shops. Importantly, CITS conducted these activities under a strategic cooperation agreement in the tourism industry with Cambodia's Ministry of Tourism[22]A second project was Chinese company Jixiang Investment's USD 700 million Diamond Island Riviera condo complex on Koh Pich (Diamond Island) in Phnom Penh. This project was a joint venture between Jixiang Investment and Overseas Cambodia Investment Corporation (OCIC).[23] Thirdly, China's Union Development Group spent around USD 5 billion on its Dara Sakor seashore resort along Cambodia's southwestern coastline in Koh Kong Province. Each of these projects raises interesting and necessary questions that are further explored in the following case study.

[22] "CITS Group Signed a Strategic Cooperation Agreement on the Tourism Industry with Ministry of Tourism of Cambodia," China Duty Free Group, January 5, 2015. *Available at* http://www.cdfg.com.cn/en/news/detail.php?infoid=480.

[23] Chris Horton, "Giant Development in Cambodia Hinges on Chinese Buyers," The New York Times, May 6, 2014. *Available at* http://www.nytimes.com/2014/05/07/realestate/commercial/giant-development-in-cambodia-hinges-on-chinese-buyers.html?_r=0.

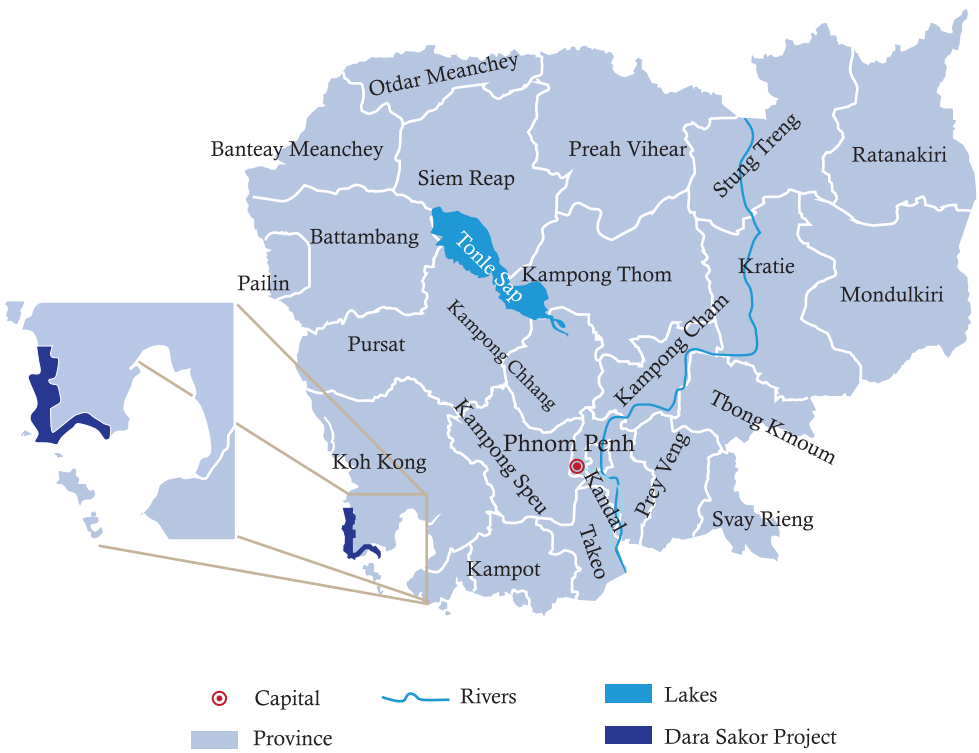
5.3 Case Study: Dara Sakor Seashore Resort Project

5.3.1 Project Introduction

Recognized as one of the World's Most Beautiful Bays in 2011,[24] Cambodia's pristine coastline is a key location for both investment as well as tourism in Cambodia. This site is home to the Dara Sakor project, located along the southwest coastline of Koh Kong Province (Figure 5-6). Along the 450-kilomester shoreline that links the four provinces of Koh Kong, Preah Sihanouk, Kampot and Kep, Dara Sakor is located approximately 30 kilometers away from Sihanoukville Pier, a distance that can be reached by a 20-minute motorboat ride. In total, the project covers a total area of 36,000 hectares, equivalent to the size of the Gaza Strip.

[24] H.E. Dr. Thong Khon, Minister of Tourism, Kingdom of Cambodia, Statement at the 19th Session of the General Assembly of the World Tourism Organization (UNWTO), October 8-14, 2011. *Available at* http://www.tourismcambodia.org/minister/index.php?view=The%20Bay%20of%20Cambodia%20has%20integrated%20the%20Most%20Beautiful%20Bays%20in%20the%20World.

Figure 5-6 Location of the Dara Sakor Project



Source: Official website of UDG (Cambodia), remade by GEI

Geographically and politically, the shoreline was an advantageous choice for Dara Sakor developer, UDG, one of the six subsidiaries of Tianjin Wanlong Group, which is the largest real estate company in Tianjin.[25]In terms of location, building Dara Sakor in Cambodia evidences the company's diversifying strategy. In fact, in 2006 UDG changed investment focus from residential apartments to tourism and recreational complexes. Since 2006, UDG has developed a couple of large-scale tourism projects in China, including one in Haikou of Hainan Province, covering the expanse of 1,000 hectares, and one in Qinhuangdao of Hebei Province, covering about 1,200 hectares.[26]The location was strategic for political reasons. In fact, the Cambodian government favors the shoreline and highlighted it as the second largest investment hub after Phnom Penh and as a third tourism hub of the country, along with Phnom Penh and Siem Reap.[27]To support the area's development, the Cambodian government established the National Committee for Management and Development of the Cambodian Beach Areas in 2012. The government also issued a series of policies related to coastal area's tourism development, namely the *Instructive Circular No. 01 on Development of the Beach areas of the Kingdom of Cambodia, the Royal Kram No. NS/RKT/0212/079 on Establishment of National Committee for Management and Development of the Cambodian Beach Areas, and the Sub-Decree No. 171 on Organization and Functioning of the General Secretariat of the National Committee for Management and Development of the Cambodian Beach Areas.*[28]

UDG was diligent in their selection process. In fact, UDG conducted comparative feasibility studies from 2006-2007 on the potential of developing such a tourism project with other countries in Southeast Asia, such as Thailand, the Philippines, and Myanmar. Cambodia was deemed a good choice as it had a stable political situation, good bilateral relationship with China, pristine coastline and tsunami-free location, as well as willingness and support from the Cambodian government.

The process of approving the project went quickly and in May 2008, UDG and the Royal Government of Cambodia reached an agreement on development of the Dara Sakor Seashore Resort Project. Notably, this agreement was reached just one month after the project acquired approval from China's National Development and Reform Commission (NDRC),[29]the agency which approves major natural resource development projects and large investment projects overseas. The agreement stipulated that the land concession would be granted to UDG for 99 years, the maximum duration according to Cambodian laws and regulations,[30]and that this concession could be extended for a limited time following both parties' approval.[31]

The master plan of the Dara Sakor Project includes seven major functional regions and several large-scale infrastructure projects. The seven major function regions are a mangrove theme resort, mountain golf theme resort, ecological landscape area, commercial, amusement and trading core area, wild environment experience resort, local culture experience resort, and a free trade zone of the airport. The large-scale infrastructure includes an international airport, international cruise terminal, cargo

[25] Tianjin Youlian Group, Phoenix New Media. *Available at* http://finance.ifeng.com/company/data/detail/2424.shtml. (Chinese).

[26] "UDG's years of comprehensive real estate development experience provides guidance for its tourism development project in Cambodia" , People's Daily Online, September 9, 2014. *Available at* http://www.022net.com/2014/9-9/514133193095264.html. (Chinese).

[27] "Cambodia's pride of having one of the world's most beautiful bays," Legend IndoChina Travel. *Available at* http://www.indochinalegend.com/cambodia_s_pride_of_having_one_of_the_world_s_most_beautiful_bays/88/1119.

[28] See lists of these laws and original texts in Khmer at: http://bnglaw.net/directory.php?action=detail&nid=56.

[29] Public notice at PRC National Development and Reform Commission. *Available at* http://zfxxgk.ndrc.gov.cn/PublicItemView.aspx?ItemID=%7Be2363a7a-ca0f-4785-9422-9f81571d140e%7D. (Chinese).

[30] Council for the Development of Cambodia, "Land." *Available at* http://www.cambodiainvestment.gov.kh/investors-information/land-site-development.html.

[31] NGO Forum, *Investigation Report On The Impact of Development Project, Union Development Group Co. Ltd in Botumsakoi and Kirisakoi District, Koh Kong Province*, Cambodia, 2015.

terminal, reservoir, power generation facilities and roads.[32] Given the size of the project, it is divided into seven phases of construction each lasting between 3 to 5 years.[33]At the time of this case study, the first phase of development was ongoing and covered 6,800 hectares, 23 kilometers of which are coastline. According to the plan, the area will include 5-star hotel complex, high-end resorts, and villas, golf course, food production base, yacht facilities, etc. [34] The investment of stage one alone is USD 800 million.[35] Development of the 4- and 5-star hotels, an 18-hole golf course with sea view and basic infrastructure has been completed and is expected to enter a trial phase in October 2015.[36]

The Dara Sakor project's unprecedented large cost and scale relative to China's overseas tourism projects opened it up to much attention from both the Chinese Government and Royal Government of Cambodia.[37]In fact, three major meetings were held that demonstrate the close government cooperation: the first was when the Cambodian Prime Minister Hun Sen's met with UDG Executive Director Li Zhiqiang in 2008 in Cambodia;[38]second, H.E. Zhang Gaoli, who at that time was the Secretary of Communist Party of China (CPC) Tianjin Municipal Committee and currently is Chinese Vice Premier, attended the signing ceremony of the project in 2008 in Cambodia; [39]and finally, Cambodian Deputy Prime Minister H.E. Gen. Tea Banh traveled to UDG's headquarters in Tianjin during his state visit to China in the summer of 2015.[40] Additionally, the Cambodian government established an inter-ministerial commission for the Dara Sakor project consisting of sixteen members and led by the Minister of Environment. The purpose of the commission is to facilitate and settle disputes as well as discuss and advise on conservation and development of the project (Royal Government of Cambodia Decision No.68 dated November 12, 2009, and Sub-Decree No.112 DC dated June 30, 2014).[41]

[32] "Construction of the seashore resort project's infrastructure is paralleled with its first phase development" , People's Daily Online, September 11, 2014. *Available at* http://www.022net.com/2014/9-11/467022213032947.html. (Chinese).

[33] *Ibid*.

[34] Cambodia Dara Sakor Seashore Resort, "Masterplan of the first phase." *Available at* http://sunnyunion.com/en/show.asp?ShowID=1188.

[35] "Cambodia's strategy to attraction Chinese tourists expected to be issued at the end of 2015, and more details about the Dara Sakor project unveiled" , The Khmer Daily, May 27, 2015. *Available at* http://cn.thekhmerdaily.com/homepage/detail/11384. (Chinese).

[36] Interview with UDG staff on September 7, 2015. Dara Sakor Seashore Resort.

[37] "Application on modification and investment increase of UDG's Dara Sakor phase I is approved by China's National Development and Reform Commission), Tianjin International Engineering Consultants Corporation, February 16, 2014. *Available at* http://www.tiecc.com.cn/html/2014/zhiliangyeji_0216/160.html. (Chinese).

[38] "UDG develops tourism and recreational sites in Koh Kong" , Cambodia Sin Chew Daily, May 28, 2008. *Available at* http://www.camsinchew.com/node/7358.(Chinese).

[39] "King of Cambodia Norodom Sihamoni and Prime Minister Hun Sen meet with Zhang Gaoli" , Tianjin Daily, November 18, 2008. *Available at* http://news.sina.com.cn/c/2008-11-18/073614745768s.shtml. (Chinese).

[40] Aun Chhengpor, "Tea Banh to Meet With Firm in Land Dispute," The Cambodia Daily, July 8, 2015. *Available at* https://www.cambodiadaily.com/news/tea-banh-to-meet-with-firm-in-land-dispute-87547/.

[41] BNG Legal, *Primary Law Update*, November 2009, *Available at* https://bnglegal.com/sys-content/uploads/2013/04/November-2009-PLU.pdf; see also VDB Loi, Cambodian Monthly Legal Update, November 2014. *Available at* http://www.vdb-loi.com/wp-content/uploads/2014/12/Legal-Newsletter-Issue-26.pdf.

5.3.2 Reported Environmental and Social Issues Related to the Project

While tourism projects have the potential to benefit the environment, by raising awareness or financing protection efforts, large scale projects can have serious detrimental effects on the region's natural environmental and societal welfare.[42] The most frequently cited negative social impacts of tourism development include increased threat to land rights, culture, livelihoods and accessibility to infrastructure and facilities.[43]

In the case of the Dara Sakor project, the most acute controversies were environmental as well as social. Parties involved were engaged in pressing social debates concerning the land concession in the Botum Sakor National Park and also faced challenges to the massive deforestation and subsequent loss of biodiversity and wildlife habitat. Moreover, the company faced challenges regarding how the resettlement affected the land, livelihoods and welfare of relocated people.[44] As such, Dara Sakor demonstrates that even with a quick approval process and government support, problems and complications still abound for foreign investment in Cambodia.

Land concession in the Botum Sakor National Park

While the approval process for the project in May 2008 went quickly, securing the land concession in the Botum Sakor National Park for the Dara Sakor project was laborious. In fact, in order to complete the land concession, it was necessary to reclassify some of the Botum Sakor land so that it could be developed. At the beginning of the project, Botum Sakor was a 'natural park,' a title which denotes that it is an area reserved for nature and scenic views and is to be protected for scientific, educational and entertainment purposes. The area was classified as such by the Royal Government of Cambodia in 1993 through the *Royal Decree on the Protection of Natural Areas*.[45] However, in 2008, the new *Protected Areas Law (Royal Decree No NS/RKM//0208/007* Dated on 15 February 2008) was passed. The Protected Areas Law introduced a new system of zoning that opened up possible avenues for investment and construction.

[42] Sunlu U., "Environmental impacts of tourism" , In: Camarda D. (ed.), Grassini L. (ed.) *Local resources and global trades: Environments and agriculture in the Mediterranean region*, Bari: CIHEAM., 2003, p. 263-270. *Available at* http://om.ciheam.org/om/pdf/a57/04001977.pdf.

[43] The Myanmar Center for Responsible Business, *Myanmar Tourism Sector Wide Impact Assessment*, 2015. *Available at* http://www.myanmar-responsiblebusiness.org/pdf/SWIA/Tourism/00-Myanmar-Tourism-Sector-Wide-Assessment.pdf.

[44] NGO Forum, *Investigation Report On The Impact of Development Project, Union Development Group Co. Ltd in Botumsakoi and Kirisakoi District, Koh Kong Province*, Cambodia, 2015.

[45] Open Development Cambodia, "Protected Areas," *available at* http://www.opendevelopmentcambodia.net/briefing/protected-areas/; *Royal Decree NS/RKT on the Establishment and Designation of Protected Areas*, November 1, 1993, *available at* http://www.opendevelopmentcambodia.net/pdf-viewer/?pdf=download/law/Royal_Decree_on_Protected_Areas__01.11.1993_ENG.pdf.

The Law's zoning system is outlined as follows:[46]

Core zone: area(s) that highly value conservation and contain threatened and/or critically endangered species, and fragile ecosystems. Access to the core zone is prohibited except for official and researchers from the Nature Conservation and Protection Administration (NCPA), who have received permission from the Ministry of Environment to conduct nature and scientific studies for the purpose of preservation and protection.

Conservation zone: area(s) that highly value conservation and contain natural resources, ecosystems, watershed areas, and natural landscape located adjacent to the core zone. Access to the zone is allowed only through the prior consent of the NCPA of the area. Additionally, small-scale community uses of non-timber forest products (NTFPs) that support local ethnic minorities' livelihood may be allowed under strict control, provided that they do not present serious adverse impacts on biodiversity within the zone.

Sustainable use zone: area(s) of high economic value for national economic development and management, and conservation of the protected area(s). This zone contributes to the local community and indigenous ethnic minorities' livelihood improvement.

Community zone: area(s) for socio-economic development of the local communities and indigenous ethnic minorities.

