

Moving Beyond Misconceptions

A critical review of Korean investment in Cambodia



Phnom Penh, Cambodia
2012

Moving Beyond Misconceptions

A critical review of Korean investment in Cambodia

Author: Ji-Sook Lee

Acknowledgement

The author would like to thank Trocaire and Heinrich Böll Foundation for supporting this research. I would also like to acknowledge and thank all individuals and organizations who supported this project with helpful discussions and comments on previous drafts, including Roger Henke, Terry Parnell, Pyrou Chung, Mark Grimsditch, Jason Jones, Dominic Renfrey, Ben Davis, Megan MacInnes, Rebecca Catalla, Andrew Cock, Ryerson Christie, Phea Chung, Fatima Ayub, Haejin Lee and Yoonjung Kim. Credit for the area maps used in the case study reports goes to Hok Menghoin, with thanks for his assistance.

I would also like to thank deeply the Lutheran World Federation and community network representatives for their invaluable help during field investigations, as well as the affected communities and individuals who took time to meet with me and answer my questions.

Finally, special thanks to Jung-Tae Lee for his never-ending clarifications and support, Katrin Seidel for the inspiring discussions and tireless encouragements and to my research assistant Vutheara Dy for her enthusiastic and unfailing collaboration.

Moving Beyond Misconceptions

A critical review of Korean investment in Cambodia

Table of Contents

| | |
|--|-----------|
| Executive Summary..... | 2 |
| Introduction..... | 6 |
| I. Korea's growing interest and presence in Cambodia..... | 8 |
| 1. A decade of deepening ties between Cambodia and Korea | 8 |
| 2. Governments' key role in tightening bilateral relations | 9 |
| A string of official visits..... | 9 |
| President Lee leads further consolidation..... | 10 |
| Cambodia, an increasing recipient of Korean ODA | 12 |
| II. Relevant Korean policy directions..... | 14 |
| 1. The “New Asia Initiative” | 14 |
| The importance of ASEAN..... | 14 |
| Korea's aspiration to be a new type of leader..... | 16 |
| 2. The quest for energy supplies, a fundamental priority for Korea..... | 17 |
| 3. Korea's climate change ambitions: “Low-Carbon Green Growth” | 18 |
| III. The expansion of Korean investment in Cambodia..... | 20 |
| 1. A boom to be nuanced?..... | 20 |
| 2. Main sectors of investment..... | 21 |
| Manufacturing..... | 23 |
| Real estate and construction..... | 23 |
| Agriculture..... | 26 |
| Mining..... | 27 |
| Financial services..... | 28 |
| Other services..... | 29 |
| 3. Why the Korean investment boom in Cambodia?..... | 29 |
| Cambodia seen as a land of opportunities..... | 29 |
| A context favorable to foreign investors..... | 30 |
| The Korean government's active role in supporting overseas private investment .. | 31 |
| The challenges of investing in Cambodia..... | 33 |
| Conclusion..... | 35 |

Executive Summary

Korea's growing presence and interest in Cambodia

Relations between Cambodia and Korea were normalized in 1997, more than twenty years after they broke down when the Khmer Rouge took power in 1975. Since then, the Korean presence in the developing nation has kept expanding as diplomatic, cultural and economic ties between the two countries strengthened over the last decade.

Korea was widely portrayed in recent years as one of the top investors in Cambodia, with its investment reaching record levels in 2007 and 2008. Its influence also became noticeably visible, from the ubiquitous broadcasting of Korean productions by Cambodian TV and radio channels to the increasing number of Korean-led ambitious real estate projects in Phnom Penh. Meanwhile, Koreans have long represented the largest group of foreigners visiting Cambodia and a growing number came to find a spouse in the developing country. Conversely, an increasing number of Cambodians went to Korea for work or studies, which attested to the country's strong appeal amongst Cambodians.

The key role of governments in strengthening bilateral relations

Such bilateral consolidation was essentially driven by the governments, with regular high-level visits that served to further cooperation between the two nations. This move was enhanced under current President Lee Myung-Bak, whose election in 2007 bore particular significance for relations between the two countries due to his past role as economic adviser to the Cambodian premier from 2000 to 2007 and a reported closeness between the two men.

Lee Myung-Bak's first official visit to Cambodia in October 2009 saw the signing of a wide range of agreements, including on energy, agriculture, forestry and climate change, all issues of increased interest to the Korean government, as well as increased Official Development Assistance (ODA) to Cambodia. In addition, President Lee pledged enhanced support to the Cambodian government as Korea committed to establish a so-called “*rectangular cooperation*” focusing on agriculture, forestry, services and infrastructure, and assist Cambodia in setting up “*master plans*” for its national economic development plans. This was meant to allow Korea to share with Cambodia its experience in moving out of poverty.

In light of the Korean administration's driving role in strengthening relations with Cambodia, a look at some of its main policy directions can be particularly enlightening, including when examining at Korean investment in the developing country. Three are particularly relevant: the so-called “*New Asia Initiative*”, the country's quest for natural resources, and its ambitious climate change agenda.

The “New Asia Initiative”

Launched by President Lee in March 2009, the “*New Asia Initiative*” seeks to foster closer ties with other Asian countries – in the areas of economy, security and culture – and thereby enhance Korea's international and regional standing. The importance of relations with the

Moving Beyond Misconceptions

A critical review of Korean investment in Cambodia

Association of the Southeast Asian Nations (ASEAN) – of which Cambodia is a member – is prominent in the New Asia Initiative, due to the strategic region's important economic growth and abundance in natural resources. Korea completed a set of Free Trade Agreements (FTAs) with ASEAN to cover goods, services and investment, which were expected to facilitate further investment and trade. Korea's relations with ASEAN provide the backdrop to its relationship with Cambodia and a look at trade and investment figures shows a continuous increase since the mid-2000s, after the first Korea-ASEAN FTA was signed.

