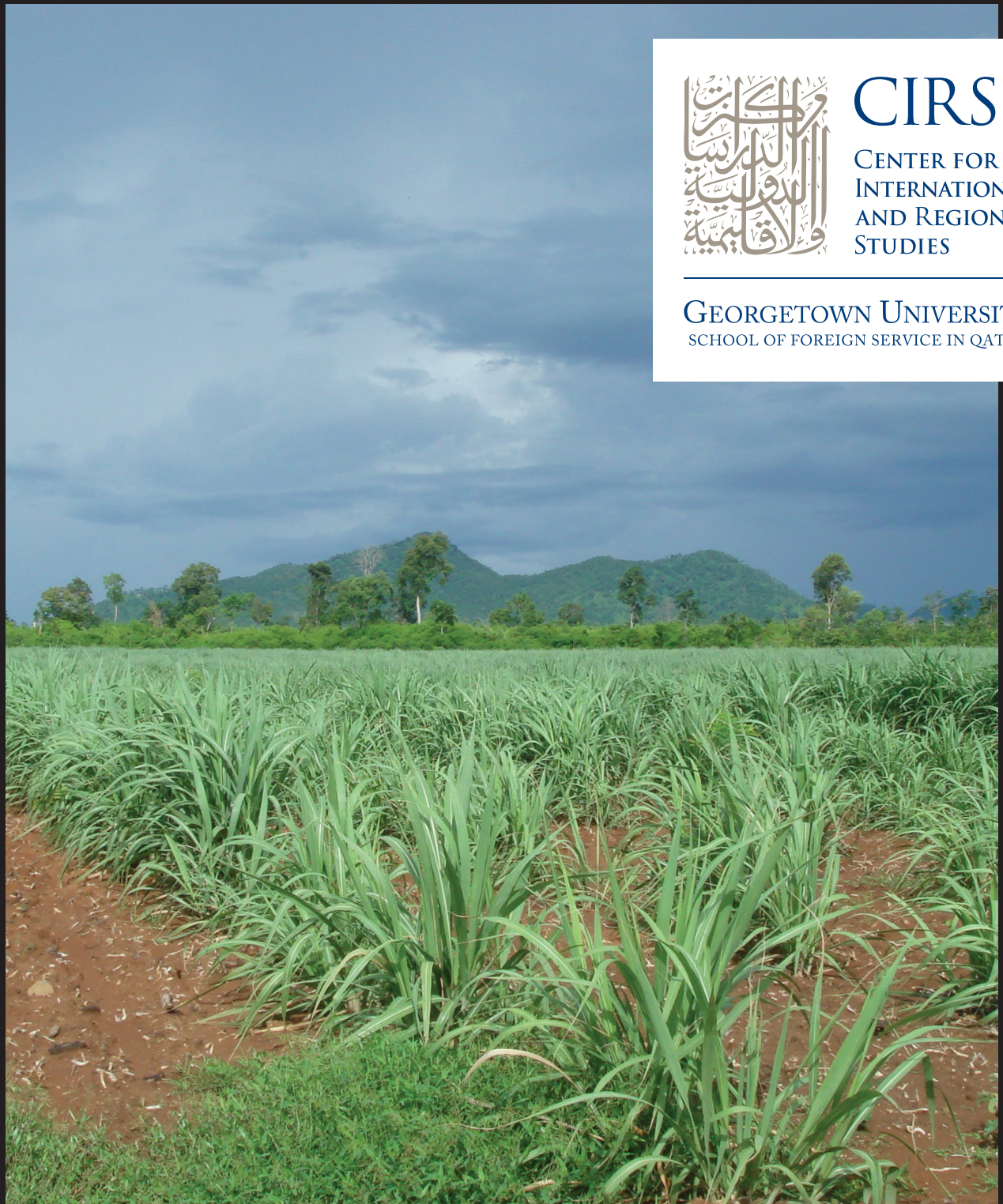




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GCC STATES' LAND INVESTMENTS ABROAD

THE CASE OF CAMBODIA
SUMMARY REPORT

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ABOUT THE CIRS RESEARCH INITIATIVE

Despite the critical regional interest in food security and food sovereignty, there is a dearth of available information on the subject as it relates to the Middle East. It is widely acknowledged that there exists a lack of available data on the subject on which to base sound analysis. This scarcity of data and non-reliability of data means that academic work on the subject of food security in this region remains limited to non-existent. A scholarly approach to this issue is both valuable and timely. With that as its goal, CIRS launched a research initiative on "Food Security and Food Sovereignty in the Middle East" and held working group meetings to discuss the topic.

The CIRS goal is to contribute to the existing body of knowledge on food security and food sovereignty in the region through supporting original research on the topic and has funded empirically-based, original research projects in order to fill the existing gap in the literature. Under the broader initiative, CIRS has created a scholarly forum for studying the main themes in food security and food sovereignty in the Middle East. Through regular CIRS-sponsored research meetings, grant awardees were able to share their research findings with other academics, policymakers, and practitioners.

This report is part of a larger CIRS-funded research project on "External Food Security Strategies: Risks and Opportunities for the Gulf States" by Mary Ann Tétreault, Trinity University; Benjamin Shepherd, University of Sydney; and Deborah L. Wheeler, United States Naval Academy. The project examines several Gulf states seeking agricultural land in developing countries. This strategy offers the possibility of securing reliable long-term food supplies but has been criticized as risking exploitation of communities in the host countries. This project examines two cases of Gulf-state land investments in developing country agriculture to develop a long-term prognosis for this going abroad strategy. The questions addressed are: What risks accrue to Gulf state investors in pursuing it? and What could increase the likelihood of long-term success?

ACKNOWLEDGEMENTS

Thanks to the Center for Regional and International Studies (CIRS) at the Georgetown University School of Foreign Service in Qatar, who funded the fieldwork for this project as part of their research initiative on "Food Security and Food Sovereignty in the Middle East." This fieldwork forms part of Benjamin Shepherd's Ph.D. research into foreign land acquisitions as a food security strategy for Gulf states. The data presented here will be analyzed in greater detail in his dissertation.

GCC STATES' LAND INVESTMENTS ABROAD

THE CASE OF CAMBODIA

This report has been prepared using data generated from fieldwork in Cambodia. It seeks to evaluate the country as a potential long-term source of agricultural staples for Gulf Cooperation Council (GCC) member states as part of their national food security policy strategies.

This research has been undertaken as part of the “Food Security and Food Sovereignty in the Middle East” research initiative generously funded by the Center for International and Regional Studies (CIRS) at the Georgetown University School of Foreign Service in Qatar. The project examined both Cambodia and Ethiopia as prospective targets of agricultural investment by GCC states. This report focuses on Cambodia and there is a sister report laying out the evidence from Ethiopia. The findings of the project as a whole can be found in the Center for International and Regional Studies’ forthcoming edited volume on *Food Security and Food Sovereignty in the Middle East*.

The main conclusion drawn in both reports is that the acquisition of agricultural land in developing countries like Cambodia and Ethiopia is a poor and risky strategy for the objective of securing food supplies for GCC states. This is because such approaches tend to dispossess, injure, or impoverish local communities, jeopardizing the viability of projects.

This report also highlights the substantial opportunities for GCC states to invest in the Cambodian agricultural sector and proposes a potentially more reliable path to deliver the desired food security objectives by investing in smallholder agriculture instead of large-scale land acquisition.

Although manifesting differently, similar problems—specifically, the risks associated with land-focused investments—are common between the two case studies and are likely to be encountered in other developing countries as well. At the same time, the opportunity for increasing productivity—presenting the possibility of generating surpluses for export—exists in both Cambodia and Ethiopia, and probably in other developing countries too. The path to addressing domestic food security prior to exporting excess production, however, varies greatly and is substantially more difficult in Ethiopia than in Cambodia. Nevertheless, the possibility of investment in smallholder farmers to increase productivity, deliver surpluses for export, and provide competitive markets for surplus production exists in both cases and will also be apparent in other target countries.

This suggests that, with some further research into other potential investment hosts, there are sound opportunities for GCC countries to use investment in developing country agriculture as part of their long-term food security policy mix as long as those investments are approached in a careful, constructive, and well-regulated way. To this end, some recommendations are made in this report for further research and for GCC policymakers to re-think national food security policies.

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Introduction

Global food prices continue to be under pressure after the spikes in 2008 that saw protests, unrest, and an increase in the number of people around the world going hungry.¹ As a result, many governments are increasingly concerned about “food security.” The member states of the Gulf Cooperation Council (GCC) are no exception. Developing reliable long-term food supplies is imperative for the continued stability of these states and the well-being of their populations. GCC states must contend with difficult conditions for domestic agriculture, high dependence on food imports, and vulnerability to whims of food trading partners, some of whom limited exports during the 2008 crisis.

One strategy being pursued by GCC members along with other nations, notably China and South Korea, is the acquisition of arable land—henceforth “land deals”—in foreign countries. The purpose is to establish intensive farming overseas and import produce back to their domestic markets. In theory, especially because it targets land in developing countries with low agricultural productivity, this strategy can have benefits for both investor and host states. However, this approach has been widely condemned as detrimental to the food security of the developing country host and as a new form of exploitative economic colonialism. It is suggested that these projects are likely to worsen further the situation for the poor in those countries.

This research sets out to examine the actual situation with respect to developing countries hosting such land deals and to suggest some guidelines for GCC policymakers to minimize harm to local communities and maximize the long-term success of investments made in the pursuit of food security objectives.

Using the Kingdom of Cambodia as a host country case, one conclusion that this report reaches is that there is an excellent opportunity for developing agricultural productivity and increasing overall food availability through investment in developing country agriculture. However, the report also concludes that the strategy of trying to secure control over land in Cambodia in the hope that this will lead to food security in GCC countries is flawed. Therefore, the way investments are made must be reconsidered. As this report illustrates, deals focusing on land do not guarantee productivity improvements and risk dispossessing local farmers, creating unrest and the real possibility of violent conflict. This instability is bad in and of itself, especially for the affected communities, but it also jeopardizes the reliability of exports back to the investors’ home market. Dispossession of local farmers also risks increasing poverty and reducing access to food by rural communities affected by these investments. This too risks disruption of export flows to the investor. Together these limit the effectiveness of a land-focused strategy.

Instead, a more reliable and effective form of investment would be to build the capacity of local farmers in the host country to improve their own productivity in order to produce surpluses for export. This facilitates reliable productivity improvements and an increase in the availability of food for export. It also preemptively mitigates the risks of violence and instability and the threat to exports that result from foreign investors often forcing smallholding farmers from their land. In conclusion, the report makes some suggestions as to how such investments might be facilitated. It recommends some policy considerations and identifies some areas for further research.

Context: Food Security as a National Strategy

Background

The Gulf Cooperation Council (GCC) member states have differing levels of domestic agricultural capacity. Saudi Arabia, for example, has invested massively in high-technology, large-scale wheat and cattle production. In

¹ During 2007 and 2008, food prices sky-rocketed. There are a number of explanations, including unregulated commodity speculation on food staples, and the flow of food production, especially US-grown corn, into biofuel production. See Miguel Robles, Maximo Torero, and Joachim von Braun, “When Speculation Matters,” *IFPRI Issue Brief* 57, Washington DC: International Food Policy Research Institute, February 2009; Donald Mitchell, “A Note on Rising Food Prices,” World Bank Policy Research Working Paper no. 4682 (July 2008). This was associated with protests, riots, and violence in as many as 30 countries and were, in turn, linked to political upheaval in some weak states such as Haiti and Madagascar. See *BBC News* articles: “Mexicans Stage Tortilla Protest,” February 1, 2007; “Food Riots Turn Deadly in Haiti,” April 5, 2008; “Haitian Senators Vote to Fire PM,” April 12, 2008; “Madagascar in Crisis,” March 18, 2009; “Madagascar Leader Axes Land Deal,” March 19, 2009. See also, Alexander Nicoll, “The Simmering Food Crisis,” *IISS: Strategic Comments* 14, no. 9 (2008); Jerome Taylor and Andrew Buncombe, “The Food Crisis Begins to Bite,” *The Independent*, April 25, 2008. Some also drew links between rising food prices and the Arab Spring. See Sarah Johnstone and Jeffrey Mazo, “Global Warming and the Arab Spring,” *Survival: Global Politics and Strategy* 53, no. 2 (2011): 11-17; and David Rosenberg, “Food and the Arab Spring,” *The Middle East Review of International Affairs (MERIA) Journal* 15, no. 3 (2011).

some respects, this has been quite effective. Wheat self-sufficiency was achieved in the 1980s and continued until 2009. However, it has come at a grave cost to the Kingdom's non-renewable water resources, and the ongoing water consumption needs of desert agriculture makes this infeasible in the medium and long term.² GCC states with little land per capita—UAE, Kuwait, Qatar, and Bahrain—have less capacity to develop local agriculture on a large scale, especially for granary staples. However, they have explored options for domestic agriculture and have undertaken or encouraged various projects such as Kuwait's vegetable farms and air-conditioned dairy barns.

Despite these initiatives, all GCC member states remain heavily dependent on food imports. From the experience of the 2007/2008 food price rises and the sudden imposition of export controls by some key trading partners, all GCC states have recognized the need to diversify their sources of key staple foodstuffs. This is important to ensure that there are long-term reliable and affordable food sources that are protected from unpredictability and the risks to pricing and supply inherent in what is in effect an unregulated and highly distorted global market.³

One of the obvious options for GCC states is to purchase agricultural land in other countries for the purpose of intensive farming in order to send the produce back to their own domestic markets. However, this strategy has been subject to widespread criticism as being detrimental to the food security of developing country hosts and as a new form of exploitative economic colonialism.⁴

This report explores the foreign land investment strategy for GCC members as it pertains to the specific case of Cambodia. It assesses the mechanisms for acquisition of Cambodian farmland by foreign investors and considers the strategy as a means of developing GCC state food security and as a source of either constructive development or destructive foreign interference for the host country. In doing so, this report seeks to identify strategies for investment by GCC members that can work towards long-term domestic food security objectives and that can make a constructive contribution to the development of the host country. This last point is of central importance. A strategy that is ultimately destructive to the host country is unlikely to provide a reliable source of food imports for the investor over the long term.

Food Security

Food security has been defined by the Food and Agriculture Organization (FAO) of the United Nations (UN) as:

exist[ing] when all people, at all times, have physical, social and economic access to sufficient, safe and nutritious food that meets their dietary needs and food preferences for an active and healthy life.⁵

While there are some significant limitations with this framing,⁶ there are three important aspects of food security that GCC policymakers thinking about utilizing foreign farmlands must consider. This report is concerned with the first and third of these aspects.