As stated in the law, protected areas are not subject to clearances and bulldozing for construction of public infrastructure within open land or forestland. Moreover, any proposal and investment for development within, or adjacent to, boundaries of protected areas are first required to have conducted environmental and social impact assessment.[47]However, the area may be subject to development and investment activities, if the protected area qualifies as a 'sustainable-use zone.' Under this classification, activities such as ecotourism, infrastructure development (including irrigation, reservoir, hydropower and electric networks), mining and environmentally friendly resin exploitation are possible. Notably, such projects are permitted only by the government at the request of the Ministry of Environment and permission is only given after consultation with relevant ministries and institutions, local authorities, and local communities in accordance with relevant laws and procedures.[48]

From 1998-2011, the Cambodian Government granted, at least, eight land concessions to private companies within the Botum Sakor National Park, with 7 of the 8 granted after the Protected Areas Law was promulgated in 2008 (Table 5-1). The total area of these concessions includes137,794 hectares that make up 81% of the total land area of the Botum Sakor National Park. Such concessions were often granted through the issuance of sub-decrees to reclassify protected areas into sustainable use zones for plantation of agro-industrial crops, development of eco-tourism and construction of water reservoir and hydropower dam.[49]

[46] *Protected Areas Law*, NS/RKM/0208/007, February 15, 2008.

[47] *Ibid.*, Article 36 & 44.

[48] *Ibid.*, Article 11 & Annex.

[49] *See, e.g., Sub-Decree No. 38 Dated on 13 April 2010 on Transfer of Land Area of 4,100 Hectares Located at A Sustainable Use Zone of the National Park 'Botum Sakor' for Agriculture and Agro-industrial Crops Sector Investment and Development* (DFDL Mekong, Cambodia Weekly Law Update, May 25, 2010).

Table 5-1 Land concession granted within the BotumSakor National Park, Koh Kong Province[50]

BOTUM SAKOR
Established by Royal Decree, dated November 1, 1993
Land Area: 171,250 ha Province: Koh Kong
Current Land area: 135,250 ha (the original designated land area was reduced in size by Royal Decree, dated April 9, 2008, which amended the Royal Decree of November 1, 1993, to excise 36,000 ha from the park).
Administrator: Ministry of Environment

Name of company or project, size, and status of land, and land concession purpose				Date of approval/ authorization	Available official document
Name	Size (ha.)	Designated land area	Purpose		
1. The Green Rich Co., Ltd	60,200	Protected area	Oil palms, fruit trees, and acacia	November 25, 1998	Contract signed with MAFF on November 25, 1998. Reference: http://www.elc.maff.gov.kh/en/profile /17-kkg/58-kk-greenrich.html
2. Union Development Group Co., Ltd	36,000	State private land	Commercial and resort zone	May 9, 2008	Royal Decree, dated 9 April 2008 to amend the Royal Decree of 1 November 1993, to excise 36,000 hectares from BotumSakor National Park 's 171,250 hectares, and to reclassify the 36,000 hectares as state private land.
3. JW Cambodia Eco Holidays	5,000	Sustainable use zone	Eco-tourism	August 20, 2009	Sub-decree 133 (Point -B ‖), dated August 20, 2009, to designate the land as sustainable use zone and to grant it to the company.
4. Koh Kong SEZ Co., Ltd	9,977	Sustainable use zone	Agriculture and agro-industrial crop	August 20, 2009	Sub-decree 133 (Point -C ‖), dated August 20, 2009, to designate the land as sustainable use zone and to grant it to the company.
5. L.Y.P Group Co., Ltd	4,100	Sustainable use zone and state private land	Agricultural crop and agro- industrial crop	March 12, 2010	Sub-decree 31, dated March 12, 2010, to designate the land as sustainable use zone, and to grant it to the company; -Sub-decree 38, dated April 13, 2010, to classify 4,100 hectares as state private land and to grant it to the company under the term of lease or concession.
6. Paradise Investment Co., Ltd	9,137	Sustainable use zone	Agro-industrial crop	April 1, 2011	Sub-decree 60, dated April 1, 2011, to designate the land as sustainable use zone, and to grant it to the company.
7. Sinomexim Investment Co., Ltd	4,280	Sustainable use zone – State private land	Agro-tourism	July 22, 2011	Sub-decree 171, dated July 22, 2011, to designate the land as sustainable use zone, and to grant it to the company; Sub-decree 239, dated October 28, 2011, referring to the above sub-decree to reclassify the designated land as state private land.
8. Union Development Group Co., Ltd	9,100	Sustainable use zone	Water reservoir and hydropower dam	August 3, 2011	Sub-decree 178, dated August 3, 2011, to designate the land as sustainable use zone, and to grant it to the company.

[50] Surya P. Subedi, "A human rights analysis of economic and other land concessions in Cambodia" , *Report of the Special Rapporteur on the situation of human rights in Cambodia*, Human Rights Council, A/HRC/21/63/Add.1, 2012. *Available at* http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-63-Add1_en.pdf.

Of the eight land concessions in Batom Sakor National Park granted from 1998-2011, two were granted to UDG and together cover 45,100 hectares. This large area equates to 26% of the national park' s land area and includes protected areas that are unclearly zoned. Specifically, in fact, in May 2008, UDG received a concession of 9,100 hectares of land within the park to develop a hydropower dam to supply electricity for the project.[51]

The means by which UDG received these concessions raises suspicion. The public opinion in literature and in the media is that a Royal Decree[52]was executed on April 9, 2008, to reclassify and excise 36,000 hectares from Botum Sakor National Park to state private land. In effect, such a decree would reduce the size of the National Park from 171,250 hectares to 135,250 hectares and thereby free up the land for the concession. [53]However, this decree or any secondhand information from Cambodian government sources regarding the decree has yet to be located. Instead, it was discovered that in April 2008 the government issued the *Sub-Decree No. 38 of April 24, 2008, on the Transfer of 36,000 Hectares of State Public Property* from the Botum Sakor National Park to State Private Property.[54]Thus, it was through this sub-decree issued in April 2008 that the land was reclassified and then given by concession from the government to UDG in May 2008.

According to the *Land Law of Cambodia*, the state-owned property is divided into state public property and state private property.[55] State public property is either a property that has a natural origin that is made available for public use or property that constitutes a natural reserve protected by the law.[56] State private property is defined as "all state property except state public property as stated in Article 58 of Constitution 1993, as well as Article 12 and Article 15 of *Land Law*." [57] One of the major distinctions between the two kinds of state property is that state private property can be subject to sale, exchange, transfer, lease or other legal contractual transactions according to the law, while the state public property cannot.[58] It is also clearly stated in the *Land Law* that it is only when state public properties lose their public interest use can they be listed as state private properties by law through transfer.[59]However, the criteria and procedure to disqualify and reclassify state public property are not mentioned. Moreover, the information disclosure and public consultation required in the 2001 *Land Law* and the later issued 2006 *Sub-Decree No. 129 on Rules and Procedures on Reclassification of State Public Properties and Public Entities* are also excluded from the transfer process.

[51] NGO Forum, *Investigation Report On The Impact of Development Project, Union Development Group Co. Ltd in Botumsakoi and Kirisakoi District, Koh Kong Province, Cambodia, 2015.*

[52] A Royal Decree is issued directly by the King of Cambodia.

[53] *See, e.g.*,, "China gambles on Cambodia's shrinking forests," Taipei Times, March 10, 2012, *available at* http://www.taipeitimes.com/News/editorials/archives/2012/03/10/2003527411/2; Surya P. Subedi, "A human rights analysis of economic and other land concessions in Cambodia" , *Report of the Special Rapporteur on the situation of human rights in Cambodia*, Human Rights Council, A/HRC/21/63/Add.1, 2012, *available at* http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-63-Add1_en.pdf.

[54] *See* BNG Legal Research and Documentation Department, *B.N.G Monthly Law Update*, April 2008. *Available at* https://bnglegal.com/wp-content/uploads/2013/04/April2008-Lawupdate_BNG_-Eng.pdf. .

[55] *Land Law*, Article 14.

[56] *Ibid.*, Article 15

[57] Sub-Decree No. 129 on Rules and Procedures on Reclassification of State Public Properties and Public Entities, Article 3. *Available at* http://www.opendevelopmentcambodia.net/download/law/ENG_Sub_Decree_No_129__27.11.2006.pdf.

[58] *Land Law*, Article 16, 17 & 58.

[59] *Ibid.*, Article 16.

UDG's somewhat suspicious land concession within the Botum Sakor National Park is only one of many cases that demonstrate the lack of transparency within the system. Importantly, the lack of transparency begins with the law: despite the fact that the *Protected Areas Law 2008* employs a zoning management system, no information can be found from public sources to detail the actual land zoning within protected areas. In fact, sub-decrees for land concessions are the only means to know these classifications and trace their conversion. One such sub-decree is the *Sub-Decree No. 46 of 6 May 2010 on Converting Management Zone Located in Natural Protected Area to A Sustainable Use Zones*.[60] In some other sub-decree cases, only the "land is transferred to a sustainable use zone" is declared, without mentioning the type of zones of the land area prior to the transfer. One such example is the Sub-Decree No. 39 from April 13, 2010, concerning *Transfer of Land Area of 1,650 Hectares Located in Sustainable Use Zone of the National Park "Preah Sihanouk Ream" for Eco-tourism Investment and Development*.[61] Furthermore, there is a lack of information about stipulated assessments for reclassification. As it stands, the *Protected Areas Law* 2008 states that modifications of any protected areas and boundaries of each zoning system should be based on specific criteria and follow the assessment of natural resources and land use.[62] However, there is no information accessible to the public detailing any such assessment that would be conducted to analyze the potential impacts and used to make decisions on reclassification. Therefore, there is a major gap in the process and the reality of land concessions and classifications.

This unclear concession process is not an isolated incident and raises questions about the system's integrity and the country's sustainability. As a matter of fact, it is reported that at least 109 companies were granted land concessions in 16 out of the 23 protected areas established by the 1993 *Royal Decree* by 2011. These concessions total 627,627 hectares, which is 20% of Cambodian's total protected areas.[63] In addition to the number of concessions, the size of the land given to each company is also a concern.It is clearly stated in the 2001 *Land Law* and again in the 2005 *Sub-Decree No. 146 on Economic Land Concession*,that land concessions shall not be more than 10,000 hectares, and that the same person or legal entity cannot hold several concessions that total more than 10,000 hectares.[64] The law continues that a concession obtained before the promulgation of related laws that exceeds 10,000 hectares must be reduced in size through a review process and negotiation.[65] Stated above, UDG was granted two concessions in 2008 and 2011 with a total area of 45,100 hectares. Therefore, UDG is holding a concession that exceeds the maximize size four times over. Similar violations were also found in concessions for plantations.[66] Even if "special cases" like UDG' s Dara Sakor project are approved by the leadership, they nevertheless undermine Cambodia's legal framework and aggravate land disputes and forced eviction in the country. In fact, rural areas rich in natural resources are especially vulnerable in cases of concession as local indigenous communities use the area's resources to sustain their day-to-day livelihood.

[60] DFDL Mekong, *Cambodia Weekly Law Update, May 25, 2010. Available at*

[61] *Ibid*.

[62] *Protected Areas Law*, Arts. 8 & 13.

[63] Surya P. Subedi, "A human rights analysis of economic and other land concessions in Cambodia," *Report of the Special Rapporteur on the situation of human rights in Cambodia*, Human Rights Council, A/HRC/21/63/Add.1, 2012. *Available at* http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-63-Add1_en.pdf.

[64] *Land Law*, Article 59.

[65] *Ibid.; see alsoSub-Decree No. 146 on Economic Land Concessions*, Arts. 37, 29 & 40, *available at* http://www.cambodiainvestment.gov.kh/sub-decree-146-on-economic-land-concessions_051227.html.

[66] Global Witness, *Cambodia*'s *Family Trees*, May 31, 2007. *Available at* https://www.globalwitness.org/documents/14689/cambodias_family_trees_low_res.pdf.

Deforestation and subsequent loss of biodiversity and wildlife habitat

The Dara Sakor project also compounds issues of deforestation and subsequent loss of biodiversity and wildlife habitat in the region. As stated above, Dara Sakor project's concession lands are currently, and were previously, classified as part of the Botum Sakor National Park and thereby, should not be permissible for construction of tourism facilities and infrastructure.

To counteract issues of deforestation and monitor such threats, the government implemented several laws and assessments, which have all been underutilized and ineffective. The first of such regulations is the 1996 *Law on Environmental Protection and Natural Resources Management*, which details that environmental impact assessment (EIA) should be conducted for every project and activity, whether they are public or privately invested.[67]Then, in 1999, the *Sub-Decree No. 72 ANRK.BK Environmental Impact Assessment Process* added that all public or private projects including wood production, mining, agriculture, tourism and infrastructure projects above a certain scale require both Initial Environmental Impact Assessment (IEIA) and EIA.[68]Even though this law and sub-decree were in place, the EIA information and publicity of the EIA report were not required by the *Protected Areas Law* 2008 nor by any of Cambodia's EIA regulations, including the *Law in Environmental Protection and Natural Resources Management* 1996, the *Sub-Decree No. 72 on Environmental Impact Assessment Process* 1999 and the *Prakas on General Guideline for Preparing Initial Impact Assessment and Full Environmental Impact Assessment Report* 2009. In this way, even though the assessments exist, they were never supported, leveraged, or viewed as necessary.

[67] *Law on Environmental Protection and Natural Resources Management*, Art. 6.

[68] EIA Sub-Decree, Arts. 2, 6 & Annex.

Even with a more detailed law for environmental assessment established, certain projects like Dara Sakor went unmonitored. In fact the *Law on Forestry* was passed in 2002 and requires "major forest ecosystem related activities that may cause adverse impact on society and environment" undertake an Environmental and Social Impact Assessment (ESIA) and that the results made available for public comment.[69] No assessment of Dara Sakor's potential and actual environmental impact, nor the details of its ESIA report, are known to the public; therefore it is assumed that this provision was violated or that Dara Sakor was not considered "major forest ecosystem related activities that may cause adverse impact on society and environment." The decision to exempt Dara Sakor from the 2002 *Law on Forestry* evidences a gross misunderstanding of the project's biodiversity impact. Dara Sakor's real impact on forestry in Cambodia is clearly visible via satellite map images of forest cover in Botum Sakor National Park and surrounding areas from 2000 to 2014 (Figure 5-7). When viewed consecutively, the images from 2000-2009 display a fairly steady pace of deforestation but the comparison in forest cover from 2009 to 2014 shows a much more rapid and dramatic loss.

[69] *Law on Forestry*, Article 4.

This accelerated deforestation since 2009 can be directly attributed to increased land concession. In fact, a comparison between the maps of forest cover change and locations of granted land concessions in the area (Figure 5-8), proves that a large portion of the areas where forests were cleared directly correspond with the locations of land concession areas. For instance, the forest loss in the upper left side of the forest cover map 2014 is linked to the land concession to the Green Rich Co. for plantation and paper pulp production. Additionally, the strip of land along the coast and in the center of that map is associated with concession areas granted to LYP Koh Kong Special Economic Zone (SEZ) Co. and LYP Group Co.

[70] Made from Open Development Cambodia's "Forest cover data of Cardamon Region and Botum Sakor National Park, Cambodia 1973-2014." *Available at* http://www.opendevelopmentcambodia.net/maps/downloads/download-forest-cover-data-and-analysis/.