In its efforts to enhance its global standing and influence, Korea has sought to portray itself as a new type of leader, a former impoverished country able to better understand and help its regional neighbors. To do so, Korea can boast of its successful transition from a country ravaged by war to an economic powerhouse in only 40 years. However, some observers have seen Korea's New Asia Initiative as a way for the country to ensure "*its long-term competitive survival*" as it competes for influence and resources.

Korea's crucial quest for natural resources

Ensuring stable energy supplies has been a fundamental priority for Korea as the country is poorly endowed in natural resources on its territory and its industrialized economy is dependent on imports for up to 97% of its energy needs. President Lee has spearheaded a vigorous "*resource diplomacy*" aimed at securing natural resources abroad, resulting in a string of mining, oil and gas cooperation agreements with resource-rich countries across the world, including Cambodia.

While the government has driven this policy, it has worked closely with the Korean private sector for its implementation. An interesting case of such cooperation is presented in "*Kenertec – Case study of a Korean mining investment in Cambodia*". Despite its lack of mining experience, the little-known Korean company won the rights for eight mining concessions in northern Cambodia in late 2007, followed by the acquisition of another mine the following year. One of the keys to its success was the strong support it reportedly received from the Korean administration and Kenertec praised its winning bids as successes both for itself and Korea. This investment was part of a growing Korean interest in the mining sector in Cambodia.

The "Low-Carbon Green Growth" model of development

Under President Lee, the Korean administration has adopted a very ambitious climate change agenda. It is embodied in a "*Low-Carbon Green Growth*" which aims to achieve economic development that is environmentally friendly. While this policy is largely domestic in its scope, it also has external implications as the Korean President has actively promoted climate change cooperation with ASEAN partners, including through forestation projects. Such cooperation has been at work in Cambodia, with the signing of a Memorandum of Agreement allocating 200,000ha for such projects in the developing nation.

Also, again relying on cooperation with the private sector, the Korean administration has increasingly pushed for overseas investment projects that fit the green growth approach: for example, plantations for biomass or other alternative energy projects, such as bio-energy. Korean

Moving Beyond Misconceptions *A critical review of Korean investment in Cambodia*

company MH Ethanol's biofuel investment in Cambodia provides an example of such projects, one that purports to provide economic benefits while helping to fight climate change with the production of a professed green fuel. An extensive review of this investment is presented in “*MH Ethanol – Case study of a Korean agro-industrial investment in Cambodia*”.

The expansion and diversification of Korean investment in Cambodia

Korean investment in Cambodia has expanded dramatically over the last decade, with a notable boom starting from 2005. From less than USD20 million in 1997, approved investment reached peak levels ten years later, with USD828 million in 2007 and USD1.2 billion in 2008, when Korea reportedly became the second largest investor in the country. This surge was driven largely by massive investment in the real estate and construction sector.

Whereas Korean investors largely focused on the garment manufacturing industry since the late 1990s (the sector has retained its importance until today), the nascent boom of Korean investment from the mid-2000s saw their increasing diversification. Korean involvement in the real estate and construction sectors took the limelight due to their spectacular boom and the highly ambitious projects driven by Koreans. The two sectors have received the largest amounts of investment. In addition, there has also been a growing interest from Koreans in the agriculture, mining and financial services sectors. The latter bears particular significance in light of Korean banks' role in funding and attracting other Korean investment projects to Cambodia.

A boom to be nuanced

However, a closer scrutiny of Korean investments in Cambodia nuances the momentous scope of these investments. The widely-quoted figures for Korean investment mentioned above refer to approved investment only, not the actual investment implemented in the developing nation. Although the actual investment figures also attest to a clear increase of Korean investment in Cambodia over the last decade, they are consistently inferior to the approved levels, oftentimes markedly so – a third less in 2007 (with USD525 million against USD269 million) and less than half in 2008 (with USD629 million against USD1.2 billion). This meant that Korean investment actually decreased significantly from 2007 to 2008, instead of the surge shown by the approved levels.

It is essentially the sectors of real estate and, to a lesser extent, construction that contributed to the stark gap between approved and actual investment figures. More recently, the agriculture, forestry and fishery sector also experienced a marked difference between approved and actual investment. Their cumulative totals were USD100 million (the fourth largest total of cumulative approved investment) and USD16 million respectively.

The fact that Korean interest does not necessarily translate into actual investment raises questions over the reasons for this continuing trend. It may be indicative of weaknesses in those projects that are approved but not realized and brings into question whether the investors behind such projects were properly prepared to and aware of the challenges of investing in developing Cambodia.

The business difficulties or failures of actual investment projects in Cambodia also raise similar

Moving Beyond Misconceptions

A critical review of Korean investment in Cambodia

questions as to their soundness. The two investment case studies analyzed as part of this research, MH Ethanol and Kenertec, provide examples of such investment and illuminate the difficulties of operating in Cambodia, as they both failed to meet their business targets: MH Ethanol suspended its activities whereas Kenertec has folded. In the real estate sector, various projects were cancelled following the global downturn and more recently, work on the Gold Tower 42, which was to become the first skyscraper in Phnom Penh, ground to a halt in September 2010, with only two thirds of its structure completed.

In any case, it appears that the magnitude of Korean investment and their impact in Cambodia, might have been unduly exaggerated, especially its flagship involvement in real estate and construction. Similarly, it was the collapse of Korean investment in the real estate sector – and the seeming bursting of the investment bubble it created – that was responsible for the sharp decline of overall Korean investment in the aftermath of the global downturn in 2009 and 2010.

Conclusion

Koreans appeared to maintain interest in investment opportunities in Cambodia, as post-downturn investment levels remained higher than in 2006 and Korean business delegations from various sectors continued to visit the developing country. This reflected a widespread perception of Cambodia as an “*emerging investment destination*” offering various advantages such as cheap labor, abundance in natural resources or trade advantages. However, some observers and business representatives themselves have also recognized the hurdles of operating in a poor developing country, such as the lack of skilled workers and quality infrastructure, the high cost of electricity or the difficulties stemming from corruption, lack of public information and the improper implementation of relevant legislation.