The first pertains to the consistent, long-term availability of sufficient, affordable food imports, especially for staple products. The second relates to how supply is equitably distributed in a society to ensure that all people

² Benjamin Shepherd, "Above Carrying Capacity: Saudi's External Policies for Securing Food Supplies" (paper presented at World Congress of Middle Eastern Studies, Barcelona, July 19-24, 2010). Available at: http://www.insight-in-security.com/insight/wp-content/uploads/2012/05/Shepherd_-_Saudi-Arabias-external-policies-for-securing-food-supplies-9Jun2010.pdf.

³ Despite economic logic suggesting that poor countries with cheap labor and abundant agricultural resources should be the most competitive agricultural producers, agricultural markets are dominated by North American and European producers who are heavily subsidized by their governments, which grossly distorts the international market for agricultural commodities. For example, see Rajesh Aggarwal, "Dynamics of Agriculture Negotiations in the WTO," *Journal of World Trade (Law-Economics-Public Policy)* 39, no. 4 (2005); John Frydenlund, "Sowing the Seeds of Failure: A Critique of the 2007 US Farm Bill," Global Subsidies Initiative, 2007; Malgorzata Kurjanska and Mathias Risse, "Fairness in Trade II: Export Subsidies and the Fair Trade movement," *Politics, Philosophy & Economics* 7, no. 1 (2008); Clive Potter and Mark Tilzey, "Agricultural Multifunctionality, Environmental Sustainability and the WTO: Resistance or Accommodation to the Neoliberal Project for Agriculture?" *Geoforum* 38, no. 6 (2007); and World Trade Organization, "Agricultural Negotiations Background," 2011. Despite, or indeed because of, these distortions, there is little agreement on regulation of international trade in agricultural products. Reaching an agreement on agriculture (the "AA") remained the primary obstacle in the WTO Doha Round of negotiations.

⁴ See Seif Madoffe, "Africa: Biofuels and Neo-Colonialism," *Weekly Forum for Social Justice in Africa*, June 4, 2009; George Monbiot, "Snatching Food From the Mouths of the Poor," *The Guardian*, 2008; James Petras, "The Great Land Giveaway: Neo-Colonialism by Invitation," *Global Research*, Centre for Research on Globalisation (December 1, 2008).

⁵ Food and Agriculture Organization of the United Nations, "The State of Food Insecurity in the World" (2010), 8.

⁶ Benjamin Shepherd, "Thinking Critically About Food Security," *Security Dialogue* 43, no. 3 (2012).

in the country can access and afford to eat healthy, appropriate (in terms of nutritional needs, culture, religion, climate, etc.) food all of the time. The third aspect is the problem of availability, equitable distribution, and affordability for the population of the countries where land is being targeted. At first glance, this latter point might not seem much of a concern for GCC policymakers and could too easily be ignored as being irrelevant or too difficult to influence. However, even with firm contractual arrangements in place, if the host country government experiences a crisis such as protests and unrest over lack of food in the host country that requires requisitioning resources contractually committed to the foreign buyer, domestic pressures will override foreign obligations.⁷ This potentially creates a source of conflict between the investor state and the host country at the same time as jeopardizing the flow of exports from the project.

Such situations, in conjunction with local tensions, limit the effectiveness of investments unless serious risk mitigation strategies are undertaken. The key point is that for foreign food security arrangements to be predictable and reliable over the long term, understanding of—and, if necessary, investment in—the conditions in the host country is required. The evidence from Cambodia will bear this out.

Land Deal Investors

State organs of GCC countries and their corporate citizens are pursuing foreign land deal projects. Sometimes the line between what is a state-led or a corporate-led investment is unclear. Some examples include Kuwait's reported acquisition of 130,000 hectares in the Kampong Thom province of Cambodia, the investments made by Qatar's Hassad Food Corp, which is a wholly state-owned enterprise, and investments made by Saudi Arabian corporations which are underwritten financially by the Kingdom's Agricultural Development Fund.

One of the questions that arises from the blurring of state and corporate activity is whether the primary objectives of the investments are purely for profit—whether from speculation or sales revenues—or primarily to deliver on national food availability objectives. Regardless of the answer to that question, one of the problems with both state- and corporate-led investment—as compared with multilateral development aid spending—is the lack of transparency on the nature of the deals, with details hidden either as diplomatically sensitive or commercial-in-confidence.

For the rural communities in the host country affected by land deals, any bad effects are not dependent on whether the investment is state-led or corporate-led, but rather on how well executed the project is. Creating the conditions for ensuring a well-executed investment project—whether funded by the state, a sovereign wealth fund, or private capital—is likely to require some degree of regulation or other intervention by the investor state government.

Moreover, for investments to be *successful* from the perspective of the investor state government—meaning a sufficient and reliable flow of the desired staple foodstuffs into the investing country—a degree of state involvement is necessary. Purely corporate-led investments will follow profit-maximizing opportunities instead. GCC state firms are already investing in and involved in land deal ventures in South East Asia, but not necessarily for the production of core staples, nor necessarily for exportation back to their home market.⁸ Other corporate investments may merely seek speculative gains—for example, from increasing land values—and may not deliver on domestic food security objectives at all.

Table 1 below outlines some of the GCC states' land investments abroad. This is not a complete list; it is based on publicly available information. There are many deals with unclear details and others that are not publicly announced, including an arrangement between Saudi Arabia and Ethiopia for up to 1,000,000 Ha reported by a Saudi policymaker.⁹

⁷ This is not so different from the 2008 food price “crisis,” where countries that imposed export bans on produce were the ones with poverty, hunger, or domestic stability problems and experiencing, or at risk of, protests against high food prices. These included India, Pakistan, and Kazakhstan. See United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA), “Export Controls Curtail Aid for Hungry Neighbours,” *IRIN News* (2008).

⁸ Examples include GCC firms such as Abbar & Zainy (Saudi Arabia) and Alpha Fruits (Kuwait) involved in fruit plantations in the Philippines exporting to different foreign markets such as Japan, Korea, and countries in Europe and the Middle East.

⁹ By way of comparison, total land area of Kuwait is 1,782,000 Ha and Qatar is 1,159,000 Ha. Saudi Arabia's total irrigated area is 1,731,000 Ha. Landportal.info reports 86 land deals in Cambodia and 71 in Ethiopia making them two of the most targeted countries after Mozambique with 92. So far, Mozambique has not been targeted by any of the GCC member states.

GCC Investor State	Host Countries	Stated Purposes for Projects	Scale of Deals
Saudi Arabia	Ethiopia, Sudan, Senegal, South Sudan, Russia, Philippines, Argentina, Egypt, Mali, Mauritania, Nigeria, Niger (Suspended by host in 2009), Pakistan, Zambia	Direct export of maize, soybean, fodder, rice, palm oil, prawn, bananas, pineapple, vegetables, wheat, poultry	Of these deals, 16 cover 1,713,357 Ha. Five of these are in Ethiopia
UAE	Sudan, Algeria, Morocco, Egypt, Ghana, Indonesia, Namibia, Pakistan, Romania, Spain, Sudan, Tanzania	Direct export of potatoes, olives, dairy, olive oil, citrus, fodder, maize, palm oil, rice, sugar cane, dates, alfalfa, cereals, cotton, sunflowers, peanuts, sorghum	Of these deals, 5 cover 1,882,739 Ha
Qatar	Cambodia, Sudan, Turkey, Brazil, Vietnam, Pakistan, India, Ghana, Indonesia, the Philippines, Australia	Direct export of sheep, wheat, cereal, rice, barley	Of these deals, 4 cover 642,630 Ha
Kuwait	Cambodia, Laos, the Philippines	Direct export of rice and maize	
Bahrain	The Philippines	Direct export of bananas and rice	
Oman	The Philippines	Direct export of rice	

Table 1: Known GCC Land Investments Abroad

Sources: “Food Crisis and the Global land Grab,” January 2012 and Landportal.info, May 2012. Thanks for the assistance of Deborah Wheeler from the US Naval Academy for her contribution to collating this data.

When GCC policymakers are developing food security policies that include investment strategies in developing country agriculture, it is important to consider the impacts of unregulated behavior by its corporate citizens. This is especially so for firms running state-funded programs or those who benefit from or use the advantages gained by association with the state’s food security policy and receive support for extra-territorial activities. However, even firms that do not directly benefit from the government’s policies have the potential to create problems for the state and the pursuit of its objectives if they create bad situations within the host country. This supports the contention that investment strategies and regulatory controls should be developed by the investor state government if long-term food security objectives are to be met. The “Recommendations and Next Steps” section of this report makes some suggestions to this end.

Research Method

This report has been written using data gathered from field research in Cambodia undertaken between May and July 2011. This research included interviewing stakeholders from as many perspectives as possible, including:

- policymakers, bureaucrats, and government officials;
- foreign investors familiar with the Cambodian agriculture sector and investment advisors in Cambodia acting for foreign investors;
- representatives of local Cambodian agri-business;
- international donor organizations working on development projects related to land and agriculture;
- journalists, academics, and think-tank analysts who have researched and commented on the sector and the commercial and foreign investment in it;
- civil society organizations working with farmers and villagers who have experience of commercial and foreign investment projects; and,
- the farmers and villagers themselves.

In total, 35 formal interviews were conducted and evidence was also drawn from many more informal discussions. Some of the interviews and many of the informal discussions were with groups of respondents in order to elicit broader participation. In all cases, it was made clear to participants that they would remain unidentifiable to ensure that they felt as comfortable as possible to express openly their experiences and views. Any exceptions to this have been canvassed directly with the individual before inclusion in this report.

Quantities of documentary data have also been accumulated during the field research period, including (translated) copies of legislation, legal case notes, media reports, policy documents, and academic/think-tank reports and publications.¹⁰

Opportunity for Agricultural Investment in Cambodia

In many respects, Cambodia is an ideal prospective agricultural partner for GCC states. It is a largely agricultural country with some fertile lands. The unique flood and drainage cycles of the Tonle Sap lake and Mekong river annually renew nutrient-rich silt deposits. Agriculture employs 72.3% of the population¹¹ and 80-90% of the population lives on and derives its income from the country's rice lands in the Tonle Sap and Mekong basins.¹² Nevertheless, Cambodian agriculture suffers low productivity, and there is considerable opportunity to generate and contribute new production to world food output.

Cambodia is not land-locked; it has a container port in the capital, Phnom Penh,¹³ and a seawater port facility at Sihanoukville, making the logistics of export to GCC states feasible.¹⁴ Cambodia has a relatively low population in relation to the amount of available arable land¹⁵ and fresh water resources, meaning that local food availability requirements are relatively easy to meet. This presents the possibility of generating substantial surpluses for export. The amount of available land is probably even higher than official records suggest, because official data may overstate the amount of forest cover by as much as 15% of the country's total area.¹⁶

Dry paddies lying fallow in the wet season suggest that lack of water is a problem for Cambodian agriculture. There certainly are some concerns for Cambodian water resources, particularly related to upstream damming of tributaries along the Mekong river, threats to the vital annual flood cycle of the massive Tonle Sap lake, and a tropical seasonal cycle which leaves five months of the year without rainfall. Nonetheless, the country has considerable fresh water resources. Estimates of renewable water are around 8,400 cubic meters per capita, which

¹⁰ A note on Khmer terms and transliteration:

The predominant ethnic group and language in Cambodia is Khmer. In general, Cambodians refer to themselves and Cambodian things as Khmer. However, not all Cambodians are Khmer; there are about twenty different ethnic groups including Thais, Viets, Chams, and various indigenous groups. In the interests of inclusion of all Cambodians, including non-Khmers, I use the term "Cambodian," unless specifically referring to a Khmer.

The Khmer language has its own script, originally derived from Sanscrit. With 24 vowels and 33 consonants (and many of the letters having two different pronunciations), transliteration of Khmer words into accurately pronounceable English equivalents is notoriously difficult. To make matters worse, there is no standard transliteration method. Although there is a handful of widely used conventions it is very common for people to make up their own phonetic transliterations. This can make using English language versions of places or people's names fraught with difficulty and searching the internet using transliterations frustratingly ineffective. For example, the Amlaing district of Kampong Speu is also transliterated as Amlaeng, Armlaign, and Umlaing. Even more frustratingly, Khmers expect precise pronunciation (partly because innuendo is frequent from mispronounced words). This means that trying to pronounce a poorly transliterated word can lead to confusion. Where possible, I use the transliteration that appears to have the most common currency.

Khmer names are presented with family name first, but, to confuse matters, any honorific (Dr, Mrs, Miss, Mr, etc) is applied to the given name. So Ngo Sothath is Mr Sothath even though Ngo is the family name. Sometimes Khmers educated in the West swap the order of their names to reflect western convention. I include Khmer names in full in the bibliography to ensure references are easily traceable.

¹¹ National Committee for Population and Development, "Cambodian Population Datasheet," (Royal Government of Cambodia, Office of the Council of Ministers, Phnom Penh, 2010).

¹² National Institute of Statistics, "Statistical Yearbook of Cambodia," (Royal Government of Cambodia, Ministry of Planning, Phnom Penh, 2008), 50.

¹³ The Phnom Penh container terminal is a shallow-draught port that connects to Saigon's deep-water port via the Mekong River.

¹⁴ Sihanoukville to Doha is 4,196 NM; a journey of 11 days and 16 hours by ship steaming at 15 knots, based on data from Sea-rates.com: <http://www.searates.com/reference/portdistance>.

¹⁵ FAOSTAT data on arable land area calculations in 2008 and population estimates in 2010 puts 3.8 Cambodians per hectare of arable land. By way of comparison, there are 12.5 Ethiopians and 17.6 Filipinos per hectare of arable land, while vast agricultural countries like Australia and Kazakhstan have just 0.5 and 0.7 people per arable hectare respectively (but Kazakhstan is landlocked and lacks the logistical infrastructure to ship large volumes to the GCC and so would not lend itself to GCC land investment). At the extreme other end of the scale lies Qatar, with 116 people per hectare and Kuwait with 267.