Figure 5-7 Change of Forest Cover between 2000 and 2014[70]

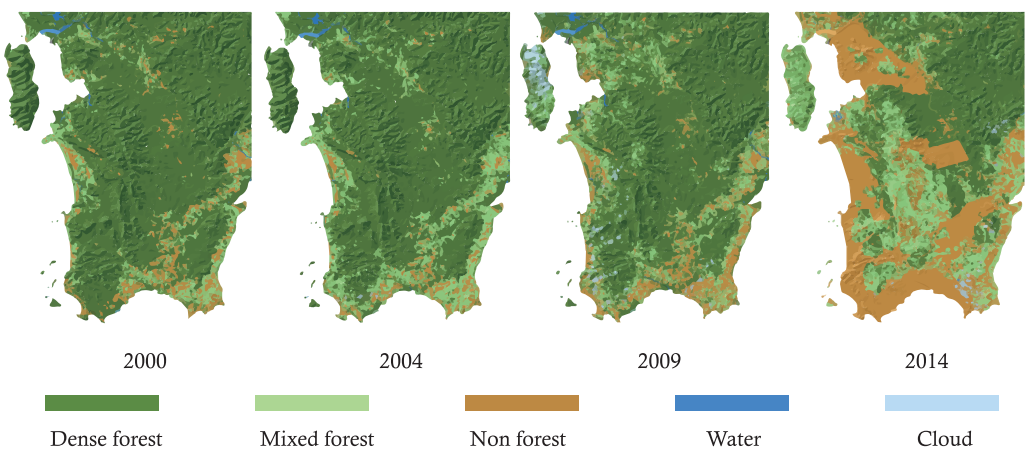
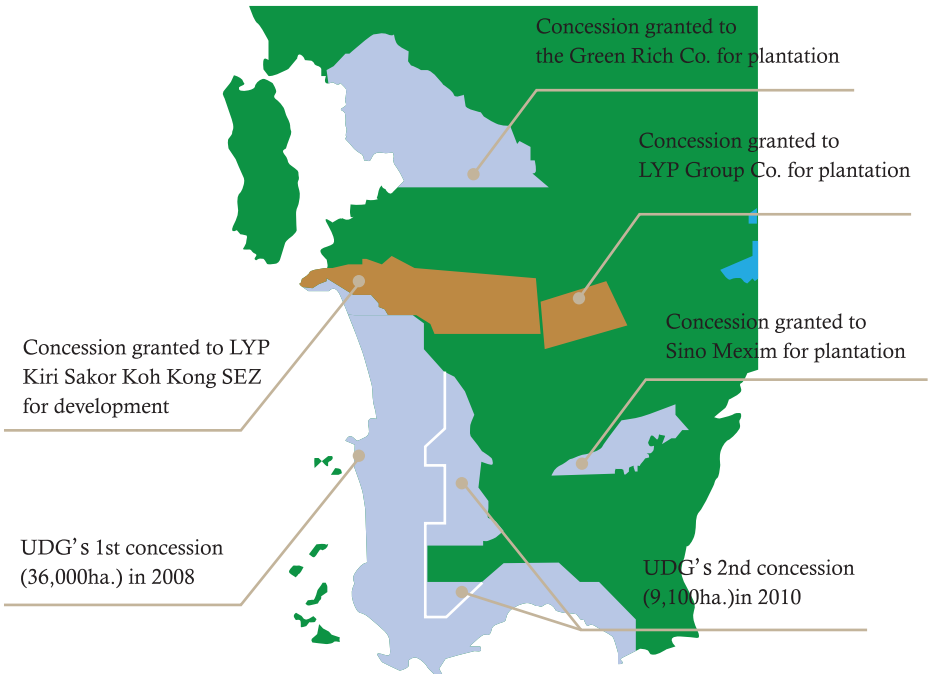


Figure 5-8 Locations of Some of the Granted Land Concession in the Botum Sakor National Park and Its Surrounding Areas[71]



Also contributing to the large deforestation that occurred from 2009-2014 is the Dara Sakor project, for which UDG received two concessions in mid-2008 and 2010. In fact, the first stage of construction of Dara Sakor project illustrated at the bottom and lower left side of the 2014 forest cover map image. Beyond the deforestation visible on the map, the project has other alleged deforestation due to resettling efforts. In particular, the communities displaced by Dara Sakor were forced to utilize new areas for agriculture and firewood in order to expand the deforested area.[72]

Beyond the great loss of forested lands, the Dara Sakor project also compromises the country's entire ecosystem. Reported to be "one of the 34 richest repositories of fauna and flora on the planet," the Dara Sakor National Park hosts lush evergreen wood, grasslands, mangroves and swamp forests.[73]Moreover, two amphibian species of global importance, namely *Limnonectes kohchangae* [74]and *Hylarana mortenseni*,[75]are also found within the park boundary.[76] While little information can be found on how deforestation caused by the Dara Sakor project directly impacts the habitat of these wildlife species, it however is known that the environment is drastically changing. As it is with many economic concessions in the park, it raises the question as to whether effective government requirements or monitoring mechanisms are in place to supervise, control and minimize potential environmental impacts.

[71] Made from LICADHO's interactive map of land concession information in Cambodia (data latest accessed on October 28, 2015). *Available at* http://www.licadho-cambodia.org/land_concessions/.

[72] NGO Forum, *Investigation Report On The Impact of Development Project, Union Development Group Co. Ltd in Botumsakoi and Kirisakoi District, Koh Kong Province, Cambodia*, 2015.

[73] Hul Reaksmey and Simon Marks, "Locals Feel the Effects of Chinese Tourism Development," The Cambodia Daily, November 18, 2010. *Available at* https://www.cambodiadaily.com/archives/locals-feel-the-effects-of-chinese-tourism-development-3127/.

[74] Listed as "Least Concern" in the IUCN Red List of Threatened Species. *Available at* http://www.iucnredlist.org/details/41238/0.

[75] Listed as "Near Threatened" in the IUCN Red List of Threatened Species. *Available at* http://www.iucnredlist.org/details/58674/0.

[76] Le Saout, S., Hoffmann, M., Shi, Y., Hughes, A., Bernard, C., Brooks, T.M., Bertzky, B., Butchart, S.H.M., Stuart, S.N., Badman, T., Rodrigues A.S.L., *Protected areas and effective biodiversity conservation*. Science 342: 803-805, 2013. *Available at* http://irreplaceability.cefe.cnrs.fr/sites/478405.

Resettlement and associated issues

While the environmental impact of Dara Sakor raises concern, the issues related to resettlement, compensation and impact on livelihoods and welfare have caused intense dissatisfaction in local communities – these issues have also gained international attention. The Dara Sakor project is estimated to have impacted 1,144 families, including 756 families of Kiri Sakor District and 388 families of Botum Sakor District, who need to settle in a new home outside the project area.[77]The communities have resisted relocation, with some households even hesitant to accept compensation packages.[78]The resettlement work also received criticism from several civil society organizations and human rights groups, like the Cambodian Human Rights Task Force and Cambodian League for the Promotion and Defense of Human Rights, both of which raised concerns over the destruction of community livelihoods, forced eviction, among several other points.[79]The dissatisfaction of the locals and involvement of the civil society organizations forced delays in the project.

According to the project agreement, both UDG and the Cambodian government have distinct responsibilities in the resettlement process: UDG is responsible for compensating and building relocation sites, while the Cambodian government is tasked with providing compensation standards and relocation plans, as well as associated administrative functions.[80]Compensations are classified into nine cases under four categories (Figure 13), depending largely on when the land title was obtained (before or after November 1, 1993) and status of the land (in or out of use, farmland/orchard or housing), with maximum compensation at USD 8,000 per hectare of farmland or orchard.[81]A standard compensation package includes payment, homestead at relocation site and 2 to 5 hectares of farmland for each household.[82] It is reported that about USD 10 million had been set aside for relocation and compensation,[83] which is on average USD 8,700 for one family.

Figure 5-7 The Four Categories of Compensation[84]

Category 1	Households who have land title issued before November 1, 1993
Category 2	Households who have land title issued after November 1, 1993
Category 3	Households considered to be "local" who have no land title but have occupied or used land
Category 4	Households who have no land title, but who have some documents certified by the village chief and commune chief

[77] NGO Forum, *Investigation Report On The Impact of Development Project, Union Development Group Co. Ltd in Botumsakoi and Kirisakoi District, Koh Kong Province, Cambodia*, 2015. Another report by Human Rights Council citing district officials' information indicates that number of affected households is 1,163. *See* Surya P. Subedi, "A human rights analysis of economic and other land concessions in Cambodia" , *Report of the Special Rapporteur on the situation of human rights in Cambodia*, Human Rights Council, A/HRC/21/63/Add.1, 2012, *available at* http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-63-Add1_en.pdf).

[78] Interview with UDG staff on September 7, 2015.

[79] May Titthara, "In 'cahoots' with UDG" , The Phnom Penh Post, May 7, 2015. *Available at* http://www.phnompenhpost.com/national/cahoots-udg.

[80] Interview with UDG staff on September 7, 2015. *See also NGO Forum, Investigation Report On The Impact of Development Project, Union Development Group Co. Ltd in Botumsakoi and Kirisakoi District, Koh Kong Province, Cambodia*, 2015.

[81] Interview with UDG staff on September 7, 2015; See also Surya P. Subedi, "A human rights analysis of economic and other land concessions in Cambodia," *Report of the Special Rapporteur on the situation of human rights in Cambodia*, Human Rights Council, A/HRC/21/63/Add.1, 2012.

[82] Interview with Wang Chao, Operations Manager of UDG on September 7, 2015.

[83] May Titthara and David Boyle, "It's paradise – for some" , The Phnom Penh Post, March 21, 2014. *Available at* http://www.phnompenhpost.com/national/it' s-paradise-—some.

[84] Surya P. Subedi, "A human rights analysis of economic and other land concessions in Cambodia" , *Report of the Special Rapporteur on the situation of human rights in Cambodia*, Human Rights Council, A/HRC/21/63/Add.1, 2012. Interview with UDG staff on September 7, 2015. *Available at* http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-63-Add1_en.pdf.

In many ways, the agreement benefits UDG. First, this allocation of responsibilities is similar to how Chinese development projects divide tasks: in development projects in China, the Chinese private companies manage compensation payment while the Chinese local governments manage compensation and relocation work. As such, the similar division of responsibilities is natural for the Chinese management of UDG.[85] Second, the agreement does not force Chinese companies to undertake activities to which they are poorly-equipped, like handling resettlement and establishing sustainable and healthy relations with local communities. Third, by having the local government bodies interact with the local community, any associations of the foreign company as an "outsider" are eliminated. Moreover, as the local government is much more familiar with the local people, culture, and customs, it has the "administrative authority" to ease the relocation process. Finally, by contracting the relocation work to the local government, the foreign company removes itself from any direct social disputes and greatly minimizes its risk.[86]

Process of Resettlement

The relocation process for the Dara Sakor project began in 2009 with the first step to register all potentially affected families. For this, offices were set up by the Inter-Ministerial Committee in the project's districts of Kiri Sakor District and Botum Sakor. Then from August 2009 to October 2009, households were invited to bring supporting documents (identification, family books, and documents related to land transactions, sale or title) for review by the compensation committee. The existing land was also registered at this time. After a full review, the compensation packages were then negotiated.[87] While compensation packages differ, in general, relocated families were offered a residential land of 50 meters by 100 meters, a new house of 6.5 meters by 7.5 meters, plus two hectares of farmland.[88] It is reported that approximately 1,000 families relocated during 2011, [89] which corresponds to UDG data detailing that about 10% out of the total 1,144 households have yet to be relocated.[90]

It should be noted that resettlement in Cambodia is quite complicated due to poor management of land registration and poor regulation of concessions; in fact, this has been the main cause of land conflicts. Rural villagers in Cambodia rely on a use-based approach to land ownership, where common understandings between neighbors and villagers are sufficient in defining land boundaries. As a result, millions of Cambodians lack documentation and full recognition of their property rights that comes with a land title.[91] The lack of documentation creates a serious challenge for resettlement work. Beyond the construction resettlement, the lack of proper real estate documentation complicates economic development and concession management.

[85] Interview with UDG staff on September 7, 2015. *Available at* http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-63-Add1_en.pdf.

[86] *Ibid.*

[87] *Ibid.*

[88] Siphat T. and Andreas N., "Resistance to Land Grabbing and Displacement in Rural Cambodia" , Conference Paper No.16 of International Academic Conference on Land Grabbing, Conflict and Agrarian-environmental Transformations: Perspectives from East and Southeast Asia, Chiang Mai University, June 5-6, 2015. *Available at* http://www.iss.nl/fileadmin/ASSETS/iss/Research_and_projects/Research_networks/LDPI/CMCP_16-_Touch_and_Neef.pdf.

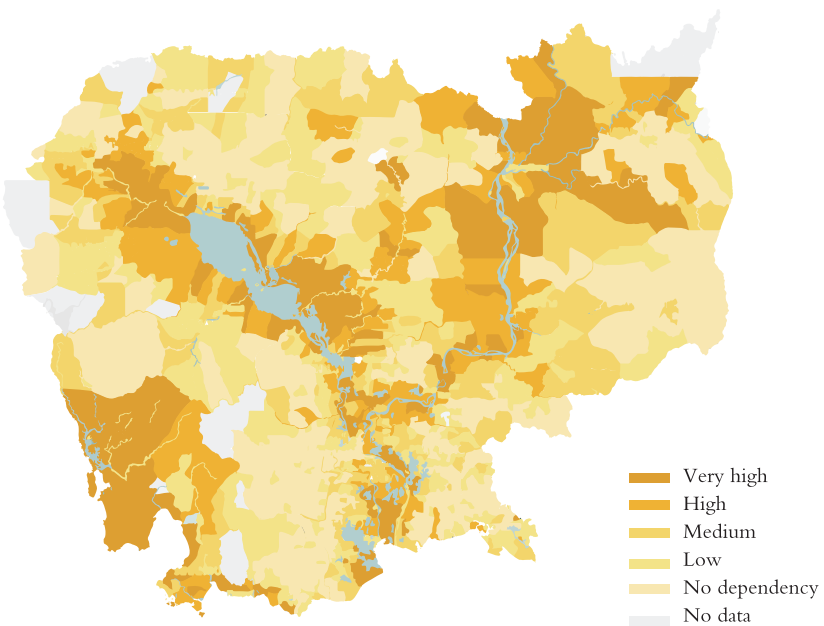
[89] Surya P. Subedi, "A human rights analysis of economic and other land concessions in Cambodia" , *Report of the Special Rapporteur on the situation of human rights in Cambodia*, Human Rights Council, A/HRC/21/63/Add.1, 2012. *Available at* http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-63-Add1_en.pdf.

[90] Interview with Wang Chao, Operations Manager of UDG on September 7, 2015.

The Dara Sakor relocation site is located deep inside the Botum Sakor National Park and extends over 4,000 hectares of land directly outside the project area. For reasons to be explained later, it is important to note that this site is located a significant distance from the coast.[92]It is said that the Cambodian government issued a sub-decree to excise 4,000 hectares from the park for this purpose,[93]but details and texts of the sub-decree cannot be found from any public sources. During the September 2015 field visit, the relocation site looked like any countryside in Cambodia. In fact, it was only possible to distinguish relocated households from original inhabitant by the color of the roof. Moreover, the area has only a few scattered forests and woods, making it difficult to imagine the area as once part of a national park. It is unclear whether this deforestation took place for decades before UDG obtained the land,[94] or if the deforestation is a result of the Dara Sakor project construction. It has been noted that some families have gradually cleared forests beside their houses for daily use.

Despite relocation plans, many of the families who accepted compensation do not regularly stay at the relocation site. The NGO Forum reports that of the 389 households, 34%[95] still live in the old villages; UDG and other reports have different figures, detailing that only around 10% remain in the old villages. The main reason the families resist relocating is that the new settlement is far from the coast and disrupts their traditional fishing lifestyle (Figure 5-9). In reaction, some people returned to their old villages to stay with fellow community members who resisted relocation or by setting up a temporary shelter in order to fish.[96] These people's homes in the relocation land remain empty and their allocated lands are unused. Other members of the community have adapted to the small family farms. In fact, they began planting vegetables and fruits such as peppers, pineapples, and papayas for their own use and selling. In addition to farms, other public spaces like schools, market places for fish and agricultural products, hospitals and wells have been constructed by UDG for the relocated villages.[97]

Figure 5-9 Fish Dependency



Source: Open Development Cambodia

[91] Cambodian Center for Human Rights, *Cambodia: Land in Conflict*, 2013, p. 2-3. *Available at* http://cchrcambodia.org/index_old.php?url=media/media.php&p=report_detail.php&reid=104&id=5.

[92] Siphat T. and Andreas N., "Resistance to Land Grabbing and Displacement in Rural Cambodia" , Conference Paper No.16 of International Academic Conference on Land Grabbing, Conflict and Agrarian-environmental Transformations: Perspectives from East and Southeast Asia, Chiang Mai University, June 5-6, 2015. *Available at* http://www.iss.nl/fileadmin/ASSETS/iss/Research_and_projects/Research_networks/LDPI/CMCP_16-_Touch_and_Neef.pdf.

[93] *Ibid.*

[94] Interview with UDG staff on September 7, 2015.

[95] NGO Forum, *Investigation Report On The Impact of Development Project, Union Development Group Co. Ltd in Botumsakoi and Kirisakoi District, Koh Kong Province, Cambodia*, 2015.