Foreign investment has the potential to foster the socio-economic development of impoverished countries. However, where there are pervading issues of governance and transparency, like in Cambodia, these create a challenging environment for business and are therefore not conducive for these investments to contribute to poverty reduction and sustainable development.

Under President Lee's New Asia Initiative, Korea clearly ambitions to assist the development of other countries. But for Korea's growing influence to match its discourse, it is indispensable that Korean investment genuinely contributes to the host country's sustainable development. For this to happen, it is imperative that this investment be sound and responsible. The Korean government also needs to pay attention to the country situation in which its national companies invest. Through its close links with Cambodia, it is in a privileged position to have such a positive influence. Korea would then live up to its aspiration to be a truly responsible leader.

Introduction

Widely portrayed in recent years as one of the top investors in Cambodia, South Korea (hereafter Korea) appears to exercise an unmistakable influence in the developing country. The first sight coming out of the international airport of Phnom Penh is one of a few Korean restaurants across the road. Along the way to the city, large road signs advertise ambitious Korean real estate projects or its latest electronics, while Korean script is ubiquitous on trucks or buses in the streets. Even the moto-taxis, a quintessential feature of life in Cambodia, usually drive red Daelim motos... made in Korea. Cambodian television and radio channels routinely broadcast Korean videos or songs, a sign that Cambodia too has fallen under the spell of *hallyu*, the “Korean wave” of movies and music. Phnom Penh's landscape also bears testament to the Korean influence, as a number of the new tall buildings in the capital are – or were – constructed by Korean companies, including the city's first skyscraper project, the so-called Gold Tower 42.

These are only the most visible signs of Korea's expanding influence in Cambodia, as the Korean government has strengthened its diplomatic, cultural and economic ties with the developing nation over the last decade. In 2008, Korea reputedly became Cambodia's second largest source of foreign direct investment as well as a growing source of foreign aid. China has been widely reported as Cambodia's top investor and donor, one praised by the Cambodian Prime Minister for its friendship and aid with no strings attached.¹ However, this influence is viewed with concern by Cambodian analysts and civil society, wary about the lack of transparency and the implications, both political and environmental, of Chinese deals.² In contrast, Korea has not attracted such mistrust and its influence until now appears to be embraced rather than criticized.³ Modern developed Korea is seen with admiration, from the infatuation of many young Cambodians following Korean fashion or learning the language,⁴ to the more serious regard for Korea's successful transition from one of the poorest countries in the world to the 15th largest economy.⁵

This positive image is something that Korea has sought to capitalize on as it became increasingly active and ambitious on a regional and global level. In particular, Korean President Lee Myung-Bak has been keen to cultivate the image of Korea as a former developing country that is able to better understand and help its regional neighbors. But there has been little scrutiny of the actual

-
- 1 However, the reality appears to be at odds with this widespread perception as the actual Chinese investment figures are significantly lower than the widely quoted approved investment figures. See Pr. Guo Jiguang, *Chinese Investment in Cambodia: Some Preliminary Findings*, 2010.
 - 2 See for example *China's growing influence in Cambodia*, Asia Times, 6 October 2006; *China's Cambodian Hegemony*, The Diplomat, 7 May 2009; *China's Large Role in Cambodian Economy Expected to Continue*, Voice of America (VOA), 5 October 2010.
 - 3 Tellingly, when the Cambodian National Assembly voted to ratify ASEAN Free Trade Agreements with China and Korea in July 2009, the former prompted a debate and was voted with one abstention, whereas the latter was adopted by unanimous vote.
 - 4 The Royal University of Phnom Penh started offering a Korean language course in 2002 – with the assistance of the Korean Embassy – before establishing a Korean Studies Department in 2007.
 - 5 According to data from the World Bank or International Monetary Fund.

Moving Beyond Misconceptions

A critical review of Korean investment in Cambodia

impact of Korea's growing influence overseas and whether it has contributed to the development of poorer countries. Cambodia represents an interesting case study in this regard. Despite its sustained economic growth for most of the last decade, it remains one of the poorest countries in the region, one that receives high levels of foreign aid and is very open to foreign investment. In this context and in light of their increased importance, it is interesting to look at Korean investments in Cambodia and examine the reality of their impact.

This paper is intended as a basis for discussions on the role and impact of foreign investment in Cambodia, looking at the case of Korea. It seeks to illuminate the main factors that are driving these investments, in particular relevant Korean policies, and presents a general overview of Korean investment in Cambodia. In order to illustrate the issues examined here, references are made throughout the paper to two cases of Korean investment in Cambodia, one in agriculture and the other in mining, two areas of significant importance to both the Cambodian and Korean governments.

MH Ethanol's investment in Cambodia includes the country's first bio-ethanol factory which was inaugurated in November 2008, as well as two land concessions acquired in the early 2000s for the growing of cassava, the raw material used to produce the biofuel. The bio-ethanol venture was praised by both the company itself and the Cambodian authorities as a major opportunity to boost the country's agricultural sector through increased demand for cassava and create new sources of wealth for Cambodia through the production and export of higher value-added biofuel.

As for Kenertec, despite its lack of mining experience, the little-known company specialized in green energy technologies won in November 2007 the rights to no less than eight concessions in northern Cambodia. The following year, it acquired an additional iron ore mine through a joint venture with a Cambodian partner, Ratanak Stone. Kenertec reportedly received strong support from the Korean administration in order to win the concessions and praised its success as a model of cooperation between the Korean government and private sector in the development of natural resources overseas.

These two case studies are analyzed in extensive detail in the separately published "*Kenertec – Case study of a Korean mining investment in Cambodia*" and "*MH Ethanol – Case study of a Korean agro-industrial investment in Cambodia*".