¹⁶ The government claims that about 59% of the country's land area is covered by forest down from 70% in the 1970s according to FAOSTAT, "Statistical Database of the Food and Agriculture Organization of the United Nations," 2011, <http://faostat.fao.org/default.aspx>. However, a 2007 report commissioned by the government from the civil society organization Global Witness suggests that 35% is a more realistic estimate. As a result of this report, Global Witness was banished from the country. Other estimates of remaining forest land have been even lower. See Chris Lang, "Deforestation in Vietnam, Laos and Cambodia," in *Deforestation, Environment, and Sustainable Development: A Comparative Analysis*, ed. Vajpeyi D.K. (Westport, Connecticut and London: Praeger, 2001): 111-137, for a list of other sources. Further, the current rate of deforestation is unclear, with illegal logging still continuing. A provincial law enforcement official interviewed at an isolated rural café during the course of researching this paper openly admitted to be waiting to collect a payment from a timber "exporter" for "staying blind."

is more than twice that of its neighbors Thailand and Vietnam,¹⁷ both of which are amongst the world's largest rice producers and exporters. The important issue is not the availability, but the extent of access to—and the efficient, sustainable, and long-term management of—these water resources.

The agricultural flatlands are suitable for major tropical-climate staple crops like rice, corn, soy, cassava, and sugar. It is debatable whether rice lands should be utilized for crops that can also be grown in land unsuited for rice such as undulating and foothill land. Undulating land is also often suitable for other plantation (but not necessarily staple food) crops including fruit, coffee, and cashew. Although clearly not a food security crop, rubber has constituted a growing sector in Cambodia and although there is little activity in biofuels so far, some jatropha and oil palm have been cultivated.¹⁸ There is also growing interest in the feasibility of multi-cropping; for example, growing soy and cassava as under-crops within rubber, cashew, banana, sugar palm, or mango plantations.

Further, there are significant forest areas that are legally protected and that are a valuable resource for the country's future ability to earn Reducing Emissions from Deforestation and Degradation (REDD) carbon credits. However, these have been decimated by illegal logging and corrupt practices, and large areas of forestland continue to be destroyed.¹⁹ What remains of Cambodia's forests provides an opportunity for GCC members to purchase long-term REDD carbon credits in partnership with a reputable, independent organization that can provide suitable ongoing auditing, monitoring, and accountability mechanisms to ensure that payments are not made against degraded or deforested lands and that continuing encroachment on paid-up protected areas is prevented.

Compared to some of its neighbors, Cambodia faces little risk from natural disasters. Geographically, it is relatively well-protected from cyclones and typhoons, and is geologically stable, with no history of earthquake or volcanic activity. Another advantage of Cambodia's agricultural sector is the available labor force. Over 60% of the population is under 24 years old, and the vast majority lives in the major agricultural areas.²⁰

Cambodian Government Policies

A clear opportunity for investors, at least in the short-term, is an extremely open foreign investment regime—so open that it comes close to representing the neoliberal ideal. There are few regulatory constraints on foreign investors other than a constitutional article limiting land ownership to Khmer nationals. A company with a 51% or greater Khmer equity stake is considered as Khmer national.²¹ The Economic Land Concessions (ELCs) detailed later in the report provide the possibility for foreigners to secure long-term control—70-99 years with the possibility of renewal—over land-holdings, including 100% foreign-owned ventures, effectively circumventing the land ownership limitation.

Neoliberal policies extend to investor incentives which allow full repatriation of profits and production, decade-long income tax holidays, and tariff-free inputs to production.²² In addition, setting up a presence in one of the Special Economic Zones also brings VAT exemption and expedited customs processes. These policies are collectively described by policymakers as Cambodia's "open door."²³ It differs from China's open door policy and the Vietnamese *Doi Moi* by being markedly more widely open in both inward and outward directions. Both

¹⁷ Data from the FAO's AquaSTAT, "Hydrological Statistical Database," 2010.

¹⁸ At least three Economic Land Concessions have been granted for the purposes of growing either jatropha and/or oil palm for biofuel production. See Economic Land Concession Secretariat, "Economic Land Concession Profiles: Kampong Speu (Fortuna)," (Royal Government of Cambodia, Ministry of Agriculture Forestry and Fisheries, Phnom Penh, 2010).

¹⁹ As illustrated by the 2007 Global Witness report. Moreover, an NGO interviewed for this research reported on dangerous contention in the ASEAN REDD Readiness Preparedness Proposal (RPP) discussions where Royal Government of Cambodia officials were embarrassed by claiming as virgin forest lands some of the same areas that NGOs were presenting as evidence of continuing unbridled deforestation (interview with the director of a civil society organization, June 17, 2011, Phnom Penh).

²⁰ National Institute of Statistics 2008.

²¹ Council for the Development of Cambodia, "Cambodia Investment Guidebook," (Royal Government of Cambodia, Phnom Penh, 2010).

²² Chea Vuthy, "Investment Opportunities in Cambodia (Presentation to Foreign Investors)," (Royal Government of Cambodia, Cambodia Special Economic Zone Board, Phnom Penh, 2011).

²³ Interview with a government official, June 24, 2011, Phnom Penh.

Vietnam and China carefully manage and regulate the terms of foreign participation in their economies in a way that Cambodia does not.²⁴

The reason that these policies may only be advantageous to the investor for the short term is that they offer little benefit to the development of the Cambodian economy in the longer term, because of:

- little company tax revenue;
- little income tax revenue from very low-paid labor;
- no guarantee of local employment;
- little prospect of re-investment of company profits;
- little incentive to establish local businesses for supply of inputs;
- no guarantee of technology transfer; and,
- for food staples, no incentive to supply local markets at low prices over exporting to more profitable markets.

Together, these are likely to have a corrosive effect on the local economy. Furthermore, if pressures on local food supplies were to result from all production being repatriated without generating income for local communities, possible instability and unrest would create a difficult environment for the foreign investor. This demonstrates the need for investors to ensure that projects are executed with strong local economic growth and clear benefits for, and improvements in the circumstances of, local communities.

Cambodian Agricultural Productivity

Cambodian rice lands produce 2.8 tonnes of paddy rice per hectare which is considerably lower than Vietnam at 5.5 and China at 6.5. The world's most productive rice yields are from Australia's high-technology dry-land rice cultivators who produce up to 9.0 tonnes per hectare.²⁵ Cambodia's average of 2.8 tonnes per hectare disguises wide variation in productivity. The majority of farmers, who are poor, smallholder families frequently with un-irrigated land, are lucky to achieve over one tonne per hectare and can only manage one crop per year in the wet season. According to government figures, only 4% of the 2.4 million hectares of wet season paddy is cropped twice per year and dry season paddy only covers 385,000 hectares, which is 16% of the rice growing area.²⁶ Rice lands nearly always remain fallow out of season instead of producing alternative crops, except perhaps for growing subsistence vegetables.

Stemming post-harvest losses is another area with considerable scope for improvement in food availability. The government states that the average annual production loss of wet season rice crop due to pests and bad weather conditions is 10%.²⁷ The International Rice Research Institute (IRRI) estimates that total post-harvest loss of the rice crop in Asia can be as high as 30-50%, including not only loss attributed to pests and bad weather, but also during processing, storage, and transportation.²⁸

Even during the wet season rice-growing cycle, significant areas of Cambodia's agricultural flat lands remain fallow in some parts of the country, especially outside the Tonle Sap basin. For example, as observed from driving through areas of Kampong Speu, Kandal, Takeo, and Prey Veng provinces in rice growing season, only a

²⁴ Vietnam, for example, requires enterprises with any foreign capital exceeding 30% to operate under license from the Vietnamese Government (which has a limited duration); to employ only Vietnamese staff and manage and train Vietnamese nationals to replace any foreign staff used in setting up the enterprise; to buy Vietnamese inputs in preference to foreign inputs "where technical and commercial conditions are similar;" to prioritize Vietnamese investors in future equity transactions pertaining to the enterprise; to use Vietnamese insurance companies and auditors; to bank with Vietnamese banks in Vietnamese currency and to transfer all technology brought into the enterprise from outside Vietnam. See Socialist Republic of Vietnam, "Law on Foreign Investment in Vietnam," (National Assembly, Hanoi, 1996).

²⁵ FAOSTAT 2011; it should be pointed out that measuring productivity in terms of tonnes per hectare is limiting. It fails to account for other crucial elements of efficiency, including water consumption and environmental sustainability as well as ignores social productivity such as the generation of income for the farming communities. Nonetheless, it is the standard form for comparing "productivity."

²⁶ Supreme National Economic Council, "Policy Paper on the Promotion of Paddy Production and Rice Export," (Royal Government of Cambodia, Phnom Penh, 2010).

²⁷ Ibid.

²⁸ Trina Mendoza and Martin Gummert, "Fighting Asia's Post-Harvest Problems," International Rice Research Institute, *Rice Today* 6, no. 1 (January-March, 2007).

proportion—less than half—of the rice paddies were actually planted. Farmers asked about this explained that lack of water is the problem: there is only enough water to cover one in two, three, or four paddies. This compares starkly to the verdant paddies covering the Tonle Sap basin areas of Kampong Thom and Siem Reap provinces, where access to water—in season—is easy.

The Cambodian Ministry of Agriculture, Fisheries, and Forestry (MAFF) promotional material suggests the problem in provinces like Takeo may be less about the absence of water than effective management of, and access to, water.²⁹ This is borne out by comparison of rice growing areas along the Mekong in Vietnam and the Mekong riparian provinces of southern Cambodia.³⁰ The differences on either side of the Vietnam and Cambodia border are apparent in satellite images as visible in Figure 1.



Figure 1: MODIS Satellite Image showing Cambodia-Vietnam border
Source: Mekong River Commission for Sustainable Development, “Monitoring the Mekong Basin,” 2002.

Expanding irrigation and introducing dry-season and dry-area growing technologies within Cambodia have the potential to increase agricultural output tremendously. Significantly greater productivity can be achieved from existing agricultural lands without encroaching on forestlands and other protected environments.

For poor farmers, being enabled to increase per season yields and grow a second and even a third crop—whether rice or another crop—each year offers considerable opportunity for productivity improvement, income gains, and a route out of poverty.

Productivity Issues

There are multiple reasons behind the lack of agricultural productivity, especially with regards to rice. As already identified, lack of irrigation and inadequate water management practices are the most pressing problems that limit the exploitation of the full capacity of the flat, rice-growing areas both in and out of season.

²⁹ Agriculture Technology Department, “The Problem of Chormpa Commune (Khmer Language),” (Royal Government of Cambodia, Phnom Penh, 2011c). This press release uses the story of Champa commune in the Bati district of Takeo province to instruct farmers to take proper care of water resources so that they have a sufficient amount available for growing a dry-season rice crop and urges farmers to learn about using dry-season seeds and technology to maximize their crop yields.

³⁰ See FAOSTAT for comparative data: <http://faostat.fao.org/site/339/default.aspx>.

Another major problem is the lack of access to markets to sell the crops. Many smallholders grow enough to eat and only a little surplus to sell because of difficulties finding buyers. One of the problems for Cambodia's rice competitiveness is that while farmers are paid amongst the lowest farm-gate prices in Asia for their crop, the Freight Onboard (FOB) price is higher than that of Thai and Vietnamese exporters due to what a senior policymaker described as "the habit of unofficial payments."³¹ This has the dual—and contradictory—effect of making Cambodia's rice production uncompetitive in the global marketplace because the price is too high and disincentivizes farmer production because the price for them is too low.

There is a small number of modern, commercial rice driers and rice mills in Cambodia, and some of them do not have enough capital to buy up the available rice crop at the time of the wet season harvest. This means some of these new mills are operating well below capacity. Instead, a significant amount of Cambodian surplus rice production is sold to Vietnamese and Thai traders who come into the country during the harvest season and buy up Cambodian farmers' paddy rice very cheaply as they are not competing with many other buyers. This produce is trucked to Vietnam and Thailand for processing where, as one NGO representative wryly said, "It is probably re-exported in bags claiming to be 'Rice of Vietnam.'"³²

All this leads to the third problem, which is the lack of capital. As well as being a problem for processors, it is hard for the rural poor to afford the necessary inputs: fertilizers, pesticides, and suitable seeds, as well as the required mechanization. Most smallholder farming is still largely manual. A tractor and community-size rice drier can service a number of families across a few hectares, but neither the capital for equipment and operating costs—especially fuel—nor the social organization required to share it is currently available.

Combined with the lack of technology—including seeds suited to specific conditions, fertilizers, and pesticides—there is a marked lack of technical knowledge in these areas. So when, for example, chemical fertilizers are used they are not always utilized correctly or effectively.³³ There are programs seeking to address these issues run by both the government and the national technical body for the rice industry, the Cambodian Agricultural Research Institute (CARDI).³⁴ Effectively commercializing these technologies and their efficient use for the Cambodian industry—and delivering the concomitant knowledge transfer—is a key role for commercial enterprise entering the sector.

Most of the issues identified here are recognized by the Royal Government of Cambodia. The Supreme National Economic Council (SNEC) recently drafted a rice industry Policy Paper which was released by the Council of Ministers (the Cabinet) in 2010.³⁵ Overall, this is a comprehensive and well-conceived document, but there are concerns about its implementation. As one advisor said, "The rice policy does assume that each of the ministries will implement their component of the plan."³⁶ In theory, this should not be a problem, given that nothing is required outside their normal scope of business. However, the policy is frequently in contradiction with existing entrenched policy mechanisms, especially Economic Land Concessions. For example, the rice policy attempts to promote a smallholder-centric approach to agriculture while the ELC and Cambodia's land laws favor large-scale agglomeration and industrialization of agriculture. The rice policy is predicated on awarding land tenure to the rural poor, enshrining rights to land that the ministries have largely not been willing to relinquish. Further, as the advisor acknowledged, "policy co-ordination [between Ministries] is weak, and Ministries are used to doing their own thing, in their own way."³⁷

³¹ Interview with a policy advisor to the prime minister, June 28, 2011, Phnom Penh.

³² Interview with a researcher at a development NGO, May 27, 2011, Phnom Penh.

³³ While in Phnom Penh, the author attended the premiere of an AusAID funded Khmer-language film *Bang Beng, The Intelligent Farmer* (Directed by Chum Reap, a Meta House Production, 2011) that is ostensibly a love story but primarily intended as an education video for rural farmers in the effective use of chemical fertilizers.

³⁴ The Ministry of Agriculture, Forestry, and Fisheries usually issues press releases that show the minister, or a senior official, teaching rural farmers how to do something better. See Royal Government of Cambodia's Agriculture Technology Department announcements (Khmer language): "Minister Says Koh Chheak Village Should be Key Rice Supplier" (2011a); "Official Tells Farmers at Chhouk to be Ready for this Year" (2011b); "Ten Types of Rice Seed Increase Yield and Quality" (2011d); CARDI, in addition to its primary scientific research objectives, offers practical training programs and information services for Cambodian farmers. More information can be found at CARDI, "Training Overview," http://www.cardi.org.kh/index.php?option=com_content&view=article&id=82&Itemid=4.