[96] Siphat T. and Andreas N., "Resistance to Land Grabbing and Displacement in Rural Cambodia" , Conference Paper No.16 of International Academic Conference on Land Grabbing, Conflict and Agrarian-environmental Transformations: Perspectives from East and Southeast Asia, Chiang Mai University, June 5-6, 2015. *Available at* http://www.iss.nl/fileadmin/ASSETS/iss/Research_and_projects/Research_networks/LDPI/CMCP_16-_Touch_and_Neef.pdf.

[97] Field visit on September 8, 2015.

Field Visit Report

During the September 2015 field visit, it was possible to meet with village heads from Ta Ny village, Tanoun village, Kien Krolanh village, Prek Smach village and Pronam village under the assistance of UDG.[98]These individuals represent 5 out of the 12 affected villages and gave insight on the livelihood in the relocated areas in terms of the impact on daily life and the new employment opportunities.

[98] The village name is a phonetic transcription from Khmer-Chinese interpretation of 巴罗南村 .

Concerning livelihood, many of village heads agreed that infrastructure in their villages was largely improved after relocation, as the relocation lands had better road condition, improved education and medical facilities and overall better accessibility. However, the relocation itself has caused strain on daily life. In fact, some village heads mentioned that the farmland provided by the government in compensation packages is a far distance away, difficult to access by road and not fertile.[99] As such, some households had to change to family-based orchid, fruit tree, and cashew farming around their residential land. Overall, the village heads noted a clear change in livelihood, notably a significant decrease in fishing activities.

[99] Field visit and interviews with village heads on September 8, 2015.

However, the relocation also gave rise to employment opportunities for the villages by UDG and other companies. In fact, according to UDG, the Dara Sakor project has employed over 1,000 Cambodian local staff, of them 20-30% are from surrounding villages.[100] Village heads also noted that due to these sorts of opportunities, villagers' incomes have increased. The village head from Prek Smach village estimated that prior to the relocation, villagers' average monthly income was 60,000 Riels/person (about USD 15), and now the amount is 160,000 Riels/person (about USD 40), a 37.5% income increase.

[100] Interview UDG staff on September 7, 2015.

In the long run, UDG plans to engage impacted communities in areas of agriculture plantation and fishing through a series of community development plans in the long term. The overall aim of such plans is to improve community livelihoods while expanding supply sources of food for the future mega-tourism site. A brief introduction of the information obtained from an interview with village heads is summarized in Table 5-2.



Relocation Site



Family Vegetable Farm and Orchard

Table 5-2 Information on Relocation and Livelihoods of Five Impacted Villages[101]

	Ta Ny	Tanoun	KienKrolanh	PrekSmach	Pronam
Population	242 households (About 780 people)	97 households	76 households	1126 households (About 630 people)	75 households (About 375 people)
Livelihoods (before relocation)	10% agriculture, 10% fruits plantation, 80% fishing	Agriculture fruits plantation and fishing	Agriculture fruits plantation and fishing	80% agriculture and fruits plantation, 20% fishing	Fishing
Livelihoods (after relocation)	110% fruits plantation, 20% employed by company, 30% move to Thailand for employment, 40% have not been relocated yet	20% fishing, 10% agriculture and fruits plantation, 30% employed by company, 40% elder people (not working anymore)	20% sailor, 20% move to Thailand for employment, 10% agriculture and fruits plantation, 5% employed by company, The rest unknown[102]	Mostly agriculture and fruits plantation, Some also employed by company	50% agriculture and fruits plantation, 40% employed by company, 10% fishing
Infrastructure Improvement (by UDG)	Improved road condition/access, School, Temple (planned but construction has not begun)	Not mentioned	Road construction (in process)	30-40 wells, Improved road condition/access, Improved access to medical resources	Improved education and medical facilities
Concerns/ Difficulties	Lack of reliable water sources in dry season	Allocated land is not fertile, and some are sandy land, which is difficult to plant crops	Lack of farmland. Allocated land is in higher places and does not have road access	Not mentioned	Not mentioned

[101] Field visit and interviews with village heads on September 8, 2015.

[102] The village head was not able to provide a complete percentage estimation of livelihoods sources during the interview.

5.4 Analysis and Recommendation for Companies

As a least developing country (LDC) that gained peace from civil war only two decades ago, Cambodia is still in the early stage of establishing and improving its legal framework and institutional capacity for monitoring and enforcement. Without sound environmental and social safeguarding systems in place, economic incentives and political willpower of large development projects have posed serious challenges for governance and enforcement, ecosystem conservation and protection of community livelihoods and rights. Even with its projected annual 20 million tourists [103]and thousands of employment opportunities for local people during construction and operation periods, the Dara Sakor project is only one of the many Cambodian investments that encountered environmental and social challenges.

For the development of the Dara Sakor project – a UDG case – the Cambodian government made several policies which cleared protected land for possible development, thereby having serious ramifications on the environment and local communities there. The policies in question include the royal decrees and sub-decrees that reclassify state public property to state private property, those that modified boundaries of the Botum Sakor National Park and its zoning, the policies that transferred land in the Botum Sakor National Park for the purposes of establishing relocation sites and infrastructure development, and those that allow land concession of over 10,000 hectares. Complicating matters is the fact that the decision process, supporting studies and results of assessment of these decrees are all unavailable to the public. Furthermore, there is no recorded public participation or stakeholder consultation for some of the decisions that may have environmental and social impacts. These instances of lacking transparency raise serious concerns but give rise to new opportunities.

While public participation and stakeholder consultation during ESIA process, as well as disclosure and public announcement of ESIA results, are currently not specifically required by laws and decrees in Cambodia, they might be required in the near future. The country is now undergoing the process of drafting a new EIA law, the current draft of which explicitly requires public participation and information disclosure.[104]If the draft is passed, it will serve as a solid foundation for public involvement. Capacity and expertise of EIA companies should also be enhanced so that recommendations and advices in EIA reports could be more helpful in guiding project investors to mitigate environmental and social risks.[105]

[103] NGO Forum, *Investigation Report On The Impact of Development Project, Union Development Group Co. Ltd in Botumsakoi and Kirisakoi District, Koh Kong Province*, Cambodia, 2015.

[104] William J. Schulte & Ashlee Stetster, *On the Path to Sustainable Development: As Assessment of Cambodia' s Draft Environmental Impact Assessment Law*, Cambodia L. & Pol' y Journal, Vol. 3, December 2014. *Available at* http://cambodialpj.org/article/on-the-path-to-sustainable-development-an-assessment-of-cambodias-draft-environmental-impact-assessment-law/.

[105] Interview with UDG staff on September 7, 2015.

At the moment, the government is only giving away information in very certain cases. In fact, NGO Forum received copies of EIA reports of a few development projects from the Cambodian government, including the ESIA report and technical drawing of Sinohydro's Kamchay Dam and the IEIA report of UDG's Dara Sakor project.[106] However, according to NGO Forum, the government released these reports for archival purposes and thus, remain classified. It is suggested that a new law would be helpful to assist such information to be more widely and completely shared.

[106] Open Development Cambodia, "List of EIAs for projects in Cambodia from 2007-2013." *Available at* http://www.opendevelopmentcambodia.net/briefing/list-of-eias/.

Beyond policy and transparency, however, the Dara Sakor project also exposes the serious repercussions of large development projects on the natural environment and local people. As discussed in this case study, the arrival of new development projects and land concessions in 2008 exacerbated deforestation and threatened flora and fauna in the affected areas. Moreover, the projects jeopardized the livelihoods of people originally living in the region. While UDG implemented steps for relocation and its project gave new opportunities for employment, skepticism existed regarding the suitability of the resettlement packages and the new land required major adaptation to villager lifestyle.

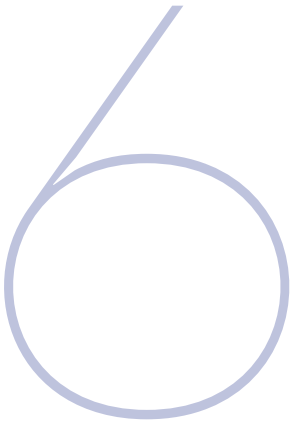
The particular challenges faced in the UDG case are evident in other Chinese investment projects in developing countries. These include:

- Lack of awareness, or relevant experience and capacity, of communicating with local communities and NGOs;
- Lack of innovation and consideration of local factors. Many companies simply replicate their operational models within China to how they operate internationally. The main operational process is to cooperate with central and local governments but not civil society organizations, local communities and the general public. In countries with high political risks, such as politically unstable countries or authoritarian countries, this government-only approach tends to cause hatred from local people, deepen misunderstandings and intensify conflicts;
- Lack of communication channels and information disclosure;
- Lack of bilateral dialogue between local communities/civil society groups and Chinese companies, resulting in tense reactions from the former;
- Lack of awareness or effective approaches by Chinese companies to establish platforms for communication and information disclosure has often deepened misunderstandings. In fact, many Chinese companies' corporate social responsibility efforts are not known to local people. Additionally, a lack of transparency has made compensation details unknown;
- Lack of consideration among companies concerning environmental and social activity;

- Lack of risk management. Chinese companies have struggled to understand the extent to which they must mitigate investment risks in developing countries. In fact, in these cases simply obeying laws of the host country is often not enough, especially in those countries that are yet to develop a comprehensive environmental and social safeguarding system nationally. Taking proactive approaches to addressing environmental and social related issues and integrating them beyond a company's CSR strategies, would be a positive step. Moreover, risk management would improve if the company had a long-term stable investment environment in the country and achieved win-win among company, host country government and local people.

To mitigate environmental and social risks in Cambodia, a country that lacks sound environmental and social safeguarding systems, we recommend UDG and other Chinese companies investing there to consider the following approaches:

- Keep stakeholders informed about project progress by establishing an information disclosure mechanism; this mechanism will publicize project-related information and update local communities, civil society organizations (CSOs) and the government on a regular basis;
- Provide an open environment for discussion and negotiation by establishing communication channels and a dialogue mechanism among communities, local government, CSOs and the company on controversial issues;
- Minimize environmental impact by integrating the concept of green and sustainable development into the construction and operation of the project; examples of such initiatives include eco-tourism, green building, and renewable energy;
- Build capacity for environmental conservation by collaborating with conservation organizations and environmental government departments to carry out conservation activities in the Botum Sakor National Park;
- Develop sustainable community livelihoods improvement approaches for impacted communities and introduce suitable technologies such as clean cook stoves (that can reduce the use of fuelwood) and household lighting systems.



Overview of Cambodia's Power Industry &Case Study of Chinese Investments

6.1 The Cambodian Power Industry
6.2 Chinese Investment in Cambodia's Power Industry
6.3 Case Study: Stung Cheay Areng Hydropower Project
6.4 Analysis and Recommendations

Author of this section: Rong ZHU, Global Environmental Institute.

China is the biggest investor of Cambodia's power industry. Chinese invested power plants accounted for 70% of Cambodia's self-generated power in 2014. Although Chinese investments have greatly alleviated the country's electricity shortage, in recent years Chinese hydropower projects in Cambodia have experienced unprecedented environmental and social challenges.

The Stung Cheay Areng Hydropower Project is a typical case of a Chinese hydropower investment abroad that was opposed and stopped. Development of the Stung Cheay Areng Hydropower Project was planned by the Cambodian government, and was financially supported by three separate Chinese companies: China Southern Power Grid Co., Ltd., China Guodian Corporation, and Sinohydro Resources Limited. Even after changes in project investors, the Stung Cheay Areng Hydropower Project has never advanced beyond the feasibility study stage.

Grassroots and international NGOs, media, senior governmental official and the National Assembly all showed great concern over the Stung Cheay Areng Project and a six-month roadblock petition was carried out in the proposed project location, Areng Valley. In February 2015, Prime Minister Hun Sen proclaimed publicly that no construction of the project would be initiated before 2018 and the next government would decide whether the hydropower station would be built. The Prime Minister's announcement not only highlighted the Stung Cheay Areng project but also negatively affected the finances and reputation of the Chinese investor.

This case study addresses the Cheay Areng Hydropower Project and the reasons it was halted by Prime Minister Hun Sen. It will present the process of the Project, probe into the main causes of its postponement, and offer recommendations to preclude such consequences. The aim ofthis case study is to serve as reference for companies, scholars and civil society organizations (CSO) interested in the development of Cambodia's power sector.

6.1 The Cambodian Power Industry

When the new government took control in 1993, the whole country was in desperate need of rebuilding. As Cambodia's political situation gradually stabilized, the economy continued to grow and consequently, Cambodia's demand for power also increased. From 2005 to 2014, Cambodia's electric power users surged from 306,000 to 14.24 million (Figure 6-1), annual deliverable power supply increased from 970 million kWh to 4.86 billion kWh, and annual power sales grew from 858 million kWh to 4.144 billion kWh (Figure 6-2).[1]

Due to insufficient power infrastructure, Cambodia's power supply has historically relied on energy imports from Vietnam, Thailand, and Laos. As recently as 2013, imported power accounted for 56% of Cambodia's deliverable power supply. However, as newly built hydropower and coal-fired power plants started generating electricity,[2] Cambodia's self-generated power increased substantially from 1.77 billion kWh in 2013 to 3.06 billion kWh in 2014. Of this self-generated power, 61.5% is from hydropower plants, 17.7% from coal power plants, 19.3% from diesel/heavy fuel oil power plants, and 1.5% from biomass power plants[3] In the same year, the proportion of imported power declined accordingly, to 37.1%.[4]

Active development of the proprietary power industry and power imports from Laos, Thailand and Vietnam lifted Cambodia out of an acute nationwide[Is this correct?] power shortage. During the rainy season some areas that rely on hydropower have experienced power surpluses in recent years. However, due to limited grid capacity, most of the countryside is still subjected to a power shortage and reliant on fuel-burning or battery lamps. By 2014, 57.3% of the residents countrywide had not obtained access to power. During the dry season, power shortage and supply instability were common that thus called for imported power. The average rate for electricity in Cambodia is around 0.17 USD/kWh, while in Vietnam it is 0.08 USD/kWh.[5] Such a high cost exerts a heavy toll on the development pace of people's livelihood and the economy.[6]For these reasons the development of a power sector is listed as a priority in Cambodia's *National Strategic Development Plan (2014-2018)*.[7]

The Ministry of Mines and Energy (MME) is the regulator of the power sector and is in charge of formulating and managing Cambodia's energy policies, power strategies, energy development plans, as well as standards of technology and safety. In 2001, the Cambodian government promulgated the Electricity Law and established the Electricity Authority of Cambodia (EAC). EAC, as per provisions of the Electricity Law, sets power supply and consumption-related administrative regulations and supervises the implementation of power policies.

[1] Electricity Authority of Cambodia, *Report on the Power Sector of the Kingdom of Cambodia*, 2015. *Available at* http://eac.gov.kh/wp-content/uploads/2015/07/report-2014en.pdf.

[2] The major power producers added during 2014 are the Stung Tatay Hydro Power Plant in Koh Kong province and the Coal Power Plant of CIIDG Erdos Hongjun Electric Power Co., Ltd. in Sihanoukville. Ibid.

[3] *Ibid.*, Annex 2(c).

[4] *Ibid.*, Annex 2(a).

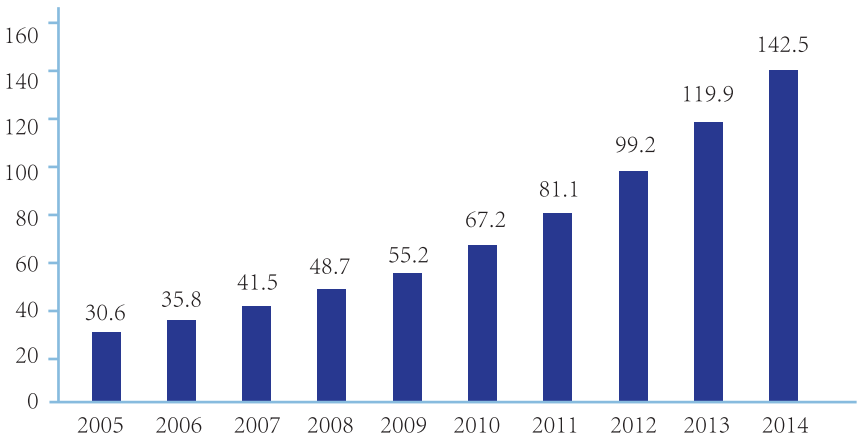
[5] "Vietnam to hike electricity prices by 7.5% on March 16," Tuoi Tre News, March 5, 2015. *Available at* http://tuoitrenews.vn/business/26486/vietnam-to-increase-electricity-prices-75-percent-since-mar16.