This research is hoped to help go beyond general economic figures and statements and thereby provide the basis for a better understanding of relevant issues regarding foreign investment in Cambodia. It is based on more than one year of work, combining desk research, press monitoring, interviews with relevant stakeholders, including Korean companies and civil society groups, and field investigations in the areas where the case study investments have taken place, including discussions with local communities and authorities. A Cambodian research assistant provided invaluable support, especially in the preparation and carrying out of the field trips.

Note: All the tables and charts contained in this paper are the author's own based on figures from the Korea Export-Import Bank (Korea Exim Bank).

I. Korea's growing interest and presence in Cambodia

I. A decade of deepening ties between Cambodia and Korea

Cambodia and Korea established official diplomatic relations in 1970, but these broke down when the Khmer Rouge took power in 1975. More than twenty years passed before relations resumed between the two countries. First, a Permanent Mission of the Republic of Korea reopened in Cambodia in 1996, before the establishment of a Korean Embassy marked the normalization of bilateral relations the following year.

Since then, Korea has become a major partner for Cambodia as political, cultural and economic relations between the two countries developed at a fast pace. Accordingly, Korea's increasing presence in Cambodia has been noticeably conspicuous. It is easily noticed on Cambodian television and radio channels as well as in Cambodian streets. The high profile exhibition "Angkor-Gyeongju World Culture Expo" held in Siem Reap in 2006 served to celebrate the closer ties between the two countries. In January 2010, the Phnom Penh-Daegu-Gyeongbuk Culture and Tourism Center was inaugurated in the heart of Phnom Penh.⁶ The streets of Phnom Penh bear further testament to Korea's influence as ambitious Korean construction projects mushroomed across the capital, especially in 2007 and 2008. In October 2010, the ties between the two countries even took a military dimension as the Korean government donated military equipment to the Cambodian army.⁷

Tourism and migration flows between Cambodia and Korea kept growing and became increasingly complex. The existence since 2005 of direct lines from Korea to Siem Reap, home to the Angkor temple complex, has contributed to making Koreans the largest group of foreigners visiting Cambodia from 2003 to 2008, peaking at nearly 300,000 tourists in 2007. However, the global downturn caused a significant decrease in the number of Korean tourists, though they later appeared to return. In addition, an increasing number of Cambodians went to Korea to study or work, which was facilitated by a government agreement on quota, while a growing number of Korean men came to Cambodia to find a spouse. Meanwhile, the community of Korean residents in Cambodia also grew in size, together with a flourishing range of restaurants and shops catering for them, especially in the capital.

6 The modern three-storey building is a Korean culture, tourism and trade centre aimed at promoting business and cultural relations between the two countries. Its inauguration was attended by the Cambodian Prime Minister, the Korean Ambassador and the governor of the Korean province of Gyeongbuk.

7 Full details were not made public, but it was disclosed that the donation included three utility boats, 100 maneuvering vehicles, 24 "engineering tools" and 36 "medical tools." See *South Korea boosts Cambodia's military*, The Phnom Penh Post, 19 October 2010.

Moving Beyond Misconceptions

A critical review of Korean investment in Cambodia

Bilateral trade nearly doubled from USD150 million in 2005 to USD290 million in 2007, after the signature in 2006 of a first Free Trade Agreement (FTA) on goods between Korea and the Association of the Southeast Asian Nations (ASEAN), of which Cambodia is a member, and the resulting reduction in trade tariffs.⁸ It has since remained at a consistent level, with USD308 million in 2008, USD291 million in 2009 and USD306 million for the first ten months of 2010.⁹ Unsurprisingly, trade flows were markedly imbalanced with Korean exports to Cambodia consistently representing over 90% of the trade total (see table).

| Year | Korean Exports to Cambodia | Korean Imports from Cambodia | Total Bilateral Trade |
|-------------|----------------------------|------------------------------|-----------------------|
| 2005 | \$144.28M | \$5.96M | \$150.24M |
| 2006 | \$205.09M | \$5.46M | \$210.55M |
| 2007 | \$281.42M | \$8.87M | \$290.29M |
| 2008 | \$294.38M | \$14.37M | \$308.75M |
| 2009 | \$273.32M | \$1.82M | \$275.14M |
| 2010 (1-10) | \$270.71M | \$35.51M | \$306.22M |

Unit: USD Million

Source: KITA

Last but not least, Korean investments in Cambodia have expanded dramatically over the last decade. Approved investment reached record levels in 2007 (USD828.4 million) and 2008 (USD1.2 billion),¹⁰ when Korea reportedly became the second largest investor in the country. This surge was largely driven by booming investment in the real estate and construction sectors, which signaled a shift from Korean investors' original involvement in the garment sector. The diversification of their interests also included a growing presence in the agriculture, mining and financial services sectors.

However, a closer scrutiny of Korean investments in Cambodia paints a different picture and nuances the momentous scope of these investments. In particular, their actual amount differs significantly from the approved levels previously quoted. This is examined in more detail in Section III.

2. Governments' key role in tightening bilateral relations

A string of official visits

Such bilateral consolidation was driven from the top levels of both countries, with high-level visits taking place regularly in Korea or Cambodia. In 2006 alone, Cambodian Prime Minister Hun Sen made an official visit to Korea before Cambodia was visited by then Korean Foreign Minister

⁸ More on Korea and ASEAN in Section II.

⁹ Figures from the Korea Trade International Association (KITA). According to the Korean Embassy, Korean exports to Cambodia mainly included raw materials for garment products, cars and trucks, motorcycles, automobile parts, and industrial machinery, while imports from Cambodia to Korea were mostly rubber, forestry products, food, minerals and apparel goods manufactured in Korean-owned garment factories in Cambodia for the most part.