³⁵ Supreme National Economic Council (2010).

³⁶ Interview with a policy advisor to the prime minister, June 28, 2011, Phnom Penh.

³⁷ *Ibid.*

Expanding Agricultural Areas

In addition to the improvement of existing agricultural areas, there is the opportunity to expand the amount of land under cultivation. The problem-cum-opportunity is that of recently deforested areas, so-called “degraded forestlands.” These, if reforestation is infeasible, could potentially be turned to agriculture. One of the potential issues with this is that jungle soil is not always well suited to agriculture. Another is the additional cost—in comparison to simply enhancing the productivity of established agricultural lands—of clearing and developing the land for agriculture. A third is the “lightening rod” problem of attracting reputational criticism for abetting forest destruction in pursuit of opaque agri-business agendas.

However, the area of degraded forestlands is potentially as much as 15% of the land area of the country.³⁸ This suggests that conservative and well-planned projects that can mitigate those issues offer significant viable potential. Strategies may include combining multi-cropping and soil-sensitive agriculture with measures to assuage fears of continued de-forestation; perhaps either forest rehabilitation projects or REDD protection of remaining forest areas.

Technical Difficulties for Investors

Infrastructure

As a destination for investment, Cambodia has several technical disadvantages; the principal one being the lack of infrastructure. The Sihanoukville and Phnom Penh ports provide limited infrastructure for the import or export of goods and neither is a deep-water port. Sihanoukville, although a seaport—unlike Phnom Penh’s Mekong River terminal—is still only capable of handling ships with draughts of less than 8.5 meters³⁹ and of handling granary shipments of up to 10,000 tonnes.⁴⁰

Transportation within the country can also be difficult. Although the network of national highways has been substantially upgraded and can support long-distance truck transport, rural road quality ranges from poor to very poor. With little respect for road laws, traffic is chaotic at best, and accidents are common. There is an ingrained practice of corruption where minor authorities—such as traffic police—routinely “tax” commercial vehicles at regular stops along the transport routes, meaning that hundreds of Riels in graft might need to be paid before a load reaches Sihanoukville. In some parts of the country, minor roads are limited or non-existent, meaning that ox-carts and ox-cart tractors threading along rice paddy berms can be the only means of transporting produce to the main arterial thoroughfares. There are also a few abandoned rail-lines in the country, including one from Phnom Penh to Sihanoukville. These are currently being rehabilitated by development aid funding from the Asian Development Bank (ADB) and Australia.⁴¹

Irrigation, as already identified, is another major infrastructure deficit. Historically, during the Angkor empire period, there was sophisticated irrigation in Cambodia⁴² and historians claim that up to 2.5 tonnes of rice per hectare was produced without fertilizer.⁴³ Indeed, the power of the Angkorean kings is believed to have been predicated upon wet-rice agriculture.⁴⁴ Centuries later, barehanded and incompetently engineered (re-) construction of irrigation systems across the country was one of the major projects of the Khmer Rouge genocide

³⁸ Based on the difference between official and unofficial estimates of remaining forest cover and making the best (or worst) case assumption that the entire difference is “degraded forest land.”

³⁹ See Sihanoukville Autonomous Port, “Berthing Facilities & Accommodation,” <http://www.pas.gov.kh/berthing-accommodation.html>.

⁴⁰ Supreme National Economic Council (2010), 24.

⁴¹ For more information on this see Asian Development Bank, “Project Data Sheet,” 2012. <http://www.adb.org/Projects/project.asp?id=37269>.

⁴² Jacques Dumarcay, *The site of Angkor* (Oxford: Oxford University Press, 1998).

⁴³ Stephen Murray, *Angkor Life* (San Francisco: Bua Luang Press, 1996); Joel Brinkley estimates three or four rice crops per year during the Angkorean period in *Cambodia’s Curse: Modern History of a Troubled Land* (Melbourne: Black Ink, 2011), 201.

⁴⁴ David Chandler, *A History of Cambodia*, 4th ed. (Boulder: Westview Press, 2008), 34 and 53.

regime for its enslaved population.⁴⁵ Today, official figures state that 1.6m Ha of the approximately 2.4m Ha of rice lands are irrigated.⁴⁶ However, this figure is misleading because it refers to wet season irrigation, meaning that the irrigation does not necessarily increase the productivity of the paddies for the remainder of the year. Figures from FAO's 2006 AquaSTAT state that just 317,000 Ha are "actually irrigated." There have been a number of long running ADB irrigation projects⁴⁷ and, more recently, China has committed substantial sums of money in both aid and loans to irrigation, including proportions of a \$1.2b aid package in 2009.⁴⁸ In 2008, Kuwait promised \$486m of a \$546m package to irrigation.⁴⁹ Despite this massive investment, continued lack of adequate irrigation speaks of the scale of the problem.

Power and communications infrastructure outside the main cities and towns is poor. Electricity is currently expensive, the majority of which is imported from Vietnam (and some also from Thailand), and there is no national power grid. The construction of eight hydro and three coal-fired power plants are slated to come progressively on line between 2011 and 2020, along with the development of national high-voltage transmissions links.⁵⁰ Although GSM telecommunications coverage is reasonably widespread, the lack of electricity—and rural poverty—means internet penetration and connectivity is very low.⁵¹

Other aspects of infrastructure with implications for foreign investors are the poor healthcare and education sectors. Health clinics, where present, are not necessarily staffed with skilled medical labor and have been indicted in Brinkley's analysis as being tainted by corruption, greed, and incompetence.⁵² This means that in the interests of a fit, healthy, and productive workforce, the onus can be on an investor to provide medical care for its employees and their families. Brinkley's assessment of Cambodia's education system is similarly harsh and is evidenced by the problem of very low levels of education,⁵³ especially in the rural areas, due to a combination of poor quality schooling—even where schools are present—and low attendance levels. This can be problematic for businesses requiring a trained labor force.

On one hand, this education deficit indicates the need for better schooling, especially in the rural areas where agricultural investment projects will take place. To this end, the Government made clear that benevolent investment in projects such as schools, teacher training, and teacher funding are regarded favorably in conjunction with commercial investment programs.⁵⁴ On the other, it also points to the commercial opportunity for vocational training as a supporting service for investors to consider.

Together all these factors mean that large-scale agricultural investments need to consider infrastructure development as an integral part of any project.

⁴⁵ In "Investment in Land and Water in Cambodia," Chann Sinath of the Ministry of Water Resources and Meteorology (Royal Government of Cambodia, Phnom Penh, 2002) described the situation thus:

Under the Khmer Rouge regime almost the entire population was forced to grow rice during the wet season and to construct water management and irrigation systems during the remaining five to eight months of the year. The country was to be turned into a super irrigation system, to become independent of rainfall. Those few persons with the required technical knowledge had either fled, been killed or were not consulted during this process. Prompted by the Angka, the political centre of the Khmer Rouge, irrigation canals were not laid-out according to contour lines, but on the coordinates which were drawn on most 1:50,000 scale topographical maps. As a result, canals from this period are situated in North-South or in East-West directions having a distance between them of one kilometre. In this way a chessboard of canals was formed. Due to the inclination of the terrain, sections of these canals often slope in different direction than other sections.

This clearly made much of that existing infrastructure worse than useless.

⁴⁶ Ministry of Water Resources and Meteorology, "Dialogue on the Water and Environmental Governance," (Royal Government of Cambodia, Phnom Penh, 2008).

⁴⁷ Asian Development Bank, "Cambodia Irrigation Infrastructures for Improving Agricultural Production," 2006.

⁴⁸ Cheang Sokha, "China agrees \$1.2b in Aid for Economic Development," *Phnom Penh Post*, December 22, 2009.

⁴⁹ Thet Sambath, "Kuwait to Loan \$546m for Infrastructure," *Phnom Penh Post*, August 22, 2008. This investment has been linked to the Kuwaitis' opaque land acquisition in Kampong Thom province.

⁵⁰ Council for the Development of Cambodia (2010), III-30.

⁵¹ That said, Cambodia's mobile telephony market is one of the most competitive in the world with nine networks competing for subscribers amongst a total national population of just 14 million people.

⁵² Foreigners and the elite tend to avoid medical treatment in Cambodia and travel to Bangkok or Singapore; Brinkley, *Cambodia's Curse*, 249-256.

⁵³ *Ibid.*, 207-219.

⁵⁴ Interview with a government official, June 24, 2011, Phnom Penh.

High Cost of Credit and Inputs

As previously mentioned, accessing sufficient operating funds can be difficult for many Cambodian businesses. A major reason behind this is the high cost of credit. According to investment advisors in Cambodia, banks are unwilling to lend to Cambodian businesses without onerous collateral requirements which to date have largely been limited to property. To compound the problem, banks are now reputedly worried about being overly exposed to loans secured by such properties and their willingness to lend is declining further.⁵⁵

This situation combines with the lack of an effective government monetary policy. Although Cambodia has its own currency, the Riel, the Cambodian economy runs largely on the US dollar. The Riel's value is pegged to the dollar and is used only as small change and by the poor. The central bank does not set official interest rates and even if it did, with the Riel forming such a small part of the local economy, the government's ability to influence the cost of money in the economy is weak.

This situation actually provides a significant opportunity for foreign investors to partner with local enterprises eager to leverage lower cost capital to improve efficiency and capacity within Cambodia's agricultural sector.

Compounding the problem of lack of available cash-flow is the cost of inputs. Capital equipment, as well as operational inputs—fossil fuels, fertilizers, pesticides, and increasingly, engineered seeds—are all imported and therefore expensive. Through its open foreign investment regime, the government offers exemption from duties on these products for foreign investors, which has a side-effect of disadvantaging local farmers.

Sectoral Issues Facing Cambodian Farmers

In addition to the same technical difficulties confronting the foreign investor and the problem of even higher costs, Cambodian farmers face a number of other issues that contribute to the inefficiency and under-production in the sector. These include:

- lack of easy access to markets, both local and export, specifically to competing buyers for bulk quantities of crops and produce that ensure fair prices and disposal of production;
- lack of access to market information, especially prices and buyer patterns, to inform growing decisions;
- high post-harvest granary losses to pests;
- high loss of spoilable produce, especially due to sparse access to rural refrigeration, refrigerated transport, or packaging;
- lack of education in effective and efficient use of chemical pesticides and fertilizers;
- lack of access to technology—notwithstanding the work of CARDI in addressing this; and,
- lack of effective social organization of farmers such as farmer cooperatives. These have been very effective both in developing agrarian economies such as Vietnam and the Philippines, but also in highly developed agricultural economies like Australia.

There are two reasons why these are important. First, they present additional opportunities for investors, especially as providing channels to new markets, but also in the provision of technology and knowledge-transfer. Second, and more importantly, they speak to the issues that need to be addressed for Cambodian farmers to maximize their own productivity and deliver yield increases as surpluses to markets like the GCC member states.

Governance, Corruption, and Political Risk

While investors must be cognizant of the negative aspects outlined above, commercial investment in most cases is likely to be one of the most productive tools for tackling these issues, so they should not deter properly prepared prospective investors. On the other hand, investors may be confronted with risks from the country's political and judicial systems that may be harder to tackle.

⁵⁵ Interview with an investment advisor, June 13, 2011, Phnom Penh.

Political Risk

Superficially, the political climate appears favorable to foreign investors and not only because of the liberal investment policies. The Government can make claims of political stability because the Prime Minister and the ruling party—Hun Sen and his Cambodian People’s Party (CPP)—have been in power for almost thirty years. To their credit, they have largely secured the country after years of turmoil. In particular, they have reduced petty and non-political violent crime in the country, making it safe and easy for foreigners to do business. They have also supervised the rejuvenation of the capital, Phnom Penh, especially with the provision of services including water, sanitation, and electricity, along with major city beautification projects. By aggregate measures such as GDP and GDP per capita, they have overseen sustained incremental growth of the Cambodian economy.⁵⁶

However, despite the indications of stability and growth, the real situation is less encouraging. First, despite the massive expenditure and effort undertaken by the United Nations during the UNTAC intervention in the early 1990s which established an electoral system and the theoretical foundations for democratic government,⁵⁷ there is no effective mechanism for the transfer of political power. Notwithstanding regular elections, the Prime Minister and the CPP have control over the electoral commission and the vast majority of Khmer language media. Between these and allegations of vote buying, intimidation, and violence against the opposition, the Prime Minister remains in power despite either suspect elections⁵⁸ or winning elections even when he or his party have received substantially less than the required proportion of the vote.⁵⁹

The problem for foreign investors is less a broken electoral system than the lack of an effective process for the transfer of power. Effective and more honestly self-defined single party systems such as China’s and monarchies with long-serving rulers such as the Gulf states have successfully established and tested mechanisms to transfer power within the ruling system. No such mechanism exists in Cambodia.

Much like Mubarak and Ben Ali were in Egypt and Tunisia, Prime Minister Hun Sen appears to be grooming his eldest son, Hun Manet, as his successor. The West Point graduate has been appointed to the rank of Major General in the RCAF and is playing a high profile role in the Preah Vihear border dispute with Thailand, building his profile and his leadership credentials within the military. While it remains to be seen when a power transition might take place—and it could be years away—a father-to-son transfer of power is unlikely to be easily accepted by other powerful members of the CPP, including Sok An, the principal Deputy Prime Minister.⁶⁰ It is also difficult to gauge public reaction to such a move within a society that has become used to elections, even though they are yet to result in change.

Backroom deals made with political cronies have the potential to become unstuck when they have enriched the cronies at the expense of the local population. The collapse of cronyist deals since the fall of Mubarak in Egypt attests to this.⁶¹ Similarly in Cambodia, just because deals are made with *Oknha*⁶² (cronies) does not make

⁵⁶ ASEAN figures state Cambodia’s GDP per capita in 2001 at \$295, growing to \$692 in 2009, which compares to the official Cambodian figure of \$778 for 2009.

⁵⁷ This followed the Vietnamese administration put in place after the invasion that ended the Khmer Rouge (KR) rule that Cambodians refer to as the Genocide Regime. Prime Minister Hun Sen himself was a member of the KR who broke from the regime, escaped to Vietnam, and was part of the driving forces behind the Vietnamese invasion in 1979. He held positions in the Vietnamese-backed government of Chan Sy and took power on Chan Sy’s death in 1984 and has effectively ruled the country in one form or another since then, notwithstanding the United National Transitional Authority in Cambodia (UNTAC) mission and the “joint Prime Ministership” with Norodom Ranariddh—a deal which Hun Sen brokered when he lost the UNTAC-run election.