[6] Economic and Commercial Counsellor's Office of the Embassy of the PRC, *Analysis into Cambodia' s Power Sector and Power Grids*, August 2015. *Available at* http://cb.mofcom.gov.cn/article/zwrenkou/201508/20150801082421.shtml.

[7] Royal Government of Cambodia, *National Strategic Development Plan*, 2014-2018. *Available at* http://countryoffice.unfpa.org/cambodia/drive/NSDP2014-2018.pdf.

Figure 6-1 Number of Electric Power Users in Cambodia, 2005-2014

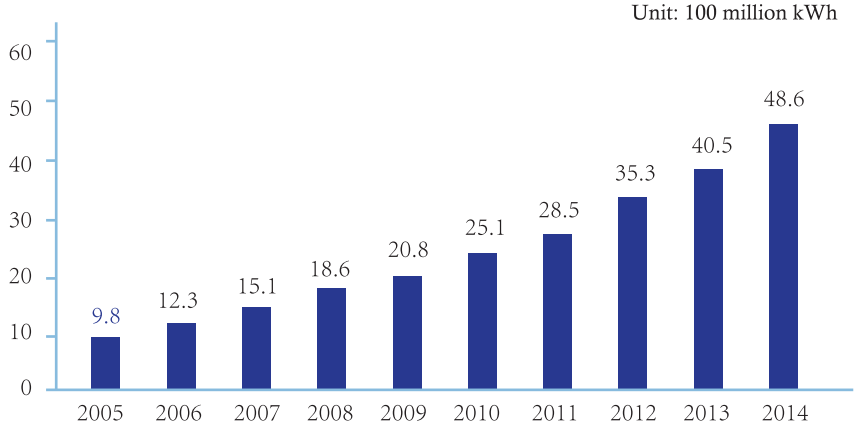
Unit: 10,000 households



Data source: Report on Power Sector of the Kingdom of Cambodia, 2015 Edition

Figure 6-2 Annual Deliverable Power Supply in Cambodia, 2005-2014

Unit: 100 million kWh



Data source: Report on Power Sector of the Kingdom of Cambodia, 2015 Edition

6.2 Chinese Investment in Cambodia's Power Industry

Chinese enterprises are the largest investors of the Cambodian power sector. By the end of 2014, the installed capacity of Chinese investments amounted to 1964.1 MW, total investment was around USD 3 billion, and annual power generation reached 2.05 billion kWh accounting for 70.2% of Cambodia's self-generated power. Chinese investors in Cambodia's power sector are all state-owned enterprises (SOEs) due to their access to capital and technology[8]

Hydropower is prominently featured in Chinese companies' investment portfolio, and 7 out of the 9 Build-Operate-Transfer (BOT) investments are hydropower projects (Picture 6-1, Table 6-1). In 2014, hydropower generated 90.9% (1.86 billion kWh) of the total amount produced by Chinese-invested power companies, with total investment reaching USD 2.719 billion.

[8] Economic and Commercial Counsellor's Office of the Embassy of the PRC, *Analysis into Cambodia's Power Sector and Power Grids*, August 2015. *Available at* http://cb.mofcom.gov.cn/article/zwrenkou/201508/20150801082421.shtml.

Picture 6-1 Chinese Invested Hydropower Stations in Cambodia

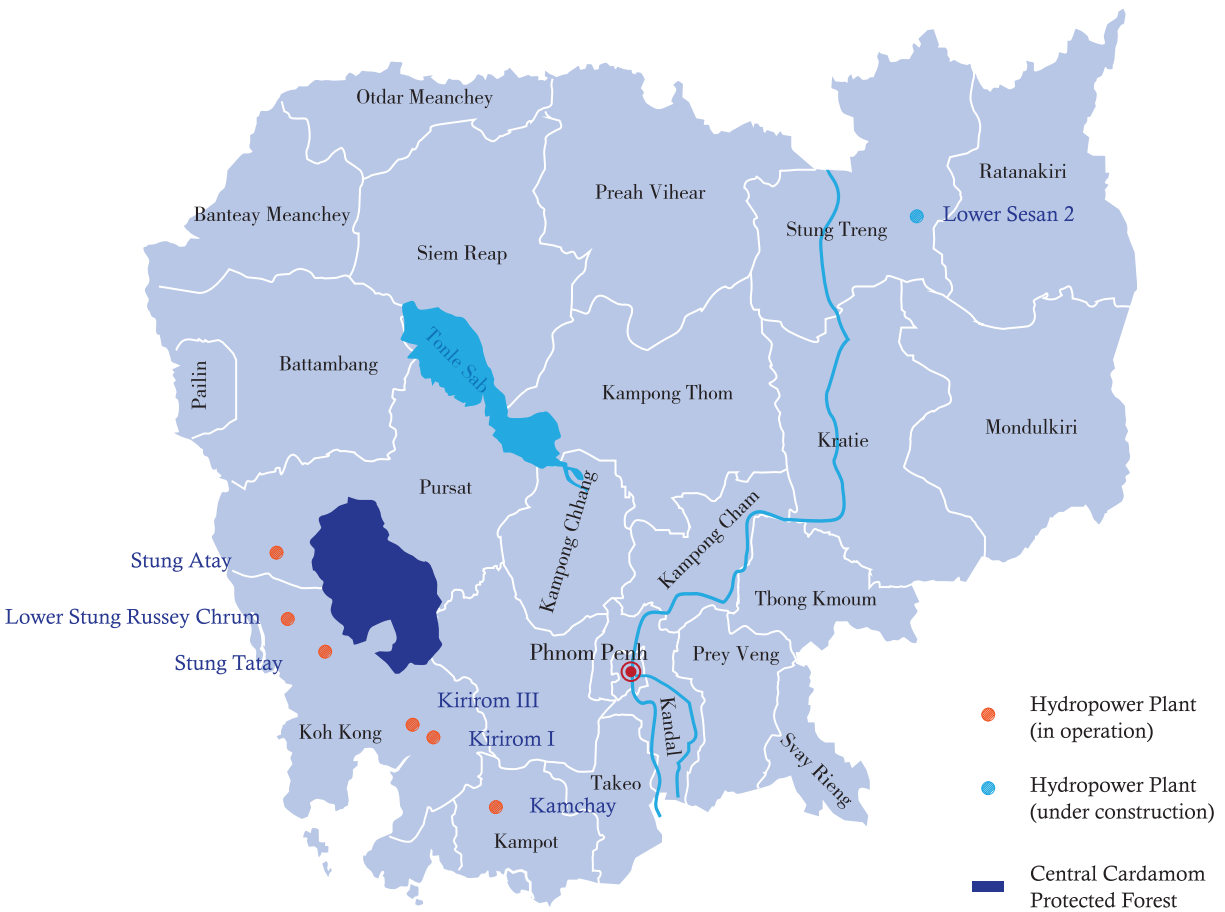


Table 6-1 List of BOT Electric Power Investments by Chinese Enterprises in Cambodia

Project	Project location (Province)	Investor	Total investment (million USD)	Installed capacity (MW)	Starting time of production
Kirirom I Hydropower Plant	Koh Kong	China Electric Power Technology Import & Export Corporation	19.24	12	2002.5
Kamchay Hydropower Dam	Kampot	Sinohydro Resources Limited	280	193.2	2011.12
Kirirom III Hydro Power Plant	Koh Kong	State Grid Xinyuan international Investment Co. Ltd.	66.53	18	2013.4
Stung Atay Hydroelectric Power Project	Pursat	China Datang Corporation; Yunnan International Economic and Technology Cooperation Company; Yunnan Fortune Seecome Investment & Industrial Co., Ltd.	255	120	2013.6
Lower Stung RusseyChrum Hydropower Dam	Koh Kong	China Huadian Corporation	558	338	2013.12
Stung Tatay Hydropower Project	Koh Kong	China National Heavy Machinery (CHMC)	540	246	2014.3
Sihanoukville Port Coal-fired Power Plant	Sihanoukville	Inner Mongolia ErdosHongjun Investment Co., Ltd.; Cambodia International Investment Development Group Co. Ltd.	620	Phase One, three 135MW units Phase Two, four 135MW units	Expected completion in 2015; first unit inPhase One started production in 2014.7
Lower Sesan 2 Dam	Stung Treng	Hydrolancang International Energy; Royal Group Cambodia; VietNam Electricity	1000	400	The first unit expected to generate power by the end of 2017
Phnom Penh to Battambang Transmission and Transformation Grid	Phnom Penh to Battambang	China Datang Corporation	113	N/A	2012.4

Source: *Analysis into Cambodia' s Power Sector and Power Grids*, Economic and Commercial Counsellor' s Office of the Embassy of the PRC, August 2015

6.3 Case Study: Stung Cheay Areng Hydropower Project

6.3.1 Project Introduction

The proposed site for the Stung Cheay Areng Hydropower Project is in Thmar Bang, Koh Kong Province, which is 294 kilometers from Phnom Penh. The Project was planned to be built on the Areng River that flows through the Central Cardamom Protected Forests (CCPF), which is one of Asia's largest protected forest areas. The planned installed capacity is 108 MW; average power generated per annum 595 million kWh; and projected total investment USD 400 million .[9],[10],[11],[12] The Cambodian government was influential in approving and pushing forward the Stung Cheay Areng Hydropower Project. The idea for building the project was first introduced in 1970, and since 2006, three separate Chinese companies have obtained its development permit.

In 2006, China Southern Power Grid Co., Ltd. (CSG) signed a Memorandum of Understanding (MOU) for the project's feasibility study, with the Ministry of Industry, Mining and Energy (now the Ministry of Mining and Energy, MME). In the following March, CSG entrusted Guangxi Electric Power Geotechnical Engineering Institute (Guangxi Institute) to visit the Areng Valley and conduct a feasibility study.[13]In February 2009, the project's feasibility study was approved by the Ministry of Industry, Mines and Energy (MIME). The Environmental Impact Assessment report was written by SAWAC Consultants for Development Company Limited (SAWAC), and the Project's Integrated Environmental and Social Impact Assessment (IESIA) was approved by the Ministry of Environment in April 2009.[14]Due to shifts in overseas investment strategies, CSG did not continue with the Stung Cheay Areng project and withdrew in 2010.[15]

[9] Areng Hydroelectric Dam-relocated Resident Representatives Visit Kamchay Hydropower Station," Phnom Penh Evening News, November 29, 2014.

[10] *Hun Sen's Response to Heng Samrin's Proposal re. Stung Cheay Areng Project*, Chinese translation, January 15, 2015, provided by Sinohydro during field study. (on file with the author).

[11] "Ministry of Mines and Energy Supports the Areng Hydropower Station, and Project's Pros Outnumber Cons," khmernavi.com, September 30, 2014. *Available at* http://www.khmernavi.com/forum.php?mod=viewthread&tid=2660.

[12] May Titthara, "Areng Dam a Boon: Ministry," The Phnom Penh Post, October 1. 2014. *Available at* http://www.phnompenhpost.com/national/areng-dam-boon-ministry.

[13] Ge Yun, *Hydropower Development in Cardamom Forest - Field Visit Report by Environmental NGO on Stung Cheay Areng Hydroelectric Station*, 2009. *Available at* http://www.doc88.com/p-7354374187125.html. (Chinese).

[14] China Power Wafar, *Research Report on Investment Opportunity of Cambodia*'s *Stung Cheay Areng Hydropower Station*, June 2012. *Available at* http://wenku.baidu.com/link?url=ObURaGY7H9uF_ScnYGwXd8aeqlPVAp_Efp0uup7baouhwS2HymHU_AopjuGlurTGGEfj9IhHG0IB7ImSKLnhut8xLDK31xQM4nWLyhu0V_e. (Chinese).

[15] *Ibid.*

In November 2010, China Guodian Corporation signed a MOU with MIME to initiate the feasibility study of the Stung Cheay Areng Project, and again entrusted Guangxi Institute to return to the site and conduct supplementary analysis. In May 2012, the feasibility study report submitted by China Guodian Corporation was approved by MIME. In June 2012, the Cambodian Ministry of Environment agreed for China Guodian Corporation to use the IESIA report compiled by SAWAC for CSG.[16] At the end of 2013, due to forecasted economic loss, China Guodian Corporation declared its exit from the Stung Cheay Areng Project.[17],[18]

At the start of 2014, Sinohydro Resources Limited (hereinafter referred to as Sinohydro), a subsidiary under Power Construction Corporation of China, signed an agreement with MME and acquired the development permit for the Stung Cheay Areng Project. Sinohydro commissioned Guiyang Engineering Corporation Limited under Power Construction Corporation of China to conduct a feasibility study. The Corporation reviewed the feasibility study compiled by Guangxi Institute, and completed the updated report in September 2014.[19]

However, as explained in more detail in the next section, heightened opposition to the project has hindered Sinohydro's work. As agreed upon with the Ministry of Environment, Sinohydro was supposed to complete the Project's IESIA[20] - outsourced to SAWAC and SBK Research and Development (SBK) – within a year of signing. Even though SBK finished the research on the financial conditions of the affected residents in February,[21]in March 2014 local communities opposed to the project began to block access to the Areng valley. [22]Work on the IESIA was therefore suspended.[23]About one year later on February 24, 2015, Prime Minister Hun Sen proclaimed publicly for the first time that before 2018, no construction would be initiated of the Project. He also stated that the impact of the Project needed further study and confirmation and that the next government would decide whether the hydropower station would be built.[24]

[16] *Ibid*.

[17] Chhay Channyada and Daniel Pye, "Areng Project Changes Hands Again," The Phnom Penh Post, April 3, 2104. *Available at* http://www.phnompenhpost.com/national/areng-project-changes-hands-again.

[18] International Rivers, "Cheay Areng Dam." *Available at* www.internationalrivers.org/campaigns/cheay-areng-dam.

[19] Review Meeting of the Feasibility Study Report of Cha Run Hydropower Project Held in Beijing, Powerchina Resources LTD. News Center, September 9, 2014. *Available at* http://sr.sinohydro.com/g163/s996/t1797.aspx.

[20] *Hun Sen's Response to Heng Samrin's Proposal re. Stung Cheay Areng Project*, Chinese translation, January 1, 2015, provided by Sinohydro during field study. (on file with the author).

[21] Chhay Channyada and Daniel Pye, "Areng Project Changes Hands Again," The Phnom Penh Post, April 3, 2014. *Available at* http://www.phnompenhpost.com/national/areng-project-changes-hands-again.

[22] Phak Seangly and Daniel Pye, "Dam route blocked," The Phnom Penh Post, March 17, 2014. *Available at* http://www.phnompenhpost.com/national/dam-route-blocked.

[23] *Hun Sen's Response to Heng Samrin's Proposal re. Stung Cheay Areng Project*, Chinese translation, January 1. 2015, provided by Sinohydro during field study. (on file with the author).

[24] May Titthara, "Don't Talk About Areng," The Phnom Penh Post, February 25, 2015. *Available at* http://www.phnompenhpost.com/dont-talk-about-areng.

6.3.2 Surge of Opposition

As mentioned earlier, public opposition to the project played a major role in the Project's suspension. The following section will summarize the major concerns raised by those opposed to the project, as well as some of the actions taken by international and Cambodian NGOs and the impacted community itself.

Research

Of all the problems, opponents were most concerned about the project's environmental impact and the impacts of its relocation efforts. According to plan, the project was to be built on the Areng River that flows through the Central Cardamom Protected Forests (CCPF), which is one of Asia's largest protected forest areas. CCPF was established by the Cambodian government in 2002, with support from Conversation International (CI), and is regulated by the Ministry of Agriculture, Forestry and Fisheries. Located in the central mountains of Cardamom Forests, which belong to Koh Kong, Pursat and Kampot Provinces, CCPF is the source of major Cambodian rivers and has great biodiversity (Picture 6-2).[25]After the establishment of CCPF, Fauna & Flora International (FFI) and Wildlife Alliance (WA) carried out protection projects in this region, worked with CI to coordinate with the Forestry Administration to formulate protection plans, conducted Payment for Ecological Services (PES) and forest patrols.