¹⁰ All investment figures quoted in this paper are statistics from the Export-Import Bank of Korea (Korea Exim Bank), which compiles information on Korean foreign investment. This data is available on Korea Exim Bank's website, www.koreaexim.go.kr

Moving Beyond Misconceptions *A critical review of Korean investment in Cambodia*

and current United Nations (UN) Secretary-General Ban Ki-Moon, and later in the same year by then Korean President Roh Moo-Hyun.

The election of Lee Myung-Bak as President in 2007 had particular significance for relations between Korea and Cambodia, as the new President had acted from 2000 to 2007 as an economic adviser to Prime Minister Hun Sen. The Cambodian premier travelled to Korea to attend Lee's inauguration ceremony in February 2008 and again visited Korea in early June 2009 for an ASEAN-Korea Commemorative Summit,¹¹ which was followed by a bilateral summit with Korea. Most recently, President Lee visited Cambodia in October 2009 for the first time as head of State.

These visits offered a chance to further cooperation between the two nations. Correspondingly, a wide range of agreements were signed during President Lee's official visit. The government's active role in supporting private investment overseas is discussed in Section III.

President Lee leads further consolidation

President Lee's first official visit to Cambodia in October 2009 served to celebrate and consolidate the strong ties between the two countries. His visit was marked by pronounced signs of friendship between the Korean President and the Cambodian Prime Minister, due to Lee Myung-Bak's past role as economic adviser to Hun Sen. While there are few public details on Lee's function and mandate during his time as adviser, the two men reportedly held lengthy discussions about Cambodia's economic development. Some observers consider their relationship as an important factor behind the closer ties between Cambodia and Korea, and particularly the Korean investment boom in the country.¹²

Lee Myung-Bak's two-day visit in October 2009 resulted in the signature of a wide range of agreements, including the following ones on energy, agriculture, forestry and climate change, all issues of growing interest to the Korean government:

- Memorandum of Understanding (MoU) for cooperation on “investment in forest plantation and climate change” – this involved the allocation by the Cambodian government of 200,000 ha of land for Korean forestation projects (for bio-mass or wood pellet fuel for instance);¹³
- MoU on investment in rice production for export – this included the establishment of a rice milling plant by a Korean company;
- MoU for cooperation on oil and gas exploration in the Cambodian sea – this was a two-year preliminary agreement for feasibility studies and data collection;

11 The so-called Commemorative Summit celebrate the 20th anniversary of ASEAN-Korea ties. A CEO meeting took place on the sidelines of the Summit, gathering private sector representatives from ASEAN countries and their Korean counterparts.

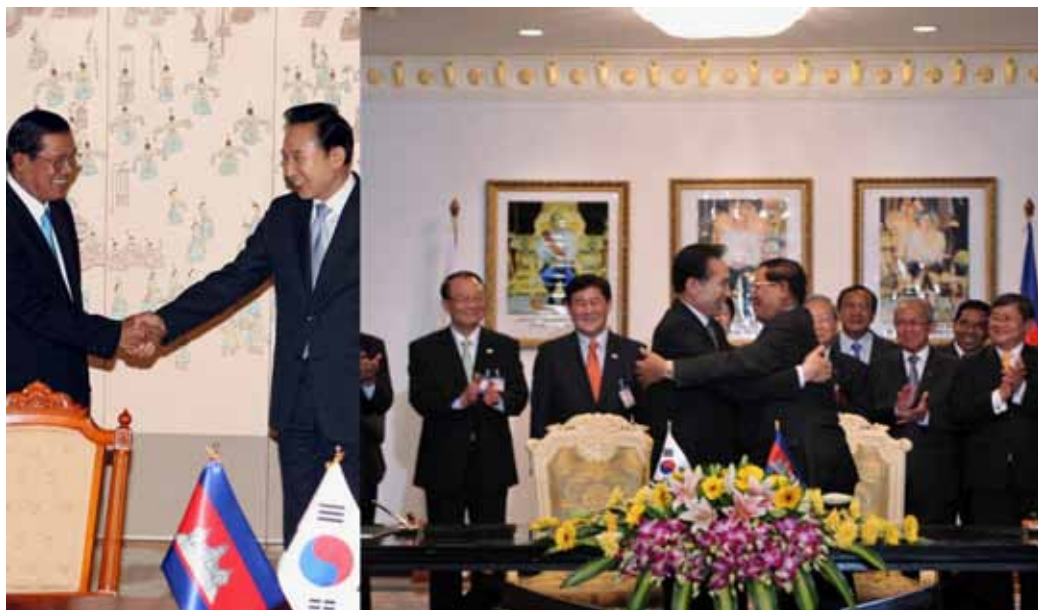
12 *South Korean president visits today for signings*, The Phnom Penh Post, 22 October 2009.

13 This also relates to the importance for Korea of its climate change agenda, including forestry issues. More on Korea's climate change agenda in Section II.

Moving Beyond Misconceptions

A critical review of Korean investment in Cambodia

- Agreements on research cooperation between Cambodian and Korean agriculture universities, and between a Korean mineral research institute and the Cambodian Ministry of Industry, Mines and Energy (MIME).



Prime Minister Hun Sen and President Lee Myung-Bak in June 2009 in Korea (left) and October 2009 in Cambodia (right).

Further agreements related to other sectors of interest for Korea, such as telecommunication services (agreement on cooperation in digital mobile television), or were testament to the continuing closer ties between the two countries. These included agreements on cooperation between the Cambodian and Korean Chambers of Commerce, the exceptional visa waiver for Korean tourists and granting of one-year business visas for Koreans (instead of one-month visas), an extradition agreement¹⁴ and the increase of the quota of Cambodians authorized to work in Korea, from 5,500 to 9,000.¹⁵ However, few details about these agreements have been released, which has made it difficult to ascertain their potential impact.

In addition, during his visit, President Lee pledged enhanced support to the Cambodian government. He committed Korea to a “rectangular cooperation” with Cambodia focusing on four sectors, agriculture, forestry, services and infrastructure.¹⁶ The Korean administration also

14 The extradition agreement was later adopted unanimously by the Cambodian National Assembly in November 2010. See *Cambodian NA passes extradition agreement with S Korea*, Xinhua, 26 November 2010.