⁵⁸ During the 2008 national elections, despite foreign observers claiming them to be “mostly” free and fair (United Nations Development Program, “Checks and Balances: Outcome Evaluation 2006-2009,” Phnom Penh, 2010), most NGOs interviewed identified substantial flaws with the monitoring processes that failed to recognize deeply suspect practices during the elections—not to mention the party control of Khmer language media. The suspect practices ranged from infringement of electoral rules and ballot procedures favoring the CPP through to political violence and intimidation which, while largely absent during the weeks of the election, had continued unabated in the preceding years. In this time frame, these practices had already effectively pre-determined the outcome in the CPP’s favor.

⁵⁹ In the 1993 elections that resulted in the joint Prime Ministership, 60% of the population voted against Hun Sen, who had only the *second* largest bloc of votes after Ranariddh’s FUNCINPEC party. Hun Sen not only managed to gain joint Prime Ministership, but retained control of all the key ministries, including the military. For a discussion of this period, see Brinkley, *Cambodia’s Curse*, 83-99, esp.87.

⁶⁰ There are five deputy prime ministers.

⁶¹ Bradley Hope, “Egypt Freezes Kingdom Farm Land Deal,” *The National*, April 12, 2011.

⁶² An *Oknha* (pronounced “oknya”) is a purchasable, honorific title for wealthy men closely allied to the political elite. The word effectively means “crony” but is used as a mark of respect. *Oknha* are expected to provide largesse, perhaps in the form of building a school or hospital on behalf of the ruling party in a certain electoral district, in return for access to business opportunities and political favors.

them free from political interference nor protected from conflict. The many public arguments involving deals by Senator Ly Yong Phat—one of the leading *Oknha*—attest to this.⁶³

Lack of Rule of Law

The CPP control over key democratic institutions extends beyond the electoral commission and the press. One lawyer described the Cambodian judiciary as “corrupt, incompetent and neither independent nor impartial.”⁶⁴ It is widely accepted that judicial appointments are purchased and made via political connections. Such investments need to be recouped with interest. This makes most judges easily persuadable by payments and the calling in of favors by political masters.

The corruption of the judiciary is evident in the decisions, or non-decisions, made by the courts in relation to the myriad of land dispute cases. In the example of the Udong conflict which will be examined in more detail later, courts of every level decided in favor of the company, despite the clear and unassailable legal right to the land belonging to the villagers in that case.⁶⁵ While there is no firm evidence of money changing hands between the company and the judges, it is apparent that the decisions have not been made in accordance with the law. This situation is repeated for land conflict cases across the country, although in some case, such as Sre Ambel in Koh Kong, the courts continue to avoid making judgments that would entail some kind of action, leaving the complainants in limbo and without recourse, while the powerful corporations continue their activities.⁶⁶

This is evidence of the absence of the rule of law in Cambodia.⁶⁷ Failure of cases to be determined in accordance with the laws and regulations of the state creates a deeply risky environment for foreigners seeking to make reliable long-term investments. It can also make for an unpredictably costly environment in which to do business. One of the problems for investors is not that they can buy a judge in a case, but that they can be just as easily out-bought by an opponent with stronger political connections.

Corruption

Corruption and the lack of rule of law in the Cambodian political system are not limited to the courts. They extend deeply into the operation of the economy. The NGO Global Witness has documented the capturing of the forestry sector and extractive industries by a few members of the elite at the expense of the Cambodian state and people.⁶⁸ These documents describe a funneling of the wealth of the economy into the hands of a kleptocratic elite, while much of the rest of the economy stagnates or declines. As will be examined shortly, it is clear that land concessions for agriculture operate in a similar way.

In response to over fifteen years of pressure⁶⁹ from the foreign aid donors who contribute as much as one billion dollars a year to Cambodia’s budget—about 50% of it—the government finally passed an anti-corruption bill in 2010. It is hoped that this will provide some certainty for investors. After a year and a half in force, only four provincial officials have faced prosecution, giving some credence to claims by observers such as Brinkley and civil society organizations such as Global Witness that the anti-corruption appointees and the legislative processes are institutions of the CPP and the ruling elite, so little real change is to be expected.⁷⁰

The breadth of corruption is also reflected in the deeply lopsided nature of economic growth in Cambodia. Despite respectable economic growth rates, GDP per capita growing from \$295 in 2001 to \$755 in 2008 (before the impact of the global financial crisis was reflected in the statistics), Cambodia has one third of the country

⁶³ See for example David Boyle and Vong Sokheng, “Koh Kong King Halted,” *Phnom Penh Post*, July 22, 2011; Steve Finch, “EU Needs to Take a Firm Stand on Sugar,” *Phnom Penh Post*, May 23, 2011.

⁶⁴ Interview with a lawyer, June 2, 2011, Phnom Penh.

⁶⁵ This is according to the National Assembly, “Land Law (English Translation)” (Royal Government of Cambodia, Phnom Penh, 2002) and confirmed by an interviewed lawyer.

⁶⁶ Interview with the director of a civil society organization, May 30, 2011, Phnom Penh.

⁶⁷ During the period of field research for this report, the World Justice Project released its “Rule of Law Index” report for 2010/2011, which included Cambodia for the first time. It ranked Cambodia worst out of the 13 regional countries for 7 out of 8 Rule of Law factors, and 12th out of 13 on the “Fundamental Rights” factor. In global rankings, Cambodia ranked 65th or 66th out of the 66 countries included in the rankings for 3 of the same 8 factors. See The World Justice Project, “Cambodia,” http://worldjusticeproject.org/sites/default/files/Cambodia_CP.pdf.

⁶⁸ Global Witness 2007 and 2009.

⁶⁹ Many would argue that foreign aid donors have taken a weak stance against corruption in Cambodia.

⁷⁰ Brinkley, *Cambodia’s Curse*, 289–296; George Boden, “New Cambodian Anti-corruption Plan Will Not Stop High-level Offenders,” press release, Global Witness, October 12, 2010.

surviving on under \$1-a-day, the highest rates of infant mortality in the region, a low life expectancy, and low literacy levels. This compares with its neighbor, Vietnam, that has experienced a similar economic growth rate from \$415 in 2001 to \$1050 in 2008, but, with 88 million people compared to Cambodia's 14 million, has nonetheless managed to reduce \$1-a-day poverty to less than 10 percent of its population, has substantially longer life expectancy (75 years compared to 62), and has much higher levels of literacy (93% compared to 78%).⁷¹ The comparison between Cambodia and Thailand is similar. These statistics speak to the detrimental economic impact of large-scale corruption on Cambodia and Cambodians.

However, the seeking of graft is not limited to Cambodia's elite. In an informal conversation, it was described to the author as "a national pastime" even to the extent that in some poor and understaffed schools, particularly in the rural areas, students are apparently not allowed to stay in class unless they can pay the teacher a daily supplement to their meager salary. This anecdote illustrates the extent to which graft is deeply ingrained and tolerated by Cambodians.

The effect of the corruption and lack of rule of law in Cambodia creates an investment environment where costs can be unpredictable and where avenues for recourse in the event of a dispute are few. During an informal conversation, one person recounted that they were at a promotional meeting with an advisory firm promoting the Cambodian market to new investors when another, foreign, attendee broached the serious question of whether they could request refunds of payments that had been made to officials to "facilitate" a project in the event that the project failed to materialize. The question was met with some derision, the answer, of course, was "no."

While these problems collectively create some practical and budgetary difficulties for investors—not to mention reputational risk, especially in western markets—they also contribute to a problem of growing political instability arising over disputed resources and confiscated assets. In some cases, this is even making its presence felt in the form of violence. If this continues to worsen, it has the potential to jeopardize the long-term stability and predictability of investments. The climate of prospective violence is especially prevalent in the context of Economic Land Concessions being granted to investors to exploit the opportunities of Cambodia's agriculture sector. These will be examined shortly.

Other Elements of the Political-Economic Situation

While having less direct impact on foreign enterprises, it is nonetheless important for prospective investors to understand some of the other factors at play in the Cambodian political landscape.

Media and Limits of Expression

First of these is the lack of a free press, indicating a culture that discourages freedom of expression and one that has a history of repression of political opposition. While the English language press—dominated by the *Phnom Penh Post* and *Cambodia Daily*—has low penetration and very limited Khmer readership and thus can afford to take a relatively objective stance and report frankly, the Khmer language press is much more constrained. Newspapers reach only a small percentage of the Khmer population and radio is the premier medium for news. All radio stations are owned, controlled, or otherwise influenced by the CPP with the exception of Voice of America (VOA) and Radio Free Asia (RFA). These two stations have daily programs broadcast into Cambodia in the Khmer language. They are, for most people, the only alternative source of information to the government-sponsored radio. VOA and RFA are regularly criticized by Hun Sen for telling lies or inciting unrest.⁷² Defamation and misinformation laws are frequently used to prosecute and imprison outspoken journalists or NGO advocates.

Recently, an employee of one of the large human rights NGOs was sentenced to two years' imprisonment for distributing pamphlets that the government deemed to be against its interests. Given some legal peculiarities in the case, which lawyers say are in violation of the country's legal code, this case illustrates not only the risks of speaking out against the government, but the lack of rule of law as well.⁷³

⁷¹ GDP per capita data from ASEAN "Macroeconomic Indicators," <http://www.aseansec.org/18135.htm>; and poverty measures from UNICEF, "Information by Country and Programme," <http://www.unicef.org/infobycountry/index.html>.

⁷² See, for example, Uong Ratana, "Media Critic: Hun Sen Blasts VOA, RFA 'Insults,'" *Phnom Penh Post*, July 25, 2011.

⁷³ LICADHO, "Appeals Court Upholds Groundless Conviction of LICADHO Staff," press release, July 14, 2011, <http://www.licadho-cambodia.org/pressrelease.php?perm=254>.

This kind of prosecution is not the only problem facing NGOs in Cambodia. A new NGO law is currently being considered by the government that would give officials the right to close down any NGO that was deemed unsuitable. Even more worrying, a draft of the bill also contains provisions that bans protests that don't have prior government permission and bans NGO advocacy of collective action in the face of human rights abuses, effectively preventing NGOs from supporting groups affected by issues such as forced eviction from their land.

Prime Minister Hun Sen claims that “NGOs are out of control ... they insult the government just to ensure their financial survival” and that “terrorist groups might settle in the country under the guise of NGOs”⁷⁴ as the reason behind the proposed law. However, civil society, including highly respectable international NGOs such as Freedom House, sees the law as:

plac[ing] troubling restrictions on the ability of NGOs to organize and function effectively..., undermin[ing] the very basis of an independent and vibrant civil society and would have a chilling effect on democratic development in the country.⁷⁵

Donor-Dependent Economy

The role and number of NGOs in Cambodia is significant in part because the economy is deeply dependent upon donor aid. NGOs are both a mechanism for delivering projects and for monitoring the extent of respect for human rights during the development processes flowing from aid injections. The yearly level of aid funding exceeds 50% of the country's annual budget, reaching US\$1.1 billion in 2010. This excludes China's separate massive aid promise that year.

An important ramification of this for prospective investors is that, despite the anti-corruption rhetoric that donors have engaged in for many years, this massive in-flow has abetted corruption and fostered a deeply inefficient economy. The problem is not only that the corruption continues unabated, but that the expenditure frequently delivers a fraction of its value. For example, despite a string of projects generously funded by the Asia Development Bank, the World Bank, and bilateral donor partners to improve sanitation in Cambodia, 82% of rural Cambodians still live without improved sanitation.⁷⁶

This is both an opportunity and a risk for commercial investment. The opportunity is to deliver an infrastructure much more efficiently than has been managed by the donor-dependent economy, but the attendant risk is that without transparency, oversight, independent auditing, and strict control, vast expenditure risks achieve very little of value.

Discord between National and Local Interests

Of particular relevance to land issues is the recognition that despite the CPP holding power both nationally and in most local areas, there exist tensions between national and local political interests. One of the local authorities interviewed in a district of Kampong Speu province made it clear that the national award of land concessions put him in a “difficult and hazardous” position. On the one hand, he had “to protect the people from harm and their property from damage” but on the other, he needed to “protect the company [that the national government had awarded the concession to] from harassment and its valuable equipment from damage.”⁷⁷ Given that the land concession was granted to the company over local people's land, this placed the man in an extremely difficult situation, despite his loyalty to the CPP:

My job is now difficult and hazardous. I am cursed by the people and blamed by the company for being an agent of the people, for inciting protests, and allowing them to happen. Even though I try to facilitate discussions, the people throw stones at me.⁷⁸

⁷⁴ Council for the Development of Cambodia, “An Elite Position: How Not to Make a Profit,” (Royal Government of Cambodia, Phnom Penh, 2011), 30.

⁷⁵ Freedom House, “Proposed Cambodian NGO Law Fundamentally Flawed and Should be Abandoned,” press release, April 1, 2011.

⁷⁶ UNICEF, “Cambodia: Statistics,” http://www.unicef.org/infobycountry/cambodia_statistics.html.

⁷⁷ Interview with district authority, June 3, 2011, Kampong Speu province.

⁷⁸ Ibid.

This type of situation is apparently commonplace. Another example reported was when the state decided to press unsubstantiated charges against local individuals. Although the local authorities knew the falsity of those charges, they were duty-bound to enforce them (or presumably lose their jobs and political positions). To complicate matters, many local authority positions are appointed by the CPP *and* face the electorate during elections; meaning they need to keep both their masters and constituents happy in order to keep their jobs and positions.

Land Deal Investments

Economic Land Concessions

The Cambodian Government has established a process known as Economic Land Concessions (ELCs) for providing long-term quasi-ownership of substantial areas of land to investors for the purposes of economic development. Concessions of up to 10,000 hectares are granted either to local or foreign enterprises on lease terms of between 70 and 99 years with the possibility of renewal.

For foreign investors seeking land in Cambodia, ELCs are the primary mechanism by which it can be easily obtained. Foreign investors can gain a concession directly, in conjunction with a local partner, or buy out an already-awarded ELC from its concessionaire or from the government if the government has determined to rescind the grant from the original concessionaire. This last circumstance arises when the government determines that inadequate development has been undertaken under the terms of the ELC.