Environmental protection organizations have had great concerns about tAreng Valley hydroelectric dam since its origination. In 2007, WA and CI each issued environmental impact assessment reports on the project found that nearly 20,000 hectares of area near the dam would be flooded.[26] The reports also pointed out that the Cardamom Forest and wildlife would be threatened during construction site clearance and the post-construction stages. The reports asserted that when the entry roads and hydropower station were completed, illegal loggers and hunters would gain easier access to the protected forests, and subsequently damage trees and hunt wildlife.[27] Though these reports were not the Environmental Impact Assessment (EIA) of the project, they were widely cited as evidence to environmental concerns.

In 2008, at the invitation of Mekong Watch, three NGO representatives from China visited the Areng River Valley to study the project's environmental and social impact. CI staff told the visitors that the work conducted by Guangxi Institute damaged the habitat for elephants, pye-dogs, black bears and deer. CI also told the visitors that the Institute' s staff littered in the forest and along the river.[28]

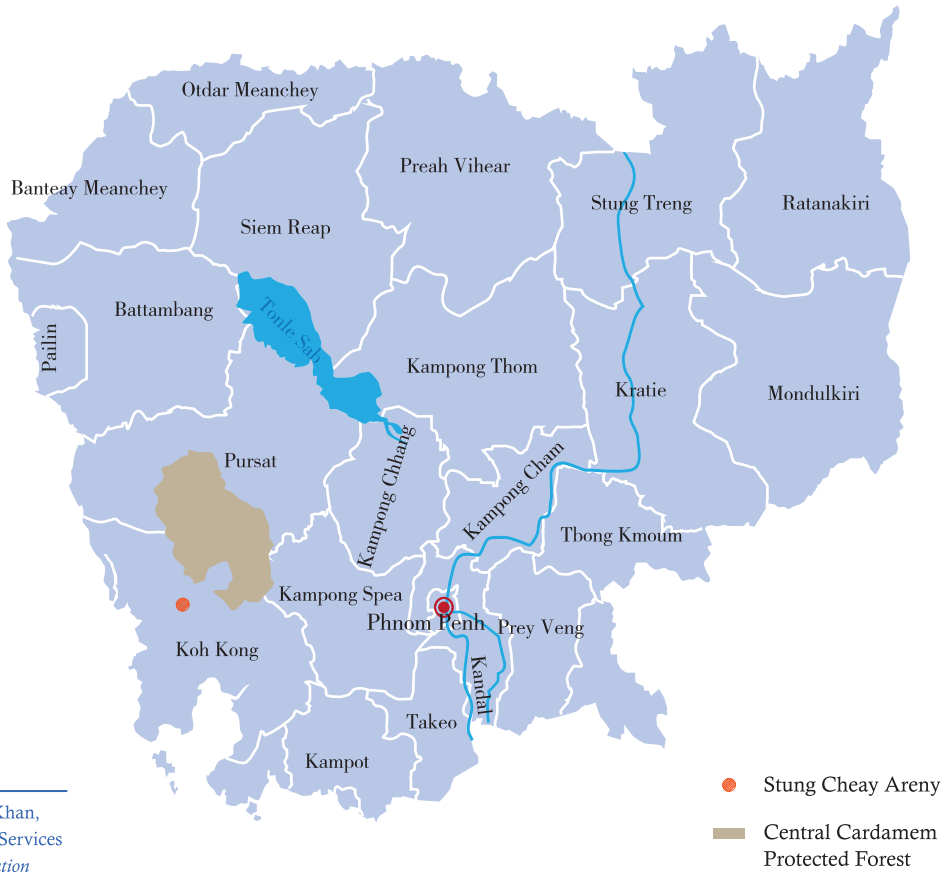
[25] Conservation International, "Central Cardamom Protected Forests." *Available at* http://ccpf-cp.org/.

[26] Conservation International *A Summary of the Social and Environmental Impacts of the Proposed Areng Valley Hydroelectric Dam, Southwest Cambodia. Available at* http://mothernature.pm/Areng%20dam%20-%20impact%20summary.pdf.

[27] *Ibid.*

[28] Ge Yun, *Hydropower Development in Cardamom Forest - Field Visit Report by Environmental NGO on Stung Cheay Areng Hydroelectric Station*, 2009. *Available at* http://www.doc88.com/p-7354374187125.html. (Chinese).

Picture 6-2 the Central Cardamom Protected Forests (CCPF)[29]



[29] Picture credit to: Lyna Khan, Payment for Environmental Services (PES): *Case Study on Conservation Agreement on Forest and Biodiversity Conservation in Central Cardamom Protected Forest, Thmar Baing District, Koh Kong Province*, International Journal of Environmental and Rural Development (2012) 3-1: 38-42.

In August 2012, NGO Forum, a Cambodian environmental protection organization, carried out research into the project's environmental and social impact. In its research, NGO Forum presented excerpts from the EIA compiled by SAWAC. NGO Forum also gave measurements for the total affected forest area which was 12,325 hectares, 4,004 hectares of which were located in the CCPF. According to NGO Forum, the affected land amounted to 9,474 hectares and affected 1,642 villagers (326 homes), 899 villagers (189 homes) of which needed relocating. Additionally, the dam would reduce the numbers of local pangolins, elephants, roe deer and deer, and in particular, would pose a severe threat to rare animals like the dragon fish.[30]

[30] NGO Forum, *Current Status of Hydropower Dam Construction in Stung Chhey Areng, Koh Kong Province*, February 2012. (on file with the author).

NGO Forum also made a field trip to the Areng Valley and noted that these villages lacked access to outbound transportation. This is particularly concerning as during the rainy season from May to November, villagers in Prolay, Thmar Dounpov and Chronup were not able to move agricultural produce to the townships. Given that these villagers mainly relied on selling self-grown agricultural produce and fruits as a means of livelihood, the lack of transportation would pose serious challenges. However, NGO Forum noted that construction for the dam would not take place during the visit and, thus, the villagers' lives would not currently affected.[31]

[31] *Ibid*.

Open Appeal

As China Guodian Corporation's continued work on the project, opposition grew. In June 2013, International Rivers (IR) wrote an open letter of appeal to Guodian, demanding the suspension of all plans to construct the dam. The appeal held that the project would generate profound and far-reaching environmental and social impact, and would subject Guodian to financial and reputational risks.[32]In December 2013, 14 NGOs including NGO Forum jointly wrote to Prime Minister Hun Sen, asking to halt dam construction and instead, purpose eco-tourism development. The NGOs argued that water from the dam would flood 20,000 hectares of forest (an inaccurate statement) and that the Environmental Impact Assessment SAWAC conducted in 2008 had insufficient interviews.[33]Both appeals also raised the issues of the "Chorng" indigenous people, for whom relocation affected their unique cultural traditions that depended on their home location.

[32] International Rivers' Letter of Appeal to Guodian on the Areng Project, June 24, 2013. *Available at* http://www.internationalrivers.org/files/attached-files/20130624-letter_to_guodian_re_cheay_areng_dam_english.pdf.

[33] Rivers Coalition of Cambodia, Open Letter to Samdech Akka Moha Sena Padel Techo Hun Sen, Prime Minister of the Royal Government of Cambodia December 17, 2013. *Available at* http://issuu.com/ngoforumoncambodia/docs/english_171213_final_open_letter_on.

"Roadblock" Petition

When Sinohydro took over the Project in 2014, opposition against it evolved from investigation and open appeal to several protests. On March 14, 2014, organized by a grassroots environmental protection entity Mother Nature, Cambodian Youth Network and local "Chorng" villages met on the road to the Areng Valley and blocked prospection and mapping equipment from entering.[34]From then on, Mother Nature began to launch frequent interceptions, and Chinese staff of Sinohydro, SAVAC and SBK which were conducting the project' s IESIA and relocation investigation, were all denied access into the valley. In April 2014, six Chorng villager representatives went to Phnom Penh and petitioned the Ministry of Mines and Energy, the Ministry of Environment and the Ministry of Culture and Fine Arts, to halt the project. International environmental protection organizations, FFI and CI, also issued announcements which advised SAWAC and the Ministry of Environment not to pass the project's EIA.[35]

[34] Kuch Naren, "Koh Kong Villagers Block Road in Effort to Stop Chinese Dam," The Cambodia Daily, March 15, 2015. *Available at* https://www.cambodiadaily.com/archives/koh-kong-villagers-block-road-in-effort-to-stop-chinese-dam-54258/.

[35] Daniel Pye, "Eco Groups Slam Areng Dam," The Phnom Penh Post, April 3, 2014. *Available at* http://www.phnompenhpost.com/national/eco-groups-slam-areng-dam.

In June 2014, Mining and Energy Minister Suy Sem announced a technical working group that would assess the project's impact on the environment and society and research new relocation destinations. SBK responded to the Minister by saying that the technical working group would be in charge of the negotiation with road-blocking campaigners, and selection of the new settlement would still be carried out by SBK. Compensation packages were prepared for residents' relocation: every relocated resident would be given 1,000 square meters of homestead, a built home, five hectares of farmland, and compensation for fruit trees, livestock and domestic animals, as well as crops. However, the road-blocking campaigners maintained their opposition, saying that not even the technical working group could enter the valley.[36] In August, Mother Nature organized a cycling event in Phnom Penh in protest.[37]

On September 15, Vice Governor of Koh Kong Province Phun Ly Vireak visited the valley accompanied by both regular and military police and encountered yet another road block incident. After hours of confrontation, nine activists, including the founder of Mother Nature Alex Gonzalez-Davidson, ended up in temporary detainment for "obstructing provincial government affairs." They were released within 24 hours.[38]The detainment raised more concerns about the project to such an extent that political dignitaries from the National Rescue Party (the opposition party) began to follow the development of the project and pressure the government.

Throughout autumn 2014, the National Rescue Party made several public statements against the project and frequently called upon the government to stop the project. On September 18, National Rescue Party member Te Chanmony wrote a letter to Prime Minister Hun Sen, demanding clarifications about the project from the government[39]to which, on October 1, National Rescue Party President Sam Rainsy responded that Prime Minister has heard the opponents' views and has relinquished decision on the dam to "future generations." [40] Following this exchange, the government failed to release information confirming the project's suspension so Sam Rainsy made a public statement on October 31, voicing that he would be

[36] Khuon Narim, "Government Pushes Ahead With Study of Koh Kong Dam," The Cambodia Daily, June 11. 2014. *Available at* https://www.cambodiadaily.com/archives/government-pushes-ahead-with-study-of-koh-kong-dam-61047/.

[37] May Titthara, "City Hall Blocks Bike Ride Against Hydro-project," The Cambodia Daily, September 29, 2014. *Available at* http://www.phnompenhpost.com/national/energy-minister-plays-down-areng-concerns.

[38] Phak Seangly and Daniel Pye, "Standoff, arrests in Areng," The Phnom Penh Post, September 16, 2014. *Available at* http://www.phnompenhpost.com/national/standoff-arrests-areng.

[39] May Titthara, "Energy Minister Plays Down Areng Concerns," The Phnom Penh Post, September 29, 2014. *Available at* http://www.phnompenhpost.com/national/energy-minister-plays-down-areng-concerns.

[40] Kalyanee Mann, "Will Cambodia Flood a Sacred and Biodiverse Valley for a Dubious Dam?," Mother Jones, October 19, 2014. *Available at* http://www.motherjones.com/environment/2014/10/areng-valley-cambodia-dam-hun-sen-rainsy-hydro.

surprised and disappointed if the government did not halt the project, and called on the government to be prudent in its decision.[41] Finally on November 19, Pol Ham, Chairperson of the National Assembly Commission on Agriculture and National Rescue Party member, took the helicopter offered by WA for a visit to the Areng Valley. This visit demonstrated Chorng villagers' adamant opposition to the hydroelectric dam to the Pol Ham. The villagers also expressed their hope that the Cardamom Forest would not be harmed in any way and their overall belief that the dam's disadvantages outweighed its advantages.[42]

International environmental and human rights organizations also kept close watch on the Stun Cheay Areng Project. In January 2015, Earth Rights, International Rivers and 3S Network submitted a report to the UN Special Rapportuer, asking the Rapportuer to investigate the breaches of and threats to human rights brought on by this project. The report also attempted to engage both the Cambodian and Chinese governments to address these issues.[43]

On February 24, 2015, Prime Minister Hun Sen repeated that the Stung Cheay Areng Project would be left to the new government, which would be elected in 2018, and requested the public to discontinue talks about the Project.[44]However, the turbulence triggered by the project did not subside as news reports covering the project and the valley continued to receive close attention.

[41] Daniel Pye and Alice Cuddy, "Impact Assessment for Areng Dam Nears Final Steps as Project Looms," The Phnom Penh Post, October 31. 2014. *Available at* http://www.phnompenhpost.com/national/impact-assessment-areng-dam-nears-final-steps-project-looms.

[42] Khuon Narim, "Visit Convinces Lawmaker of Dam's Threat to Areng," The Cambodia Daily, November 19, 2014. *Available at* https://www.cambodiadaily.com/news/visit-convinces-lawmaker-of-dams-threat-to-areng-valley-72608/.

[43] Earth Rights, International Rivers, and 3S Network, Submission to UN Special Rapporteur on the Situation of Human Rights in Cambodia - Hydropower Dam Development in Cambodia: Lower Sesan 2 and Stung Cheay Areng Hydropower Projects, January 13, 2015. *Available at* http://www.internationalrivers.org/files/attached-files/submissiontospecialrapporteuronhydropower_151301.pdf.

[44] May Titthara, "Don't Talk About Areng," The Phnom Penh Post, February 25, 2015. *Available at* http://www.phnompenhpost.com/dont-talk-about-areng.

6.3.3 Field Visit Findings

From May to September 2015, GEI took three trips to Cambodia during which the team visited Chinese hydropower enterprises and environmental NGOs interested in the Stung Cheay Areng Project. GEI also met with local officials in Koh Kong Province and talked with villagers in the Areng Valley. The views listed above and in the subsequent analysis come from these trips as well as from NGO reports, open letters and media reports. As GEI acquired more in-depth information and interviewed an increasingly diverse range of people, we began to form new perspectives on the understanding of the project and inserted this into our analysis for the project's suspension.

Areng Valley Opponents' Concerns

On September 4, 2015, GEI drove from Phnom Penh to the Areng Valley with two young members from the Cambodian Youth Network serving as guides and interpreters. The original plan was to transfer to motorcycles in Thmor Bang County, as motorcycles were the only possible vehicle for common citizens to enter the valley. However, six hours after we left Phnom Penh, the car could no longer go on the muddy road. When the car stopped, there was no cell-phone service so the guide went ahead to send help. When motorcycles finally arrived, GEI traveled for four hours wet through red muddy roads, single-plank bridges and brook to reach Areng.



Villager's House in Chumnab



Muddy Road

On the morning of September 5, GEI worked with guides to hold a discussion with 26 Chorng people hailing from Chumnab and Prolay who had opposed the project. GEI held the discussion at Areng Valley Eco-tourism Centre jointly built by Mother Nature and Chumnab. The discussion lasted for more than two hours and gave great insight on the villager's livelihood. In fact, we learned that the major source of livelihood for the villagers were planting and harvesting non-timber forest Products (NTFP). Villagers plant rice and fruit trees, collect resin and rattan in the surrounding forest, and then transport these goods to the county for sale. Income from NTFP collection comprises 50% (or even more) of total income. Beyond the goods for sale, the villagers also pick mushrooms and fruits in the forest and fished in the Areng River for their own consumption. We also learned that the family demographics were 3-7 persons with most homes earning 30,000-50,000 riel per day (USD 7.50-12.50); several villagers quoted their income as 10,000 riel per day (USD 2.50).

The villagers were first introduced to the project in 2007 when government officials and the head of the village briefed them about a hydropower project in the valley. In the same year, SAWAC and Chinese companies conducted mapping and prospection in the valley. Then in 2010, SAWAC revisited the valley to investigate the villagers' living standards and conditions; they also measured and mapped the land. Another feasibility study was carried out in 2012, as the government investigated the financial conditions of affected households. The villagers followed SBK's requirement and confirmed stated information by leaving an inked fingerprint on investigation reports.

In our discussions, we also learned that the villager's reactions to the project are quite complicated. In fact, some villagers expressed support for the project even though the majority of people were not willing to relocate. The villagers were also initially reluctant to believe Mother Nature's Alex Gonzalez-Davidson when he told them the Chinese company and Cambodian government would not actually give compensation. However, after some time, the villagers' distrust of the government grew. This distrust came to a head in November 2013, when the government claimed that the villager's fingerprints denoted their agreement to the project. This, of course, was not the case as the villagers objected the project. After the government misrepresented the villagers' wishes, they turned to Mr. Gonzalez-Davidson for advice and heeded his instructions to hold protests on the crucial roadways.