15 Cambodia was one of the countries selected to be allowed to send workforce to Korea. An MoU was concluded between the ministries of Labor of both countries and about 4,000 Cambodian workers had entered Korea since 2003.

16 The name is in reference to Cambodia’s most important economic policy document, the Rectangular

Moving Beyond Misconceptions *A critical review of Korean investment in Cambodia*

vowed to assist Cambodia in setting up “master plans” for its national economic development plans, through the launch of a joint development program in 2010. This was meant to allow Korea to share with Cambodia its development experience in moving out of poverty.¹⁷ Finally, the Korean government nearly doubled its Economic Development Cooperation Funds (EDCF) loans to Cambodia from USD120 million to USD200 million for a revised period going from 2009 to 2012, while a further USD9.25 million grant aid was to fund infrastructure projects in 2010 and 2011. This consolidated existing trends favoring Cambodia as an Official Development Assistance (ODA) recipient.

Cambodia, an increasing recipient of Korean ODA

Cambodia's growing importance to Korea was reflected in the increasing development assistance it received and its status as a priority recipient country. Korean ODA consistently favored the Asian region which received USD155.8 million, representing 41.4% of Korea's total ODA in 2006. In that region, Cambodia was the largest aid recipient with USD13.1 million in 2008 and had received a cumulative total of USD91.8 million from 1991 to 2007.¹⁸ As for loans, Korea and Cambodia signed a Basic Agreement on the Provision of EDCF in 2001. As of May 2009, Korea had extended a total of USD219 million through EDCF loans.

Two of the main goals of Korea's ODA are to contribute to poverty reduction and the sustainable socio-economic development of developing nations, using the model of Korea's successful economic development. The Korea International Cooperation Agency (KOICA) identified four priority sectors in Cambodia: infrastructure, health, education and rural development. One of the targets of Korean concessional EDCF loans has been infrastructure projects, in particular the funding of the rehabilitation of National Road 3 between Phnom Penh and Kampot.¹⁹ Following a June 2009 bilateral summit, Korea granted two USD30 million EDCF loans to Cambodia, including one for the improvement of two roads which are part of the Greater Mekong Sub-region Southern Coastal Corridor.²⁰

But economic interest is hard to dissociate from aid development. Some Korean ministries, such as the Ministry of Strategy and Finance, have acknowledged their belief that aid should serve national economic interest, for example to ensure stable access to natural resources or promote Korean investment. Researchers have commented that, as with other international donors, “*the government of Korea is using the aid channel to reduce uncertainties in the private sector that might*

Strategy for Growth, Employment, Equity and Efficiency, which lays out the country's development policy plan.

17 Korea's aspiration to pose as a model of development is further examined in Section II.

18 See KOICA website; Korean Ministry of Foreign Affairs and Trade, ODA Korea, <http://www.odakorea.go.kr/eng>.

19 EDCF loans have also been granted for vocational training, road construction or rehabilitation, water resources development and support to local administration networks.

20 S. Korea, *Cambodia agree on large-scale economic projects*, Yonhap, 5 June 2009, <http://www.kdb.co.kr/weblogic/Board?BID=25&NID=36246&ACTION=VIEW>

Moving Beyond Misconceptions

A critical review of Korean investment in Cambodia

otherwise inhibit them from investing in a poor country like Cambodia.”²¹

While the links between Korean ODA and investment are outside the scope of this research, it should be noted that the last decade saw the steady expansion of Korean ODA as well as of Korean trade and investment in Cambodia.

²¹ Jin Sato, Hiroaki Shiga, Takaaki Kobayashi and Hisahiro Kondoh, *How do “Emerging” Donors Differ from “Traditional” Donors? - An Institutional Analysis of Foreign Aid in Cambodia*, JICA Research Institute Working Paper, No. 2, March 2010, p.23.

II. Relevant Korean policy directions

The Korean administration's policy directions obviously influences the country's foreign relations, including those with Cambodia. Three are particularly relevant when looking at Korean investment in Cambodia: Korea's aspiration to assert its regional influence through a new type of leadership based on Lee Myung-Bak's "New Asia Initiative"; the country's energy policy marked by the need to secure overseas natural resources; and its climate change agenda through a green growth model Korea ambitions to represent.

I. The "New Asia Initiative"

Marking a potential shift in Korean diplomacy, the "New Asia Initiative" aims to foster closer ties with other Asian countries – in the areas of economy, security and culture – and thereby enhance Korea's international and regional standing.²² It was launched in March 2009 by President Lee, who explained: "*Now is the time we must again pay closer attention to Asia's growing importance. The center of the world is moving from the West to the East.*"²³

The importance of ASEAN

Relations with ASEAN are one important dimension of the New Asia Initiative.²⁴ Prior to the Initiative, market and resource hungry Korea already had strong ties with the region, due to the latter's important economic growth and abundance in natural resources. ASEAN reportedly accounted for 48% of Korea's international trade,²⁵ 53% of its overseas investment and 47% of its ODA. But the New Asia Initiative enhanced the Korean interest in the region.

In March 2009, an ASEAN-Korea Centre was inaugurated in Seoul, an organization mandated to "increase trade, accelerate investment flow, invigorate tourism and enrich cultural exchanges" between Korea and ASEAN countries.²⁶ Three months later, an ASEAN-Korea Commemorative Summit was held on the Korean island of Jeju, to celebrate and consolidate the relations between the regional bloc and Korea. The Summit was followed by several bilateral meetings between President Lee and some of his ASEAN counterparts, including one with the Cambodian Prime Minister. Also, Korea completed a set of FTAs with ASEAN to cover goods, services and

22 *South Korea in a new Asia initiative*, Asia Times, 30 June 2009.