Ministry of Agriculture, Fisheries, and Forestry data from 2011 states that 956,690 Ha have been awarded as valid concessions to 85 different entities across 16 provinces.⁷⁹ A further 379,034 Ha are slated for contract cancellation. One human rights monitoring NGO provided data gathered from its provincial offices⁸⁰ that suggests approximately 1.5 million Ha are currently under concession in those provinces alone.⁸¹ An economist who has been researching ELCs agreed that it was likely that there were many more concessions than publicly accounted for, but noted the lack of resources within the ministry to maintain up-to-date records.⁸² He also added that there might not be strong motivation within the ministry to keep up-to-date records of ELCs in the public domain.

One such record that is not in the public domain is a 130,000 Ha concession granted to the State of Kuwait in Kampong Thom province that appears on an internal MAFF spreadsheet from 2009 obtained by the author, but for which scant public information is available. One of the major issues with this concession is that it far exceeds the 10,000 Ha maximum. The same spreadsheet also includes lines for Qatar and Israel as concession holders but no further information on these concessions is officially available.

There are at least nine other concessions that substantially exceed the 10,000 Ha size limit, but most of these were concluded prior to the 2001 Land Law. A concession granted to the Cambodian firm Phea Pimex in 2000, not long before the land law passed, is 315,000 Ha. These are apparently now subject to renegotiation, although the owner of Phea Pimex, an *Oknba*, is supposedly refusing to negotiate.⁸³

The regulations for the granting of ELCs are laid out in Sub-Decree No. 146 pertaining to the 2001 Land Law.⁸⁴ The process for obtaining an ELC in accordance with the sub-decree requires a number of steps to be undertaken. These include:

- an Environmental Impact Assessment (EIA);
- a Social Impact Assessment (SIA);
- community consultations with affected peoples; and
- a Master Plan that details the development that will be undertaken on the land, including income generating projects and investment in infrastructure.

⁷⁹ Ministry of Agriculture, Fisheries, and Forestry, “Overall [*sic*] Status of Economic Land Concession in Cambodia,” <http://www.elc.maff.gov.kh/en/news/12-clc-status.html>.

⁸⁰ The organization only has offices in some of the provinces.

⁸¹ Interview with an analyst from a civil society organization, May 27, 2011, Phnom Penh.

⁸² Interview with an economist, June 10, 2011, Phnom Penh.

⁸³ Interview with a journalist, May 26, 2011, Phnom Penh.

⁸⁴ Royal Government of Cambodia 2005.

Lease rates for ELC lands are extremely low; the maximum cost is \$10 per Ha per year. Lands classified as “degraded” are available with no lease fee at all.⁸⁵ This compares to what an economist said would be the price that would have to be paid by a Khmer farmer for a regular commercial lease on, for example, his neighbor’s land of between \$200 and \$500 per Ha per year.

Further, the sub-decree defines specific limitations on land that can be awarded under an ELC including:

- only land classified as “state private land” can be granted, meaning the land has no private or other (e.g. indigenous) title claims and no public use (such as “state public land” or other state lands such as protected lands);
- size of grant not to exceed 10,000 hectares; and,
- “there will not be involuntary resettlement by lawful land holders and that access to private land shall be respected.”⁸⁶

In effect—in theory—the right to develop any concession thus excludes certain nominated areas which may include villagers, villager subsistence farms, and preservation areas (for example, natural fresh watercourses).

In light of these legal limitations it is curious that the Ministry of Environment (MoE), whose responsibility pertains to preserved and protected lands—in theory *not* “state private land”—is apparently able, along with the MAFF, to issue ELCs. According to the *Cambodia Daily*, in July 2011, “six land concessions have been granted since June 3, totaling 46,000 Ha in protected areas, to agribusiness companies.”⁸⁷

An academic suggested that the reason that this can occur without apparent contradiction is that the classification of land in many areas remains unclear. This enables officials to be able to classify something as state private land so that it can become a concession.⁸⁸ In his opinion:

I don’t feel that there is much incentive for the Ministries to clarify the classification: at the moment they have competing claims over land. Ministries in Cambodia do not hold land in trust but *own* the land.⁸⁹

It is not only MAFF that deals with sizeable chunks of land, but the MoE and the Ministry of National Defense (MoND) also control large amounts of land. Apparently in the 1990s, prior to the Land Law and ELC sub-decrees, MoND was granting concessions but more recently has been using a swapping mechanism—facilitating land swaps—to derive benefit from commercially valuable land and expand other areas for the military. Oddly, although the Ministry of Land Management, Urban Planning and Construction technically has control over land use and planning, it actually has no control over the land *per se*. Effectively, these Ministries are in competition for land. Some have competing claims over land areas, and boundaries are often neither agreed upon nor clear.⁹⁰

The process for awarding an ELC involves the highest levels of government. For an investor seeking an ELC, first a request is sent to the MAFF ELC secretariat and an inter-ministerial committee is then formed to examine the application, which includes representatives from MAFF, the Council for the Development of Cambodia (CDC), the MoE, the Council of Ministers, and local authorities. As described by a government official “the committee visits the proposed site ... and ... identifies any sensitivities”⁹¹ before making a report to each Ministry and the Council of Ministers. Then, once the Council of Ministers acknowledges or recommends the ELC, it is signed off, in person, by the prime minister. The MAFF is then able to agree the contract with the grantee subject to the PM’s approval. The company must then execute its Master Plan, which is reviewed on an annual basis. If

⁸⁵ Ministry of Agriculture, Fisheries, and Forestry, “The Fixation of Concession Land Rental Fee,” <http://www.elc.maff.gov.kh/en/laws/16-fixation.html>.

⁸⁶ Royal Government of Cambodia, “Sub-Decree on Economic Land Concession (English Translation),” (Office of the Prime Minister, Phnom Penh, 2005).

⁸⁷ Van Rouen, “More Concessions Granted in Protected Areas,” *The Cambodia Daily*, July 6, 2011, 30.

⁸⁸ In the 1980s, under the rule of the communists, all land was owned by the state. Later, the privatization process began, but largely without titling and so few people had documented ownership of land. The land reform process in the late 1990s led to the “2001 Land Law” and gave some rights to people with settlement for 5 years prior to 2001. Others, however, had no rights.

⁸⁹ Interview with an academic, July 11, 2011, Phnom Penh.

⁹⁰ *Ibid.*

⁹¹ Interview with a government official, June 24, 2011, Phnom Penh.

the government decides that insufficient development against the Master Plan has taken place, it has the right to rescind the ELC.

Unfortunately, the awarding of ELCs provides further evidence of the lack of rule of law in Cambodia. There was evidence that none of the ELC projects had followed procedures in compliance with the regulations. A lawyer working on ELC-related matters stated “it would not be outlandish to assume that *no* large-scale ELC has been granted in full accordance with the law.”⁹² Many independent observers canvassed concurred with this view, especially with respect to the procurement of objective EIAs and SIAs and the conduct of meaningful community consultations prior to the award of the concession. Nonetheless, a few interviewees were able to identify projects where some of the central principles of the laws had been applied.

Example of an ELC with Potentially Positive Outcomes for the Local Community

One example of such a project is the Dak Lak concession granted to a Vietnamese firm in Mondulhiri province for a rubber plantation.⁹³ After the initial hostility between the company and the local community—when the contract was awarded without proper EIA, SIA, or community consultation—negotiation between the parties reached an arrangement where:

- A proportion of the villagers’ cropping lands, which are dispersed across the 5,000Ha, will be aggregated to one contiguous area within the concession;
- The company will develop that aggregated area on behalf of the villagers;
- The company will charge the cost of developing each villagers’ area as a loan with 20-year terms;
- The terms of the loan are 3% interest per year and no capital repayments for 10 years which start low at year 10 and increase linearly until year 20;
- Farmers will get paid 80% of the then-current international rubber price for their crop. The international rubber price will be determined by the FOB price on the Bangkok exchange.

The purpose of the delayed capital repayment is because rubber trees have a seven-year cycle before they produce and because their production increases over their lifetime. This means farmers are receiving an income from the rubber before they start repaying the capital. The capital cost is \$2000/Ha. It was calculated that over a 25-year period (i.e. 5 years beyond paying off the loan) this will give the villagers an Internal Rate of Return (IRR) of 24%.

Compared to the disputes, conflicts, and forced evictions that characterize so many ELCs for local communities, this is a good outcome for the local farmers as they get the investment that can lift their farming to aggregated, industrialized, commercial, high-return rubber plantation. However, a major problem remains in that each of the village families receives only 50% of the cropping land they had previously farmed granted to them as part of the aggregated area. A family farming 4 Ha only gets 2 Ha in the rubber plantation and loses the rest. This means that farmers lose half their cropping area and the subsistence value of that land in providing food for their families. It also raises the question as to the farmers’ livelihoods during the 7-year period until the rubber production comes on line, and other questions in respect to how risk is shared on the farmer-owned, but company planted and run, section of the plantation.

Although this outcome hasn’t been reached by following the legal process for an ELC (in terms of EIA, SIA, and community consultation), it has avoided the worst outcomes of many of the other concessions granted with little respect for ELC regulations.

Standard Practice for Granting ELCs

Blatantly illegal awarding of ELCs has included:

- granting of protected lands;
- granting of lands that under the terms of the 2001 Land Law have unassailable private rights;
- forcing involuntary resettlement of lawful landholders;

⁹² Interview with a lawyer, June 21, 2011, Phnom Penh.

⁹³ Interview with a Cambodian economist, May 27, 2011, Phnom Penh.

- denying access to private lands;
- granting of areas larger than 10,000 hectares; and,
- granting concessions without adequate EIA, SIA, or community consultation.

As well as the earlier-mentioned example of the 130,000 Ha Kuwaiti project, a 60,000 Ha concession was granted to a Korean firm in 2008.⁹⁴ Furthermore, it appears to be reasonably common practice for the 10,000 Ha limit to be skirted by obtaining two (or more) adjacent concessions via different company names with connected business interests. The Sre Ambel sugar concessions to Ly Yong Phat companies that will be examined shortly are an example of this.

One NGO has undertaken GIS mapping and analysis of ELC locations and believes there is substantial encroachment on national parks and preservation areas—even beyond the protected areas openly granted by the government as concessions. Unfortunately, the organization is afraid to publish this information due to its sensitivity and the risk of arrest and imprisonment of its staff as a result.⁹⁵

Subjects repeatedly described the EIA, SIA, and community consultation process as derisory. For example, community consultations that took the form of “instructing the community that the land has been granted to an investor and that they have to vacate”⁹⁶ or that “the EIA was created from a Google map.”⁹⁷ The problem with the latter, apart from the obvious issue of missing the point of assessing environmental vulnerability, is that once the ELC, including the questionable EIA, is approved by the Prime Minister, no-one—including the Minister of Environment himself—is willing to challenge the EIA because it has the imprimatur of the chief.

The consensus, which appears to be based on speculation rather than hard evidence, is that ELCs are awarded on the basis of graft payments that make the desired land available to the investor. A government official, when questioned about corruption in the ELC process and whether it was a risk for foreign investors, admitted that:

Yes, there is corruption, like everywhere, but it is not so bad. In the case of getting an ELC, a group [the inter-ministerial secretariat] looks after the process. If you pay graft to someone it will cause a risk, however, if you pay for the ELC as a package, then no one will miss out or become angry so there is no risk.⁹⁸

Another government official said:

You will not be asked to make payments here. Instead, it is more appropriate to pay for services in kind. Granting of shares to important members is better.⁹⁹

Two foreign investors also had views on this. One investor stated that—presumably for a western firm that must avoid entanglement in corrupt business practices—obtaining an ELC is not nearly as simple as the procedure and law suggest. Another said that patience and painstaking effort would be required to follow the ELC regulations and procedures if one wanted to obtain a concession “legitimately.”¹⁰⁰

On one level, the process for ELCs that seems to avoid rigor in the EIA, SIA, and community consultation process might seem to be an “easy in” for a foreign investor. However, the opaque costs, the flagrant disregard for the law, and the awarding of ELCs without adequate consideration for the occupants of the land causes significant problems for those communities and thus risks for investors. This is evidenced by the disputes, conflicts, and violence resulting from the awarding of ELCs across the country.

⁹⁴ Kenertec, “Kenertec Develops a Bio-Complex in Cambodia,” press release, May 14, 2008.

⁹⁵ Interview with the director of a civil society organization, June 22, 2011, Phnom Penh.

⁹⁶ Interview with villagers subject to eviction, June 3, 2011, Kampong Speu province.

⁹⁷ Interview with an analyst from a civil society organization, May 30, 2011, Phnom Penh.

⁹⁸ Interview with a government official, June 24, 2011, Phnom Penh.

⁹⁹ Interview with a government official, June 24, 2011, Phnom Penh.

¹⁰⁰ Interview with an investment advisor, June 13, 2011, Phnom Penh.

Land Rights and Other Tenuring Systems

Before examining these disputes, conflicts, and violence it is worth understanding how ELCs fit within the broader issue of land rights and the ongoing issues over land distribution and titling in Cambodia.

The World Bank, along with some bilateral donors, has been deeply involved in a program called the Land Management and Administration Project (LMAP), intended to secure land titles in target provinces, implement the intentions of the 2001 Land Law in Cambodia, and create a model for further titling by the Cambodian Government. Even though “the project [has] issued more than 1.1 million land titles, mostly to poor people in rural areas”¹⁰¹ between 2002 and 2008, it has nevertheless been criticized for ignoring people most in need of land titles—those threatened by development and resulting evictions.¹⁰² However, given the speed of the program’s implementation, it is reasonable to assume that titling was most likely occurring in the least sensitive and uncontested areas first, avoiding painful problem areas until later. Nevertheless, increasing conflicts over land and systematic criticism by observers forced the position of the World Bank into withholding further funding, in turn causing the government to suspend the project.¹⁰³ The current position is a stalemate where LMAP is stalled, government policies and actions with regards to forcible evictions remain unchanged, and World Bank funds are in limbo.¹⁰⁴

With LMAP stalled, the other mechanism in place for land titling, also involving the World Bank, are Social Land Concessions under a project known as Land Allocation for Social and Economic Development (LASED). As of January 2011, LASED had awarded 1,254 SLCs of between 1.5 and 3.5 Ha to poor, rural families in Kampong Thom, Kratie and Kampong Cham provinces.¹⁰⁵ These are effective mechanisms for providing land reform for farming families who don’t meet the requirements of the 2001 Land Law to obtain legal tenure over a smallholding of farmland. However, although SLCs were brought into being by government sub-decree in 2003, so far these 1,254 are the only ones that have been awarded.