Aside from worries about due compensation, the villagers also expressed concern about the project's cultural and economic impacts. In one aspect, they were concerned that the reservoir caused by the dam would inundate the forest where they frequently pay tribute to ancestors and conduct religious practice. They also stated that they did not want to become corporate employees. Finally, they stated that they hoped their farming and food-plucking and collecting lifestyle could continue undisturbed.

On the afternoon of September 5, GEI visited two families in Prolay, a village head and a standard family. We first went to the home of the village head, a Cambodia People's Party member who lived with his wife and son. When asked his opinion on the Project, he said it had been cancelled, and that he respected Prime Minister Hun Sen's decision. When he was asked how many villagers were Chorng, he replied that many had moved during the Khmer Rouge era with only some of the current villagers having moved into the valley after the war. Overall, he claimed to have insufficient knowledge of Chorng issues and was only aware of Khmer people on the household registrations.



Discussion



Prolay

The second family we visited had six members, spanning three generations. The oldest son was collecting resin and rattan in the forest and would live in the mountain for around half of each month. On the other hand, the daughter-in-law, grandson, granddaughter and the youngest son stayed at home. The village primary school had 50 students and one government-paid, full-time teacher, whose salary was subsidized by Mother Nature. Due to unstable income, he suspended classes several times after April 2014 but resumed upon obtaining three months of funding. The family expressed opposition to the Project and admitted their participation in the road blocks. When asked about other villagers' views, they said 80% of them were also against the project.

Through discussions and interviews, GEI also learned about the extreme inconvenience of the village lifestyle. In these interviews, we asked villagers what needed to be developed in the village. The overwhelming response was hope for improved access to medicine, education, communications, and transportation. In fact, both healthcare clinics and middle schools were located in the capital, six hours away by car or motorcycle from the village. We also learned that Areng Villages did not have access to electricity, phones, TV or mobile phone signals. Without electricity, most families relied on solar energy panels for lighting, firewood for cooking, and water from the wells and brooks. Moreover, ordinary families did not have toilets but rather used the village streams for bathing and washing. When it was suggested that the project's dam could ease the burden of electric power, the villagers continued to resist: villagers said they did not need the dam to generate electricity, as they could do it themselves. Moreover, given that the villagers are very poor and already enduring medical bills and school fees, they did not want to pay the electricity bills to the company.

[45] *Hun Sen*'s *Response to Heng Samrin*'s *Proposal re. Stung Cheay Areng Project*, Chinese translation, January 15, 2015, provided by Sinohydro during field study. (on file with the author).

Table 6-2 Statistics on Resident Relocation in Villages of the Areng Valley [45]

Chumnab Commune	Chumnab	56 houses
	Chrok Ruseiy	40 houses
	Total	96 houses
Prolay Commune	Prolay	53 houses
	Ta Ngel	28 houses
	Samroang	64 houses
	Chamna	42 houses
	Total	187 houses
Thmor Doan Pov Commune	Prek Svay	48 houses

Position of the Provincial Capital Government

Pech Sayon, Director of the Department of Mines and Energy, Koh Kong expressed a very supportive view during his interview on May 27, 2015. From the economic perspective, Sayon stated that the project was conducive to local economic development given that Koh Kong had very rich and untapped hydropower, which could mitigate the electricity shortage and bring down the bills. He also claimed that the project had the support of the local community. According to Sayon, Ministry of Mines and Energy was put in charge of the project and the Provincial Department of Mines and Energy had already committed extensive human resources to investigate the financial conditions and household assets of the relocated residents. According to these assessments, there were indeed Chorng aboriginals within the valley, but this population was only at 30% of the total, and the majority of residents had moved in around a decade ago. He also claimed that 90% of the villagers supported the Project and the Chorng people only accounted for a small percentage among the opponents.

When asked about the road-blocking protests, Sayon believed that the persons did not intend to voice concern. After the protest on March 14, the government gathered the villagers twice to present the project in detail, answer their questions, and explained and clarified matters relating to the project's environmental impact and relocation compensation. Sayon said that no matter what the government said, Mr. Gonzalez-Davidson refused to believe and continued with his anti-project campaigns. As Mr. Gonzalez-Davidson's actions were already interfering with Cambodia's internal politics and had become intolerable, the provincial government detained those participating road-blocking activists in September.

Phnom Penh Sinohydro's Views

During the investigation, we also interviewed the Sinohydro staff members in charge of the Areng Project on multiple occasions. According to these staff members, Sinohydro had ceased -project-related operations and the office in the provincial capital had also been closed since the Prime Minister's announcement in February 2015 of the project's suspension until 2018. When asked about the project's environmental impact and relocation issues, staff mentioned that Sinohydro commissioned the project's Integrated Environmental and Social Impact Assessment (IESIA) to SAWAC and the relocation investigation to SBK. When pressed further, SAWAK's assessment was said to have been terminated due to the road blocks, while SBK's investigation had been submitted to the government. As for relocation compensation standards, it had been dictated in a previous agreement between Sinohydro and the government that the compensation standards would be set by the government.

Sinohydro further claimed that all constructive opinions regarding the project would be heeded. For instance, the suggestions for settlement areas submitted by Wildlife Association (WA) were adopted but WA's willingness to undertake the relocation and settlement was not heeded. In fact, Sinohydro believed that only the local government was capable of coordinating the relocation and settlement. Sinohydro and the government also held the same belief that the road blockage protests were political statements and that a minority of extreme activists and villagers were against the project. In fact, this belief was stated in a letter, which Sinohydro showed GEI during the interview. The letter was jointly-signed by village heads to the provincial government after the road-blocking events and stated that the villages were in favor of the dam with only a small dissenting minority, whom were influenced by extreme activists. In addition, Sinohydro produced a

document with hundreds of villagers' fingerprints, which they said proved consent to the Project.[46] When asked why this document was not publicized, Sinohydro said that such documents were the Cambodian government's internal possessions and they were not at liberty to disclose. They also stated the feasibility study was still being conducted and Sinohydro had yet to sign a Build, Operate and Transfer (BOT) contract with the government. According to this interview, Sinohydro believes that the reality of the investment depends on the feasibility study and IESIA results.

[46] As Sinohydro merely displayed these documents, the author is not clear on the specific number of villagers.

When asked about whether the government had issued public responses to the objections, Sinohydro offered us the translated Chinese script of *Hun Sen's Response to Heng Samrin's Proposal re. Stung Cheay Areng Project*, on January 15, 2015. The Response claimed that the Project's reservoir and plants covered an area of about 8,474 hectares, substantially smaller than the opponents' version of 20,000 hectares. Specifically, natural forest accounted for 874 hectares, semi-natural forest 3,890 hectares, forest for religious practice (for hermits) 66 hectares, sandy forest 37 hectares, secondary forest 725 hectares, cemetery woods 13 hectares, meadow 467 hectares, waters 156 hectares, field 1,194 hectares, plantation 1,245 hectares, abandoned tillable field 705 hectares, and homestead 129 hectares. The document also stated that the building of the project would require the relocation of 349 households, altogether 1,318 persons and is still undergoing environmental and social impact assessment. Furthermore, once the government has taken the IESIA results into account and weighed the investment returns against its environmental and social impact, the government will decide whether or not to build the dam.

Appeals of the Areng Valley and NGOs in Phnom Penh

Two staff members from the Cambodian Youth Network (CYN) acted as our guides and interpreters during our visit to the valley. One of them founded CYN at university, which was aimed at mobilizing Cambodian youths to develop the countryside. CYN was among the organizers of road block protests and therefore was extensively familiar with the valley and villagers. The two CYN youths believed that the Cambodian government was corrupt and they expressed hope that they could build a new Cambodia. The CYN youths envisioned a Cambodia in which valley residents could build homes, develop eco-tourism, and would be exempt from relocation due to the dam.

In Phnom Penh, we visited Samreth Law Group (SLG), a non-profit law firm with charity services in the Areng Valley. SLG provided training on the valley villagers' legitimate rights and offered legal support to anti-project campaigners and opponents. SLG believed that in many development projects in Cambodia the legitimate interests of villagers in the project area were not legally protected. As such, SLG's primary mission was to safeguard the local interests, particularly those of the underprivileged, by promoting awareness of rights and conducting charity litigation. SLG said that most villagers were against the project and had heard accounts of the government misrepresenting villager opinion. According to villagers, in a meeting held by the government involving companies, villagers were asked to vote on whether the dam should be built by raising hands; however, the villagers say that the hands raised in opposition were interpreted as in favor of the dam by the Chinese interpreter. Despite GEI's suspicions as to whether the villagers could understand the Chinese interpretation, the truth or falsity of this statement nonetheless reflects the divergent views on the project.

6.4 Analysis and Recommendations

An analysis of the contradictory information acquired from field investigations demonstrates that international and domestic environmental and human rights organizations in Cambodia are ardent followers of hydropower projects' impact on the environment and residents. It was also discovered that some organizations hold inherently opposing positions with regard to hydroelectric development. We believe this is a shared predicament among Chinese hydropower investors in Cambodia, and is well embodied by the case study of the Stung Cheay Areng Project, which was stopped as early as in the feasibility study phase.

There are many factors that cause opposition to hydropower projects in Cambodia. These factors include a complicated multi-party political system, strong grievances against government corruption held by younger generations, an underdeveloped economy and an unsound legal system. Such dynamics enable disagreements to escalate into social and political events that obstruct regular project development. As such, discussions relating to the Project no longer revolved around core issues as the negative feelings were so intensified. In this way, topics like technological and economic feasibility, environmental and social impact, relocation compensation plans and standards, and legal compliance during project execution were never fully discussed. For example, before the investigation was finished, opponents had already adamantly denied the project and distrusted any explanation or clarification given by the government. As such, proceeding with the investigation would only trigger more protests and magnify the objecting voices.

Companies looking to invest in Cambodia are often in a difficult situation as the government is considered corrupt and lacks common support and the NGOs, which are often at odds with the government, are considered trustworthy. As such, once public opinion sways away from the government, the corporation has little negotiating power. In the case of Sinohydro, this is demonstrated in the discrepancy between the government and the NGOs' quoted percentage of villagers against the project: NGOs and those interviewed at the invitation of CYN quoted 80% against the Project, while the government cited merely 10%. Demonstrating their allegiance to the government data, Sinohydro even used a letter of consent by village heads and hundreds of villagers to prove that opponents were the minority. Importantly, the media never mentioned the specific opposing percentage and the government never released public responses to this issue.

Even though Chinese hydropower investors originally believed that government acknowledgment and support are the prerequisites for smooth investment, they are starting to realize the influence of NGOs and public opinion. With the help of Electric Power Enterprise Association of the Chinese Chamber of Commerce in Cambodia, Chinese hydropower enterprises are attempting to talk with local NGOs. This is largely an effort to learn about their opinions on their investment so to solve problems in a more constructive manner.

Based on talks with the local residents, government officials, Chinese enterprises, and Cambodian NGOs, as well as analysis into the suspension of the Stung Cheay Areng Project, we provide the following recommendations for smooth development of hydropower projects:

Information Disclosure and Transparent Operations

Cambodia is still categorized by the United Nations Conference on Trade and Development as a Least Developed Country." Power and transportation infrastructure remains highly underdeveloped and there is still considerable room for improvement in terms of laws, polices, and law enforcement. For instance, the Cambodian law currently does not require disclosing IESIA and EIA reports and the government does not demand enterprises publicize IESIA and EIA reports. Instead the reports are only delivered to two NGOs, Development and Partnership in Action (DPA) and NGO Forum, for review opinions. After this review process, land and relocation compensation standards are formulated by the government. Compensatory money is then given by the enterprise to the government, which then transfers the money to villagers. Finally, compensatory land and building relocation villages are all conducted by the government.

Relocation problems and land disputes arising from large development projects have become typical issues for some out of the many Cambodian NGOs. Furthermore there is an extensive crisis of trust throughout the interactions between NGOs, government and the locals. In fact, when considering opening their IESIA and EIA reports to the public, corporations will express concern that the transparency will make them vulnerable to criticism. As such, the value of full disclosure has yet to be understood by Chinese corporations in Cambodia.[47] With training, these corporations could come to learn that through open discussion and open information, better solutions be formed. In this way, much work needs to be done so to rebuild the government and companies' credibility and cut down on corruption.

[47] This is the concern of enterprises that the author learned about during the field study.

Coordination of All Sides, and Acquisition of Public Recognition

The country with sound public governance clearly defines the scope and manners for public participation in development project discussions by formulating laws, policies and standards. In such a country, enterprises will secure public recognition as long as they comply with laws and rules.

This is not the case for Cambodia. The country currently lacks a sound legal system and developed public facilities. Cambodia does have very active social organizations and ferocious inter-party conflicts. With this imbalance between governance and activism, public recognition is not achieved through compliance procedures alone. As such, enterprises must obtain the acknowledgment of society, particularly local communities, NGOs, and the media.

One successful instance of a corporation working with the local community in Cambodia was shared by Mam Sambath, Executive Director of Development and Partnership in Action. In the discussion meeting titled at "Reconciliation of Enterprise-Community Conflicts in a Complex Context," which was jointly organized by Cambodia's Hydropower Association and the American Friends Service Committee (AFSC) on September 22 2015, Mam Sambath shared a story of an Indian mining enterprise. The enterprise had a major dispute with villagers over the compensation of 38 hectares of farmland. With the suggestions of DPA, the enterprise decided to handle the dispute via multilateral participation and peaceful negotiation. Specifically, the enterprise held multiple talks on compensation standards and invited local villagers, government, NGOs, media and Ministry of Mines and Energy officers to attend. After several rounds of negotiation, villagers, and the enterprise agreed to follow DPA's advice, and set the compensation amount at the then market price of land (USD 1,500/hectare). The enterprise accepted the villagers' compensation request and directly paid the money to them. Importantly, this negotiation required several steps but each proceeded smoothly. In fact, villagers initially raised excessively high compensation standards during the negotiations to which enterprise did not agree. The enterprise was supported by the media and NGO representatives present at the meeting.

This case shared by DPA shows that in Cambodia, enterprises can build up a multilateral dialogue mechanism that incorporates stakeholders and establishes mutual trust with villagers, NGOs, the media and the government. Furthermore, through these dialogues, all parties are informed of the benefits and assistance derived from the development project and therefore, is a means by which an enterprise can secure public recognition and garner support.

Conclusion

Appendix A Table of Cambodia's Environmental Laws and Policies
Appendix B Acronyms and Abbreviations

Conclusion

Having conducted research into Cambodia's investment policies and its environmental management system, we conclude that Cambodia's economic development is at a stage of infancy and its institutional arrangements are still rather rudimentary. Cambodia's underdeveloped governance system inevitably engendered policy shifts and ultimately resulted in inconsistent laws and regulations. The government's weak capacity to execute and regulate further worsened policy instability. Specifically, the laws and regulations addressing environmental and social protection have been neglected, thereby allowing important yet problematic laws like Environment Law and Land Law to persist and negatively impact procedural fairness and transparency, stakeholder participation, and public supervision. Importantly, since these laws also affect environmental protection and local community interests, they are subject to scrutiny from the international community and domestic organizations. Under such volatile social and policy circumstances, large-scale investment projects requiring extensive land use, such as hydropower and real estate, tend to arouse huge environmental and relocation-related controversies that result in the project's suspension.

Nearly 1,000 Chinese companies invest in Cambodia, making it China's largest foreign investment recipient. While only a fraction of China's investments in Cambodia are in the sectors of forestry, hydropower, real estate development, infrastructure, extraction, agriculture, etc.,[1] these projects are likely to have comparatively large environmental and social impacts, and thus arouse more public attention and concern. Extensive insight on these problematic areas is given in sections 4 through 6 that present the perspectives of enterprises, research departments, and NGOs, and offer analysis into problems and challenges encountered by Chinese state-owned and private enterprises when conducting investments in forestry, real estate and hydropower in Cambodia. It merits special attention that these problems and challenges not only affected Chinese investors in Cambodia, but are of a certain universal nature of Chinese investment abroad. In fact, GEI's prior investigations and Laos, Myanmar and other countries discovered similar scenarios.

[1] The proportion is lower than 25% from 1994 to 2010. Source of data: Figure 1-7.