23 *Shift to Asia*, Korea Times, 9 March 2009.

24 *With 'new Asia initiative', Korea comes of age*, The Korea Herald, 30 March 2010.

25 From 2004 to 2008, total trade between ASEAN and Korea doubled from USD46.4 billion to USD90.2 billion, while mutual investment increased five-fold from USD1.3 billion to USD6.8 billion. (See *Joint Statement of the ASEAN-Republic of Korea Commemorative Summit*, Jeju Island, Korea, 2nd June 2009) In 2009, Korea was ASEAN's fifth largest trading partner, with total trade between the country and the region amounting to USD53.3 billion.

26 See ASEAN-Korea Centre website, <http://www.aseankorea.org>. Among others, the Centre regularly organizes country investment seminars, cultural fairs and exhibitions.

Moving Beyond Misconceptions

A critical review of Korean investment in Cambodia

investment, which were expected to facilitate further investment and trade.²⁷ It also continued its active involvement in the “ASEAN Plus Three” mechanism.²⁸



The ASEAN-Korea Commemorative Summit in June 2009, Jeju Island, Korea.

The New Asia Initiative was also spearheaded by Lee Myung Bak's administration through visits to Asian countries. A six-day official tour in Southeast Asia covering Vietnam, Cambodia and Thailand in October 2009 offered President Lee the chance to promote directly his New Asia Initiative and seek to strengthen Korea's bilateral and regional cooperation. The Korean Presidency readily acknowledged that the tour was “aimed at building the foundation for Korea's new growth engine through economic and energy cooperation” with Vietnam and Cambodia, two “emerging economies with rapid growth in recent years.”²⁹ More recently, during a Korea-Asian Development Bank (ADB) Mekong Development Forum in September 2010, the Korean Finance Minister recognized that Korea was actively “seeking to play a role in the development of the Mekong River region”, through increased financial support, technical cooperation and investment.³⁰ The following month, Lee Myung-Bak proposed the creation of a South Korea-

27 Korea and ASEAN first concluded an FTA on goods in May 2006, later extended to services in May 2009 and finally investment in June 2009. Under the agreements, Korea and ASEAN countries have committed to eliminate trade tariffs on a range of products within a determined period, through annual reductions of those tariffs.

28 “ASEAN Plus Three” is a forum of cooperation between ASEAN and China, Japan and Korea initiated in 1997. It covers a wide range of issues and has played a prominent role in financial and monetary issues.

29 *Energy, economy top Lee's agenda for Asean tour*, Joong-Ang Ilbo, 15 October 2009.

30 *South Korea seeks role in Mekong River region development*, Yonhap, 7 September 2010. Note Korean financial aid includes Korea Exim Bank's direct loans and grants, but also co-financing in partnership with ADB.

Mekong Foreign Ministers Meeting to strengthen Korea's economic cooperation with the region.³¹ Korea's wider relations with ASEAN provide the backdrop to its relationship with Cambodia.

Korea's aspiration to be a new type of leader

In its quest for increased influence in ASEAN, Korea has to compete with other nations, including China, that are also attracted by the prospects and potential offered by the strategic region. In this context, the New Asia Initiative seems to open a new path for the Korean administration. Under the Initiative, Korea has sought to portray itself as a new type of leader that is able to understand better developing countries' needs and act as a bridge between them and developed nations. To do so, Korea can boast of its successful transition from a country ravaged by war to an economic powerhouse in only 40 years.³² While it used to receive development aid until the mid 1990s, Korea became a donor country, starting at the end of the 1980s.³³ Not only was the so-called Korean miracle a source of pride for its people, but it also stirred admiration in developing countries aspiring to emulate the Korean success and facing the same challenges Korea did. Referring to this history, the Lee Myung-Bak administration has readily emphasized Korea's ability to empathize with current developing nations. For example, President Lee made powerful references to his own life story: "[A] young boy who once stood in line to receive used clothes from foreign missionaries now stands before you as president of the Republic of Korea. I know what it is like to be in want. I have benefited from other people's compassion and so I know more than others what kind of help should be given to those in need."³⁴

Two emblematic events reflected Korea's success in its ambitions to play a more prominent role internationally. In January 2010, it joined the Development Assistance Committee (DAC) of the Organization for Economic Cooperation and Development (OECD), one of the very few former aid recipient countries to do so.³⁵ This meant a stronger commitment for Korea as a donor, which pledged to triple its aid by 2015. Korean aid neared one billion dollars in 2009, focusing mostly on Asia.³⁶ In 2011, Seoul will also host the Fourth High-Level Forum on Aid Effectiveness

31 *South Korea, ASEAN upgrade relationship*, UPI, 29 October 2010.

32 In the last fifty years, Korea's annual per capita income experienced a phenomenal increase, from \$82 to \$19,000 (See: Duncan Green, *From Poverty to Power: How Active Citizens and Effective States Can Change the World*, 2008). As of 2009, Korea was ranked the 15th largest GDP in the world according to a World Bank list. Although its economy was badly hit by major crises in 1997 and 2009, the country eventually rebounded successfully. It was one of the first nations to emerge from the recent global downturn, with the IMF even forecasting 6.1% growth for Korea in 2010.

33 See ODA Korea, Ministry of Foreign Affairs and Trade, <http://www.odakorea.go.kr/eng/introduction/history.php>.

34 *Keynote Speech*, 9th International Institute for Strategic Studies Asia Security Summit, Singapore, 4 June 2010.

35 The OECD DAC is a 24-member committee that comprises the major international donor countries and acts as a forum to discuss and coordinate international aid. Becoming a DAC member is conditioned to certain criteria about that country's aid, particularly its amount and type. Korea's admission is thus symbolic of the emergence of non-Western donors.

36 Korea committed to increase its aid from 0.09% of its GNI in 2009 to 0.15% by 2012 and 0.25% by 2015.

Moving Beyond Misconceptions

A critical review of Korean investment in Cambodia

organized by the OECD and the World Bank.