This leaves the majority of smallholder farmers—indeed the majority of Cambodians—without official land titles. Many meet the legal requirements for secure tenure of their lands under the 2001 Land Law, but lack both a title deed and the ability to prove their history on the land. Many others do not meet the legal requirements for secure tenure, but nonetheless feel that they have enough tenure security in a practical sense to continue to invest in their land by farming it and planting perennial crops and trees. Behind this is a widespread custom of unofficial and undocumented tenuring. For example, local people will get permission from local authorities to undertake activities on specific parcels of land, perhaps by paying them a cut of the action (burning forest for cooking charcoal production) or a promise of future benefit (perhaps planting mangos or papaya for future sale). Although these processes can be quite systematic—people know who to go to in a local area to make the tenuring arrangements, what the local rates for land use are, and the local mechanisms for resolving conflicts—these processes are a legal grey area and do not provide surety or protection in the face of tenurial awards, like ELCs, made from Phnom Penh.

Without official and documented tenure, lands are easily (re-)classified by the government as “state private land” and thus suitable for granting as concessions. This is one of the most significant problems behind the granting of ELCs. It signifies two problems for foreign investors seeking land. First, in the absence of existing formal tenurial instruments it is hard to lease land from existing occupiers and be certain that the lease is secure. Second, taking on a grant of land under an ELC may risk dispossession and forcible eviction of the farmers and occupants who are dependent upon that land for their lives and livelihoods.

¹⁰¹ World Bank, “Statement on the Termination by the Royal Government of Cambodia of the Land Management and Administration Project,” press release, September 6, 2009, <http://go.worldbank.org/MOSJT2H711>.

¹⁰² Interview with the director of a civil society organization, June 22, 2011, Phnom Penh.

¹⁰³ Evidence of human rights violations in the course of illegal and forced evictions by the government was presented by a Cambodian NGO to the World Bank’s Inspection Panel—its public accountability mechanism—forcing the World Bank into a position where it could no longer proactively participate in LMAP until the Royal Government of Cambodia—the other principal partner in the project—began proceeding according to the law.

¹⁰⁴ As of the end of 2011, there is much discussion among the donor community in Cambodia about what this brinkmanship actually means. Would the World Bank actually stop funding other activities, or even pull out of the country if the government doesn’t acquiesce on the issue, or will it risk its reputation and seek a compromise with the government, despite the human rights violations? Moreover, will exertion of funding pressure by the Bank on the government—frequently threatened by donors but never seriously implemented—become contagious to other donors? Answers to these questions remain to be seen.

¹⁰⁵ World Bank, “Land Grant Gives Widow Hope to Escape Poverty,” 2011, <http://go.worldbank.org/TFCTB1QZK0>.

Land Disputes, Forced Evictions, and Violent Conflict

The muddy waters of land rights and titles in Cambodia combined with the government's willingness to seize and re-distribute land to wealthy investors—both domestic and foreign—is causing land disputes, forced evictions, and violent conflict across the country. On the one hand, a government official said that:

These are not so common and arise only when companies or individuals do not accept what they are given, and are greedy and want to take over more—for example, take the whole 10,000 hectares even though there are areas excluded because of villages and villagers in some parts. Or they are made problems because someone decides they want to make a political issue out of the ELC. Risk of land conflict can be easily avoided by not being greedy and sticking to what the Government offers.¹⁰⁶

On the other hand, there are reports in the English language press at least two or three times a week of court proceedings, protests, evictions, conflicts, and sometimes violence over the commercial exploitation of land that rural Cambodians depend upon for their life and livelihoods.

Violence

In June 2011, the author witnessed a violent confrontation between villagers and armed police in the Udong district of Kampong Speu province, where about six people were badly injured. A 300-strong police force, which included regular police, military police, and some senior officers from the Royal Cambodian Armed Forces (RCAF), used automatic weapons, tear gas grenades, electric-shock batons, and riot shields in a failed attempt to enforce a court ruling evicting villagers from their land. Despite legitimate and legally unassailable claims to their farmlands under the 2001 Land Laws—they have been continuously resident on and farming the land since 1997—the Cambodian courts awarded the villagers' land to a company owned by a Taiwanese businessman. In this particular case, the basis for the company's title to the land is not an ELC but an alleged back-room deal granting part of the land to the company and an incomplete purchase of the remainder, which the villagers allege the company offered to buy from them but then refused to pay for. This was the second time there was a violent confrontation between villagers and armed authorities over this land. When armed authorities arrived to demolish some of the villagers' houses in March 2010 on behalf of the company, the villagers had been unprepared and said they only retaliated with violence once an elderly village woman was struck unconscious by a policeman with his baton.¹⁰⁷

On this second occasion, the villagers were better prepared and had armed themselves with stones, sling-shots, machetes, poles, and sharpened sticks. However, it appeared to be sheer bravery, fury at injustice, and fear of losing everything combined with a lack of will and capability on the part of the authorities' forces (rather than their hand-made weapons) that saw the villagers prevail on the day.

The lack of will on behalf of the armed forces was not so surprising given that at least one of the policemen on duty was from the village and claimed to be facing his wife and son across the battle-lines. Even though the villagers saw the police off on this occasion, the court order in favor of the company remains enforceable, so it is unlikely to be the last time that the villagers face eviction and demolition of their homes and farmlands. As of July 12, 2011, the press was reporting that the company and authorities were preparing yet again to move in and forcibly evict the villagers.¹⁰⁸

According to some of the local policemen, the company was meeting the costs of the eviction: the cost of the prosecutor, the police forces, the gendarmerie forces, the RCAF, the heavy equipment (earth movers, excavators, etc), and the logistics of getting all these into (and back out of) the rural area.¹⁰⁹ To whom the payment for this was made is unclear. From a business perspective, these payments are bad investment: these are investments that make enemies of one's neighbors and workforce. It would seem absurd to be spending this money when

¹⁰⁶ Interview with a government official, June 24, 2011, Phnom Penh.

¹⁰⁷ Interview with villagers some days prior to the violent confrontation, June 1, 2011, Udong district.

¹⁰⁸ Khouth Sophakchakrya, "Violent Dispute is Far From Over," *Phnom Penh Post*, July 11, 2011.

¹⁰⁹ As background to this, in March 2010, Prime Minister Hun Sen announced a program to obtain corporate sponsorship for 42 military units ostensibly to solve the funding crisis in the RCAF, but which critics say effectively buys military protection for corporate interests. See Brennan Brady, "The Cambodian Army: Open for Corporate Sponsorship," *Time*, June 9, 2010.

potentially the same money could go towards legitimately concluding the transaction with the villagers for the desired land.

This particular eviction order applies to 223 hectares that provides subsistence and livelihoods for 88 families. This is reasonably small in scale, but is not an isolated incident.

Dire Food Insecurity and Hunger

Elsewhere in Kampong Speu province, in the more distant Amlaing district, the author visited two adjacent ELCs for industrialized sugar and corn production on 8,000 and 5,000 hectares respectively. The sugar project alone is forcing the eviction of 1,100 families. Given the size of some of these extended families, the actual number of affected people could be in the range of 10,000–15,000.

The author visited two groups of villagers who had been landholders prior to the granting of the sugar project ELC to the corporation. One group of villagers had “accepted” relocation and “compensation.” The other group was preparing to fight.

The villagers who had been relocated were given “compensation” which consisted of a 40m x 50m plot of land per family, in the remote foothills. As well as being tiny and distant from services, the foothill land is poor quality for growing food; rocky and with sandy soil.

One of these relocated families claimed to have previously owned 20 hectares¹¹⁰ of good quality (but un-irrigated) rice-growing lands on the plain which has now been totally absorbed into the company’s sugar cane plantation. This particular family had eight children, a father too old and frail to work, and an 11-year-old son who wanted to work but had been refused by the company because he is too young. Three of the older daughters had left to cross the border to Thailand to find work. The mother expressed worry about them becoming caught up in the sex trade. She has heard nothing—nor received any money—from them since they left. Even with the older siblings gone, the family is going hungry because the land is insufficient to feed them, they cannot grow, or get, rice, they have no source of income, and they cannot get employment. There is no nearby healthcare or schooling and they could not afford it if there was. Even when the son is old enough to work, the company pays laborers only \$2.50/day which is still insufficient to feed the family, even disregarding the problem of a long journey to buy supplies. Cambodians have coined the Khmer expression for “living ghosts” to describe people like this who are left without food, income, or hope.

When questioned, this family explained that they had not “accepted” relocation, but that authorities had arrived and threatened them until they picked up whatever they could carry and were herded by the authorities out of their homes and on the long trek up to the foothills for over 10 kilometers. They were told not to go back on the threat of criminal prosecution. These villagers said they were, and continue to be, frightened of the authorities.

Instability

The other group of villagers was lucky in that they had land which was adjacent to the road instead of in the middle of the concession area. During the original allocation of the ELC—which according to the villagers was awarded without an EIA, SIA, Master Plan, or any community consultation—they lost their lands more than 200m away from the road in return for \$200 compensation per family. For families with a road frontage of between 60 and 80 meters and 700 to 900 meters deep from the road, they lost between 3.0 and 5.6 hectares and were left with small plots of between 1.2 and 1.6 hectares. The villagers said they were unhappy with this, but stated they had been unwilling to fight the company.

However, the villagers then found that the company was claiming the remainder of their plots and was seeking to forcibly relocate them to 40m x 50m plots in the foothills. Some of the men claimed their names were on arrest warrants being accused of organizing community action against the company. Although they were worried about prosecution, the villagers were more worried about growing enough food and earning enough income from the 1.2-1.6 hectares and were adamant that they would not be forcibly evicted to even smaller plots that they could not gain a living from. They were asking for assistance from NGOs to support taking the company to court and were preparing to protest and dig in if the company and authorities tried to forcibly move them.¹¹¹

¹¹⁰ This made them well-off by local standards and they not only produced a decent income but also provided employment for others.

¹¹¹ During the course of meeting with this group of villagers, a heated debate broke out over the use of violence as a strategy.

“Bitter Sugar”

There are many other similar disputes throughout the country. A member of the European Parliament (MEP), Cecilia Wikström, recently visited two large adjoining sugar plantation ELCs in the Sre Ambel district of Koh Kong province. These two concessions together are almost 20,000 hectares and although they were granted to two different firms to meet the 10,000 hectare maximum size requirement, both enterprises are wholly owned by the same person—Ly Yong Phat, a senator, *Oknha*, and member of the ruling party—who is operating the ELCs in tandem with Thai sugar refinery corporations as backers.

The senator’s firms and the Thai investors’ sugar refineries have been selling tariff-free sugar to the European market under the Everything-But-Arms (EBA) trade agreement between the EU and the world’s least developed nations, including Cambodia. The MEP has labeled the human rights violations that have accompanied this trade as “bitter sugar” and is lobbying for a cessation of Cambodia’s EBA tariff-free access to EU markets.

Those working with, supporting, monitoring, and providing legal aid services to the affected Sre Ambel villagers tell of forced evictions, illegal dispossession, infliction of poverty and hunger, and routinely corrupt court proceedings finding against the villagers.¹¹²

Issues for Investors

This “bitter sugar” case illustrates that the problems are not necessarily just short-term ones in getting an ELC off the ground and underway. The dispossession and brutal treatment of local communities can have long-term ill-effects for an investor. This risk was also clearly illustrated by some villagers discussing a land-grab they had heard about in another part of the country for a rubber project. Given the long lead-time for a rubber plantation to become productive—approximately seven years—the gist of their discussion was that the company better watch out if the evicted villagers in that community decided to burn down the plantation before the first harvest commenced.

This pitting of communities against investment projects is damaging for both sides. Instead, cooperative ventures that ensure ongoing engagement and benefit for the local community would be surely more productive and reliable over the long term.

Scale of the Problem

It is important to realize that the cases described above are not isolated incidents. There are many cases of ELCs and corporate land acquisition efforts turning sour, some of which have resulted in protest or violence. Some additional examples are listed below. Cases marked with an asterisk have had military involvement. Those marked with a cross indicate villagers have died as a result of violence with the authorities:

- Thmor Koal district in Battambang province;¹¹³
- Kampong Svay district in Kampong Thom province;
- Kien Svay district in Kandal province;
- Lumphat district in Ratanakiri province;
- Bousra commune in Mondulakiri province;¹¹⁴
- Pateah commune in Ratanakiri province;
- Samlot district in Battambang province;^{115*}†
- Memot district in Kampong Cham province;
- Romeas Haek district in Svay Rieng province;

¹¹² Interview with various NGOs working with Ms Wikström, May 25, May 30, May 31, June 1, June 2, 2011, Phnom Penh.

¹¹³ See civil society organization ADHOC Cambodia’s website for information on this and the following three cases: <http://www.adhoc-cambodia.org/>.

¹¹⁴ See the Indigenous People NGO Network (IPNN) of Cambodia, “The Rights of Indigenous Peoples in Cambodia,” United Nations Committee on the Elimination of Racial Discrimination (76th session), February 2010, http://www2.ohchr.org/english/bodies/cehd/docs/ngos/NGO_Forum_Cambodia76.pdf.

¹¹⁵ See materials from civil society organization Cambodian League for the Promotion and Defense of Human Rights (LICADHO) for this and all subsequent cases: “LICADHO Homepage,” <http://www.licadho-cambodia.org/>; “Land Grabbing and Poverty in Cambodia: The Myth of Development,” May 2009, <http://www.licadho-cambodia.org/reports.php?perm=134>; “Freedom of Expression in Cambodia: The Illusion of Democracy,” December 2010, <http://www.licadho-cambodia.org/reports.php?perm=149>.

- Chi Kreng district in Siem Reap province;* †
- Snoul district in Kratie province;
- Tumring district in Kampong Thom province;
- Santuk district in Kampong Thom province;*
- Rovieng district in Preah Vihear province;
- Malai district in Banteay Meanchey province;*
- Chhuk district in Kampong Speu province;*
- Phnom Srouch district in Kampong Speu province;*
- Phnom Kravanh district in Pursat province;*
- Prey Lang Forest, covering multiple provinces.

It is also worth noting that such “land grabs” are not only happening in the Cambodian countryside. In downtown Phnom Penh, a Chinese firm has been granted an economic land concession at Boeung Kak Lake, which has given 130 hectares of urban space to a Chinese corporation for a private profit reported to be in the order of two billion dollars while evicting 1,500 families. Protests against this development in April were also met with violence by the state’s security forces according to English language newspapers and NGOs. Despite progress with the development, protests by evictees seeking better compensation continue.¹¹⁶

What Does this Mean for Investors?