These problems can be primarily attributed to the fact that enterprises are accustomed and apt at dealing with top-level personnel and the government but lack the awareness and experience to cooperate well with NGOs and local residents. Moreover, we found that enterprises do not have sufficient knowledge of and capacity for proactive communication nor do they have established channels of information disclosure. Additionally, the enterprises largely struggle to build partnerships for such information and thus, rely on third-party groups like a Chambers of Commerce, the media, NGOs, etc. The establishment of the Belt and Road Initiative and the Asian Infrastructure Investment Bank (AIIB) are expected to better facilitate the international ambitions of more Chinese enterprises, and thus improve economic cooperation and conduct with countries along the 'Belt and Road' , including Cambodia.

Even with these impending improvements, it is crucial to minimize both the environmental and social risks of Cambodia-bound investors and reduce the investment's environmental and social impacts. Based on the findings of our research, we provide the following recommendations:

1) Seriously Assess Environmental and Social Impact

Enterprises considering overseas investment should first conduct a comprehensive evaluation of the project's environmental and social impacts. These evaluations are particularly pertinent in areas of high political and ecological sensitivity. However, locations with low or absent local environmental access standards also require that proactive efforts be made to conduct assessment, work with local researchers, and obtain complete estimates of potential risks caused by environmental and social problems.

2) Take the Initiative to Adopt Industry Best Practice and Advanced Environmental Standards

As of the present, Cambodia has promulgated the 1996 *Law on Environmental Protection and Natural Resource Management, the 1999 Sub-Decree on Environmental Impact Assessment Process, and the 2009 Guidelines for Preparing IEIA and EIA Reports*. Also, the country recently established an environmental management and environmental impact assessment system. However, the overall execution of environmental policies remains inefficient and environmental legal and policy systems are in urgent need of improvement. In fact, current environmental policies do not require disclosing environmental impact assessment reports and the environmental standards and technical guidelines for different industries have yet to be provided. Therefore, if enterprises only refer to Cambodia's environmental laws and regulations during project design, plan and execution stages, the project is likely to encounter environmental and social troubles; this is especially expected for projects with potentially massive environmental and social impact.

To ameliorate the system's deficiencies, investors in Cambodia are encouraged to take the initiative to adopt either relevant Chinese environmental standards or put in place more environmentally and socially strict international standards and best industry practices. By adhering to more stringent standards, Chinese investors will curb and reduce adverse environmental and social impact. This recommendation echoes the *Environmental Protection Guidelines for Outward Investment and Cooperation*, jointly issued in 2013 by the Ministry of Commerce and Ministry of Environmental Protection: these Guidelines state that enterprises shall not only proactively study and comply with local laws and regulations, but should also conduct research into and draw references from environmental protection-related principles, standards and conventions, adopted by international organizations and multi-lateral financial institutions.[2]

[2] PRC Ministry of Commerce and Ministry of Environmental Protection, *Guidelines for Environmental Protection in Foreign Investment and Cooperation*, February 18, 2013, Article 22. *Available at* http://english.mofcom.gov.cn/article/policyrelease/bbb/201303/20130300043226.shtml.

3) Build information disclosure and communication mechanisms; promote multilateral consultations, mutual benefits and win-win cooperation

In countries with sound public governance, the government is likely to build and implement information disclosure systems that ensure the public's access to government information. The disclosure system functions to boost government transparency and law-based administration because the information affects public interest and is publicized as per legal

requirements. It comes as no surprise that since Cambodia has not developed sound legal system and the government is not transparent, information relating to large projects' environmental impact and relocation standards is largely not accessible. Without this information, concerns of NGOs, residents and media about the environment and locals' rights remain unresolved. As a result, these groups are likely to doubt the government and enterprise, as well as impede the overall development of the project. In fact, environmental, relocation and land-related issues caused by large development projects occur frequently in this way.

Investors in Cambodia can abate such a problematic situation by taking the initiative to build information disclosure mechanisms. These mechanisms should establish clear channels that disclose, to the local government, residents and other stakeholders, project information that impacts their respective core interests or affects public wellbeing. Such disclosure practices achieve accurate basis for public debate, can help avoid promulgation of false information, and bolster corporate and governmental credibility. In addition, enterprises are recommended to establish communication mechanisms that enable them to gather opinions and suggestions on the project from relevant government authorities, residents, NGOs and the media. These communication mechanisms should also function to help immediately resolve any issues encountered during project execution. As such, the enterprises can build multi-lateral dialogue mechanisms among stakeholders, formulate plans for relocation compensation, and strategize corporate social responsibilities considering input from all stakeholders. In this way, the communication mechanism facilitates social acknowledgement and curtails environmental and social risks.

4) Launch CSR demonstration projects, which emphasize resident livelihoods and environmental issues

Enterprises are recommended to launch environmental cooperation projects and Corporate Social Responsibility (CSR) demonstration projects within the investment areas. Additionally, enterprises should assist locals improve ecological and living conditions and reduce pollution risks. By getting involved with and assisting the local community, the enterprise will improve its reputation and gains opportunities for engaging in strategic investments, like training projects on education, health, environmental protection, poverty alleviation, etc. Another sample project includes setting up a fund or setting aside appropriations for local environmental protection and livelihood improvement. All in all, these projects seek to produce a win-win scenario that benefits local residents while also helping firms achieve economic profit and an improved corporate reputation.

Annex A: Table of Cambodia's Environmental Laws and Policies

Kingdom of Cambodia			
Title	Issued By	Date	Notes
Constitution			
Constitution of the Kingdom of Cambodia	Constitutional Assembly	September 21, 1993	• Art. 31 – "The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants related to human rights, women's and children's rights." • Art. 35 – states that Khmer citizens of either sex "shall have the right to participate actively in the political, economic, social and cultural life of the nation." • Art. 39 – guarantees Khmer citizens the right "to denounce, make complaints or file claims against any breach of the law by state and social organs or by members of such organs committed during the course of their duties." • Art. 44 – states that land may not be confiscated unless it is in the public interest, and only after payment of fair and just compensation • Art. 59 – "The State shall protect the environment and balance of abundant natural resources and establish a precise plan of management of land, water, air, wind, geology, ecological system, mines, energy, petrol and gas, rocks and sand, gems, forests and forestry products, wildlife, fish and aquatic resources."
Laws (Chbab)			
Draft Law on Environmental Impact Assessment	N/A	Forthcoming	• When adopted, the draft Law on Environmental Impact Assessment will be Cambodia's first national legislation on EIA and will significantly improve Cambodia's current EIA regime
Law on Environmental Protection and Natural Resource Management, Preah Reach Kram/NS-RKM-1296/36		November 18, 1996	• Chapter III, Arts. 6-7 address EIA • Art. 16 – states that MOE shall encourage participation of the public in the environmental protection and natural resource management • Art. 17 – states that the MOE shall issue a Sub-Decree for procedures for participation of the public and access to information pertaining to the environmental protection and management of natural resources • Art. 18 – requires information related to environmental protection and natural resource management to be mutually disseminated between the MOE and other ministries
Land Law, Preah Reach Kram NS/RKM/0801/14		July 20, 2001	• Art. 5 – states that no person may be deprived of land ownership unless it is in the public interest, and only after the payment of fair and just compensation

Law on Mineral Resource Management and Exploitation, Preah Reach Kram NS/RKM/0701/09		July 13, 2001	• Art. 11(6) – requires holders of a mining exploration license to submit, among other things, an environmental and social analysis to the Minister in charge of minerals in order to obtain an Industrial Mining License • Art. 20 – authorizes the Minister in charge of minerals to release information related to environmental and social issues to the public • Art. 21(2) – requires all mining license holders or subcontractors to comply with their EIA, environmental management plan, and site restoration and rehabilitation guarantees
Protected Areas Law, Preah Reach Kram NS/RKM/0208/07	National Assembly	February 15, 2008	• Art. 4 – guarantees the rights of local communities, indigenous ethnic minorities and the public to participate in the decision-making on the sustainable management and conservation of biodiversity • Art. 17 – states that the development and revision of the National Protected Area Strategic Management Plan should involve public consultation, notice, and comments • Art. 18 – states that the process of developing an action plan for individual protected areas shall involve coordination and consultation with local authorities, local communities, and indigenous ethnic minorities • Art. 21 – "Local communities, indigenous ethnic minority communities, and the public and civil society are encouraged to participate fully in the provision of and access to information relevant to the protected area management, conservation and development." Chapter VI generally addresses the involvement and access rights of local communities and indigenous ethnic minority communities in the management of protected areas • Art. 44 – requires that an Environmental and Social Impact Assessment be conducted for "all proposals and investment for development within or adjacent to protected area boundary by the Ministry of the Environment with the collaboration from relevant ministries and institutions."
Law on Forestry, Preah Reach Kram NS/RKM/0802/016		July 30, 2002	• Art. 4 – requires that: 1) the Law on Forestry be implemented to ensure public participation in "any government decision" that may impact forest resources or the communities that depend on them; 2) any activity that may cause adverse impacts on forest resources must undergo an Environmental and Social Impact Analysis (ESIA); 3) the ESIA must be made available for public comment; 4) the Government must consider the recommendations of the ESIA before approving any activity that may impact forest resources. • Art. 6 – requires the Forestry Administration, which is under the Ministry of Agriculture, Forestry, and Fisheries and is responsible for managing forests and forest resources, to "perform its duties in a manner consistent with principles of transparency, thereby ensuring the right of the public to participate in decisions regarding the management, sustainable use and conservation of the forests." • Art. 19 – requires all entities seeking a forest concession to prepare an ESIA as part of their Forest Concession Management Plan, submit it to the MOE for review, and the submit it to the Ministry of Agriculture, Forestry and Fisheries for approval; the Ministry of Agriculture, Forestry and Fisheries must ensure that the Forest Concession Management Plan and the ESIA are available for public comment prior to the issuance of a harvest permit.
Law on Investment, Preah Reach Kram No. 03/NS/94		August 5, 1994	• The Law on Investment itself does not contain provisions that relate directly to environmental protection or public participation, but see Sub Decree No. 111 on Implementation of the Law on the Amendment to the Law on Investment below.

Law on the Amendment to the Law on Investment, Preah Reach Kram NS/RKM/0303/008	National Assembly	March 24, 2003	• The Law on the Amendment to the Law on Investment itself does not contain provisions that relate directly to environmental protection or public participation, but see Sub Decree No. 111 on Implementation of the Law on the Amendment to the Law on Investment below.
Sub-Decrees (Anukret)			
Sub-Decree on Environmental Impact Assessment Process, No. 72 ANK/BK/11Aug99	Royal Government of Cambodia	August 11, 1999	• Annex I contains the list of projects subject to an Initial EIA or EIA • Art. 1 – one of the main objectives of the Anukret is to "encourage public participation in the implementation of the EIA process and take into account their input and suggestion in the process of project approval." • Art. 4 – states that government institutions, in their capacity as the "Approval Institution," may approve projects subject to the EIA requirement only after "consideration" of the findings and recommendations of the Ministry of Environment • Art. 18 – states that if the MOE does not provide findings and recommendations on a project' s IEIA or EIA within 30 days of receipt, then the Project Approval Institution may assume that the IEIA or EIA complies with all requirements
Sub-Decree on Economic Land Concessions, No. 146 ANK/BK	Royal Government of Cambodia	December 16, 2005	• Art. 4(3) – among other requirements, an Economic Land Concession may not be granted until "environmental and social impact assessments have been completed with respect to the land use and development plan for economic land concession projects." • Art. 4(5) – among other requirements, an Economic Land Concession may not be granted unless there have been public consultations "with territorial authorities and residents of the locality • Art. 5 – proposals for ELC' s shall be based, among other criteria, on "perpetual environmental protection and natural resource management," and "avoiding or minimizing of adverse social impacts." • Art. 7 – in cases where a Contracting Authority initiates an ELC through a solicited proposal, the Contracting Authority is responsible for arranging for the conduct of an IEIA or an EIA, as the case may be • Art. 12 – an application for a Solicited Proposal shall include, among other things, a description of the environmental and social impacts of the proposed investment activity and preventive or reduction measures the project proponent will take • Art. 14 – states that one of the criteria for ranking and evaluating applications for Solicited Proposals is "compliance with national environmental standards and provision of sound preventive or reduction measures for adverse environmental and social impacts." • Art. 20 – an unsolicited proposal for an ELC must include an IEIA or EIA, as the case may be • Art. 35 – after receiving detail applications for either a solicited or unsolicited approval, the Contracting Authority shall organize public consultations with territorial authorities and representatives of local residents by sending the proposal documents to the Commune Council(s) of the affected area for their review and recommendation. The Contracting Authority shall consider the comments received and provide reasons if it should reject any of the comments

Sub-Decree on the Implementation of the Law on the Amendment to the Law on Investment, No. 11 ANK/BK	Royal Government of Cambodia	September 27, 2005	• Schedule 2: Application Form for an Investment Proposal – among other information, applications for investment proposals must contain information on the proposal' s environmental impacts
Guidelines (Prakas)			
Prakas on Determination of Service Charge for Environmental Impact Assessment Report Review and Follow-up Monitoring of Project Implementation, No. 745	Ministry of the Environment	October 2000	
Prakas on Guideline for Conducting Environmental Impact Assessment Report	Ministry of the Environment	March 2000	• Referenced here: http://www.opendevelopmentcambodia.net/briefing/eia/
Prakas on General Guidelines for Initial and Final Environmental Impact Assessment Reports, No. 376 BRK/BST	Ministry of the Environment	2009	• Referenced here: http://www.opendevelopmentcambodia.net/briefing/eia/
Prakas on Registration of Consulting Firms for Studying and Preparing Environmental and Social Impact Assessment Report, No. 215	Ministry of the Environment	2014	
Prakas on Establishment of the Technical Working Group for Reviewing and Commenting on the EIA Report, No. 63	Ministry of the Environment	2014	

Annex B Acronyms and Abbreviations

AFSC	American Friends Service Committee
BOT	Build-Operate-Transfer
CAEP	Chinese Academy for Environmental Planning
CCPF	Central Cardamom Protected Forests
CDC	Cambodia Development Council
CHMC	China National Heavy Machinery
CI	Conversation International
CIB	Cambodia Investment Board
CITS	China International Travel Service
CPC	Communist Party of China
CRC	Conditional Registration Certificate
CRDB	Cambodian Rehabilitation and Development Board
CSEZB	Cambodian Special Economic Zone Board
CSG	China Southern Power Grid Co., Ltd.
CSO	civil society organization
CSR	corporate social responsibility
CTIA	Cambodia Timber Industry Association
CYN	Cambodian Youth Network
DPA	Development and Partnership in Action
DRC	Democratic Republic of the Congo
EAC	Electricity Authority of Cambodia
EIA	Environmental Impact Assessment
ELC	Economic Land Concessions
ESIA	environmental and social impact assessments
FA	Forestry Administration
FAO	Food and Agriculture Organization
FDI	foreign direct investment
FFI	Fauna & Flora International
FRC	Final Registration Certificate
FSC	Forest Stewardship Council
GDP	Gross Domestic Product
GEI	Global Environmental Institute
HRTF	Human Rights Task Force
IEIA	Initial Environmental Impact Assessment

IESIA	Integrated Environmental and Social Impact Assessment
IR	International Rivers
LDC	least developing country
LICADHO	League for the Promotion and Defense of Human Rights
MAFF	Ministry of Agriculture, Forestry & Fisheries
MIME	Ministry of Industry, Mines and Energy
MME	Ministry of Mines and Energy
MOC	Ministry of Commerce
MOE	
MOU	Memorandum of Understanding
MOWRAM	Ministry of Water Resources and Meteorology
NCPA	Nature Conservation and Protection Administration
NDRC	National Development and Reform Commission
NGO	non-governmental organization
NTFP	non-timber forest product
OCIC	Overseas Cambodia Investment Corporation
OFDI	Outward Foreign Direct Investment
PES	Payment for Ecological Services
PMIS	Provinces/Municipalities Investment Sub-Committees
PRC	People' s Republic of China
REDD	reduce emissions from deforestation and forest degradation
SAWAC	SAWAC Consultants for Development Company Limited
SBK	SBK Research and Development
SEZ	Special Economic Zones
SLG	Samreth Law Group
SLO	Social License to Operate
SMFP	Sustainable Forest Management Plans
SOE	state-owned enterprise
UDG	Union Development Group
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Program
VLS	Vermont Law School
WA	Wildlife Alliance
WCS	Wildlife Conservation Society
WTO	World Trade Organization

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