While the specific circumstances vary between each land conflict, they are consistently affecting villagers, farmers, or indigenous groups who have been deprived of their livelihood by outside commercial interests. Given 80-90% of Cambodians are rural and agrarian, they depend on their—often small—parcels of land (or in the case of indigenous groups, protected forest lands) as their only source of food and income. Forced evictions, destruction of smallholder farmlands and forest lands, inadequate or non-existent compensation, and deeply limited (and often badly and unreliably paid) employment options leave the rural communities without security, food, income, or hope.

This deprivation is the central cause of the land conflict and violence that is rife across the country and suggests an explanation for the fury and energy behind villagers’ defense of what they believe is their property.

The court-sanctioned and police-enforced evictions also reflect the lack of the rule of law in Cambodia. There are no other avenues of recourse for average Cambodians facing economic catastrophe at the whim of the government. It is hardly surprising that these confrontations are increasingly leading to violence.

These are clearly situations that business-minded foreign investors will wish to avoid. The investment climate is uncertain and lack of rule of law is a serious investment risk. Conflicts jeopardize the success of the investment, put crops and produce at risk, create a volatile, weak, and unhappy workforce, curtail potential markets, add unpredictable costs—not least having to pay for court proceedings (and outcomes) and deployment of armed forces—and damage commercial reputations.

Even when coming into the country with very high political connections, these risks remain; perhaps especially so. The nature and breadth of corruption in the political system means that with the right contacts and greasing the right palms, the granting of an ELC and skirting the regulatory processes is likely to be relatively easy. But as the Thai investors have seen in the Sre Ambel case, this kind of smoothing of the process does not reduce project risk; instead, it contributes to worsening it over the long haul.

It is worth noting that an increasing number of land conflicts appear to be initially between local elites—for example *Oknhas’* wives or local military commanders—who see speculative opportunity from taking land from the peasants with a view to leasing it commercially for profit.¹¹⁷ Title obtained in this way does not eliminate the risk for a foreign investor who then takes on development of these contested lands.

While the simple message from these problems for an investor is *caveat emptor* on lands obtained through questionable activities, this is an unsophisticated answer to a more complex question: *How can the opportunities presented by Cambodia’s agriculture sector be leveraged by foreign investors seeking reliable long-term staple food supplies?*

¹¹⁶ The author attended the aftermath of a demonstration by Boeung Kak Lake villagers in Phnom Penh on July 7, 2011.

¹¹⁷ This is the situation for the case listed in Pateah District of Ratanakiri Province where the land is claimed to have been “tricked” out of the villagers’ possession by the wife of a senior government official (interview with the director of a civil society and legal aid provider, May 31, 2011, Phnom Penh).

Food Security Investments in Cambodian Agriculture

Posing the above question to different stakeholders in Cambodia drew different views and different suggested approaches for successful investment strategies ranging from better utilization of the ELC mechanism to abandoning ELCs and using alternative mechanisms, through to avoiding investing in the country altogether.

The latter was based on the argument that until there is sufficient protection of human rights and adequate rule of law to protect both Cambodians and investors, that investment will be unlikely to achieve its long-term objectives. There are flaws in this approach. It abandons rural Cambodians to continued poverty and under-development and prevents them from obtaining income growth and the opportunities that come with economic development. It also abandons Cambodia's fertile agricultural lands to continued under-production and keeps them from making an increasingly important contribution to global food supplies.

To ELC or not to ELC?

The argument to abandon ELCs is based on the premise that if proper title is in place, land can be leased legally and directly from the landowners, without the need for an ELC. This is undoubtedly true, but a large part of the problem in the first place is the dire lack of transparent, well-defined, and legally unassailable land titling that would allow this to happen, and which would avoid some of the issues with ELCs. Further, the ELC mechanism—despite its weaknesses and appalling implementation record—is, nonetheless, an existing legal mechanism. Risks are likely to be even greater when there is no legal framework within which to work. The absence of a legal framework would make procedures even less transparent than they are now.

However, as already stated, working within the ELC framework also has its difficulties. The lack of the rule of law, what a senior government advisor called the “unofficial costs and payments,” and the risks to local communities will ultimately jeopardize the short- and long-term viability of the project.

Nevertheless, a significant number of stakeholders believe that the principles behind the ELC and the law itself are substantially sound. These respondents concurred with the idea that *if* the ELC law was applied as intended, then it would be a satisfactory model for facilitating investment in the agricultural sector. The people interviewed include lawyers, economists, academics, researchers, policymakers, and businesspeople. People working in civil society organizations who had first-hand experience of human rights violations because of ELCs and other land-grabs generally seemed more reluctant to accept this proposition.

Risk Mitigation

Different approaches were suggested for tackling the problem of applying the ELC law effectively. A manager of foreign investment funds in Cambodia suggested that an agricultural ELC could be granted legitimately—and operated effectively—if a few guidelines were followed:¹¹⁸

1. Ensure the project is large, high profile, and positive. The idea here is that a positive story will attract attention and motivate the people involved to behave appropriately.
2. Be patient. The argument is that a lot of corruption comes from wanting to speed things up. By being patient and firm, but not aggressive, time will eventually see things happen and reinforce a reputation for not paying “grease.”
3. Offer things like knowledge transfer, processing facilities, and provision of schools and teachers, or other important wins for the government. This puts the investor on strong ground for refusing to pay “grease.”
4. Involve multilateral backers with accountability mechanisms—such as the Asian Development Bank, the International Financial Corporation, the International Monetary Fund, or the World Bank. These provide a legitimate pretext for declining to engage in graft payments—“I can't do that because I'm restricted by my backers' rules.”

¹¹⁸ Interview with a manager of foreign investment funds in Cambodia, June 13, 2011, Phnom Penh.

Further, it is reported that there is a culture where foreign businesses buy local consultancy to “solve the grease problem.” The advice given on this is that:

This turns out not to be a sustainable model because consultants’ positions frequently change within the system and you have no transparency of where your money is going—or has already gone—and what you should have got for it.¹¹⁹

Others suggested more practical steps in the process of planning the ELC that would go a long way toward mitigating some of the major concerns. These include:

1. Paying an independent third party (“preferably an independent organization”) to undertake an EIA and SIA.
2. Embark on an on-going community consultation project that is effectively a community engagement strategy to hear what the people want, need, and would value coming from the proposed development of the area and include them in the process and outcomes of the proposal.
3. Get to know (even photograph) the village chiefs, family heads, and farm workers, so that when the time comes to negotiate the deal and pay compensation you are dealing with legitimate claimants and not others who have come in to take advantage.
4. Be prepared to pay fair market prices to the current occupants for the use of their land.

As previously mentioned, there also exists the opportunity to enter Cambodia via rescinded ELCs, either for sale by the concessionaire due to lack of will or capital (or other capacity) to undertake the development of the land, or from the government who has confiscated it on the basis of insufficient development having taken place.¹²⁰ In either case, buyer due diligence is crucial to evaluate the situation with respect to the local communities and previous occupants of the land and to establish a mutually beneficial arrangement for the future progress of the project.

An Alternate Strategy: The Way Forward?

Even with the sound strategies proposed above for mitigating the risks inherent in ELC investments, the problem remains that the investment is in a piece of land which has, in one way, shape, or form, been removed from its current occupants. Whether or not occupants are employed as future employees on the project, this circumstance does not help guarantee the productivity improvements from the land which a food security investment strategy is predicated upon.

Furthermore, there is an assumption underpinning ELCs that large-scale corporatized production of agricultural produce is the most suitable solution for Cambodia. This is not necessarily the case. Firstly, the Vietnamese experience shows that smallholder rice production can be highly efficient and internationally competitive. Second, and perhaps more importantly, such a strategy is not likely to improve food security in Cambodia where the central piece of the food security problem is affordability of, and access to, food by poor and largely rural constituents rather than production quantity *per se*.

Instead, both agricultural productivity in the form of total food availability and food security more holistically can be improved by focusing on developing Cambodia’s smallholder production rather than large-scale corporatized production.

This suggests that an alternate strategy that invests not in the land itself but in the people who are currently farming that land, and who hold the ability to deliver the productivity improvements given the right tools, might in fact be a better approach for investors seeking sources of reliable, long-term staple foodstuffs.

To maximize the productivity of Cambodian smallholders in order to provide big and reliable surpluses for export, much more needs to be done. Cambodian farmers need:

¹¹⁹ Ibid.

¹²⁰ These do not come with guarantees that the community has acquiesced to the project, so investor risk remains.

1. Security of land tenure;
2. Better irrigation;
3. Improved local and transport infrastructure;
4. Capital finance for equipment and operating cash flow for inputs;
5. Knowledge and technology transfer, especially on the application of techniques to maximize yields;
6. Access to competitive markets;
7. Social organization—such as co-operatives—which can collectively negotiate with buyers, suppliers, and lenders and can facilitate the sharing of capital equipment amongst farmers; and,
8. Ideally, opportunities to participate further up the supply chain.

At first glance all this might appear to be an undesirably difficult undertaking for a foreign investor. However, closer examination belies this. A foreign investor could help facilitate security of tenure by working with a group of farmers in a region to obtain SLCs or via an ELC within which the local farmers are all shareholders. Irrigation, infrastructure, finance, technology, and training are all no different than if investors are coming in on their own to operate an ELC directly. The investor *is* the avenue for access to international markets. Similarly, investment in local processing facilities that buy produce from the whole region is contributing to the creation of more competitive markets domestically in Cambodia. Inclusion of local communities in such ventures goes toward raising farmer participation up the supply chain.

That leaves the creation and development of farmer co-operatives as really the only one of these issues which is substantially different from if investors come in on their own in pursuit of land. Ideally, this is something that an investor would not be involved in anyway. This is because, to be most effective for the community, such an organization should be completely autonomous. However, there are NGOs and donor projects that try to create farmer co-operatives. So far, these seem to have limited success perhaps because they have not had the opportunity to be effective: neither the capital to share mechanization and irrigation equipment, nor the commercial opportunity to bargain with buyers, vendors, or lenders may have been available.¹²¹ This suggests, however, that nascent organizations could become starting points for smallholder-centric agricultural investment projects.¹²²

In these ways it appears feasible—and not much more complicated than managing conventional ELC projects—to establish investment projects in Cambodian agriculture that avoid the risks of dispute, conflict, violence, and instability that plague ELCs as they stand today.

Such smallholder-centric development projects offer the prospect of dramatically increasing the productivity of Cambodia's under-performing agricultural sector and creating substantial surpluses for export. They also present the possibility of increasing farmer incomes, growing the rural economies, and mitigating the risks to investors who would be otherwise trying to export food away from poor, hungry, dispossessed, and angry communities.

Recommendations and Next Steps

The primary assumption contained herein is that poor investment practices create risks for long-term food security goals if those practices dispossess, injure, or impoverish local communities. That poor investment practices easily result in dispossession, injury, and impoverishment of local communities has been comprehensively exhibited by the problems with how Economic Land Concessions currently operate in Cambodia. Examples like “Bitter Sugar” in this report illustrate how unlikely such arrangements are to provide stable long-term food exports to investor countries unless such poor investment practices are relegated to history. While the ELC model is specific to Cambodia, undoubtedly this assumption is universal.

Thus, the first recommendation of this report is that if GCC member states concur with this assumption, then, prior to embarking on any new projects, the states need to, either individually or collectively, regulate the extra-territorial activities of their businesses. As defined in the second “Foundational Principle” in the Ruggie Report to the UN Secretary-General,¹²³ GCC states should “set out clearly the expectation that all business enterprises

¹²¹ Interview with an analyst at a think tank, May 24, 2011, Phnom Penh.

¹²² The longer-term idea being that once the effectiveness of an institution—the co-operative—becomes proven, its establishment gains momentum.

¹²³ John Ruggie, “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework,” (New York: United Nations Human Rights Council, 2011).

domiciled in their territory and/or jurisdiction respect human rights throughout their operations”¹²⁴ and consider implementing the Ruggie framework in its entirety as a strategy to help encourage good investor and enterprise behavior.

Despite the issues with ELCs and bad outcomes for local communities from poor investment practices, the opportunity presented by agriculture in Cambodia to contribute to much-needed increase in global food output for exports should not be dismissed.

To this end, two options for investment projects in Cambodia have been presented here: a set of approaches for reducing the problems with ELCs as they are currently implemented and an alternate strategy for investing in smallholder-centric agriculture instead of large-scale land deals facilitated by ELCs. While either are preferable to the current situation for agricultural investments in Cambodia, the latter offers more confidence in a stable and reliable future by generating direct economic benefit for the pivotal local communities.

This leads to the derivation of a second assumption which is that, in general, agricultural development investments that empower and create profit for local communities are likely to be more successful over the long term than those which confiscate resources from those communities. It seems likely that this assumption will apply in other environments regardless of the fact that their political and economic environments might differ quite markedly from Cambodia’s and that investment mechanisms differ to the Economic Land Concession model.

The second recommendation is to conduct research into other potential investment hosts in light of this second assumption to verify that it applies similarly in other least-developed countries with agricultural potential.¹²⁵

The final recommendation for GCC policymakers in light of the material contained in this report is to think carefully about existing strategies for investing in developing country agriculture in the pursuit of long-term food security objectives and consider how alternative policy strategies might look. Such a re-think should include not only the first recommendation above, but also specific consideration of:

1. a moratorium on land-acquiring investments until mechanisms—or alternatives—are in place which mitigate the risks arising from them;
2. regulation of private-sector activity in the pursuit of state-desired food security objectives;
3. strategies, policies, and protocols for managing smallholder-centric investment projects, which may require investment in pilot projects to gain practical experience from which strategies, policies, and protocols can be deduced; and
4. establishing independently audited public accountability mechanisms for both private-sector and state-led projects.

The last point might seem counter-productive to usual business and investment practices which tend to shirk transparency, but it is, in actuality, crucially important for monitoring the types of risks that jeopardize the long-term viability of these projects: dispossession, injury, or impoverishment in the host country. These are the issues that must be prudently avoided if food security projects in foreign countries are to have high prospects for long-term success.

¹²⁴ *Ibid.*, 7.

¹²⁵ The second stage of this research program funded by the Center for International and Regional Studies (CIRS) at the Georgetown University School of Foreign Service in Qatar goes some way to addressing this need by undertaking similar field research in Ethiopia.

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