The hosting of the G20 Summit in Seoul on 11-12 November 2010 was also testament to Korea's growing international standing.³⁷ It offered a major opportunity for Korea to embody its pledge to become a more responsible member of the international community and defend developing nations' interest. Building on the precedent of Toronto, Korea invited five non-G20 countries as observers to the Summit, including Ethiopia and Malawi for Africa, as well as Vietnam as ASEAN chair. But most importantly, the G20 agenda included for the first time a session on development issues, reportedly upon Korean initiative. Insisting on the importance of poor nations' development, President Lee stated it was “one of the G20's duties to narrow the growth gap with the rest of the world.”³⁸ The Summit concluded with the adoption of the “Seoul Development Consensus for Shared Growth” which stated as its main objective “helping LICs [Low Income Countries] improve and maintain the levels and quality of growth, thereby reducing poverty, improving human rights and creating decent jobs.” The Consensus also rejected a “one-size-fits-all” development formula and stressed the lead role of developing countries in “designing and implementing [their] development strategies”.³⁹

Some observers see Korea's New Asia Initiative as a way to ensure “its long-term competitive survival” as it competes for global influence and resources, especially in relation to the strategic ASEAN region.⁴⁰ Other advantages working to the benefit of Korea include its democratic transition, making it a more open alternative than China, and the lack of any significant past history in the Asian region (unlike China or Japan) which means Korea's influence may be seen less as a threat.

2. The quest for energy supplies, a fundamental priority for Korea

Natural resources are crucial for Korea to sustain its energy-intensive economy. As its territory is only poorly endowed in natural resources, the country is acutely dependent on imports, for up to 97% of its energy needs. Oil represents half of its needs, coal a quarter and natural gas about a tenth. As of 2007, Korea was the fifth largest importer of oil in the world, the second largest importer of liquefied natural gas and imported the bulk of its coal requirements.⁴¹

Ensuring stable energy supplies has therefore been a fundamental priority for Korea. The current government set the objective to increase Korea's energy self-sufficiency, aiming for a near five-fold increase for oil and gas (from 4% to 18%) and a near doubling for mineral resources (from

See KOICA website, <http://www.koica.go.kr/english/koica/>

37 The G20 gathers the twenty major developed and emerging economies. It meets regularly to discuss and cooperate on key economic and financial issues.

38 *G20 summit tests Lee's global leadership*, The Korea Times, 11 November 2010.

39 Seoul Development Consensus for Shared Growth, 12 November 2010.

40 Newsweek, 16 January 2010.

41 See U.S. Energy Information Administration Statistics, http://www.eia.doe.gov/cabs/South_Korea

18% to 32%) from 2007 to 2012.⁴² Enhancing energy development projects overseas was identified as key to realizing this goal.

The Korean diplomacy duly reflected this priority, starting with previous President Roh Moo-Hyun, who understood the importance of securing energy sources overseas in the early 2000s. But this intensified under President Lee as he spearheaded a vigorous “resource diplomacy” aimed at securing resources abroad and widely supported domestically. The Korean government has become ever more active in its efforts to enhance energy cooperation with resource-rich countries across the world. Korean official visits to such countries have resulted in a string of mining, oil and gas cooperation agreements.⁴³ Cambodia is no exception, with agreements related to mining signed during Lee Myung-Bak’s visit in 2009. While the government has driven this policy, it has worked closely with the Korean private sector for its implementation. This cooperation is examined further in Section III.

In Cambodia, prior to Lee Myung-Bak’s visit, a few Korean companies were already involved in the energy sector, such as GS Caltex which owns a stake in an oil exploration block off Cambodia’s coast. Another interesting case is Kenertec, a little-known company that won the rights for eight mining concessions in northern Cambodia in late 2007, followed by the acquisition of another mine the following year. This came to the surprise of some observers as Kenertec lacked any prior mining experience and had faced reportedly intense competition, including from Chinese and Vietnamese companies. One of the keys to its success was the strong support it received from the Korean administration. Meaningfully, Kenertec praised its winning bids as successes both for itself and Korea.

3. Korea’s climate change ambitions: “Low-Carbon Green Growth”

Another prominent policy direction spearheaded by Lee Myung-Bak’s administration is its ambitious climate change agenda. This is embodied in a “Low-Carbon Green Growth” which aims to achieve economic development that is environmentally friendly in order to combat climate change.⁴⁴

Heavily industrialized Korea is one of the world’s fastest growing carbon emitters. Although it was not required to reduce its greenhouse gas emissions under the Kyoto Protocol,⁴⁵ it voluntarily committed to cut by 30% its greenhouse gas emissions by 2020, one of the highest

42 See Ministry of Knowledge Economy website, <http://www.mke.go.kr/language/eng/policy/Epolicies.jsp>

43 For example, a Korean delegation comprising of both government officials and company representatives accompanied Lee Myung-Bak in resource-rich Uzbekistan and Kazakhstan in May 2009, while another one visited Venezuela, Bolivia, Ecuador and Mexico, all rich in oil, gas and minerals. See *Korean ‘Caravan’ Boosts Resource Diplomacy*, The Korea Times, 24 June 2009.

44 In January 2010, the Korean government adopted a “Low-Carbon, Green Growth” law committing the country to spend 2% of its GDP for eco-friendly business projects contributing to reduce greenhouse gas emissions. See *S. Korea authorizes “low carbon, green growth” law*, Xinhua, 13 January 2010.

45 Korea is still considered as a developing country under the Protocol.

Moving Beyond Misconceptions

A critical review of Korean investment in Cambodia

reduction targets in the world. The Korean administration has taken a range of measures – such as a five-year plan for green growth including massive government spending – to support green technologies and increase the use of clean and renewable energy, while reducing reliance on fossil fuels. Under Korea's impulse, “Green Growth” was one of the discussion items on the agenda of the Business Summit held on the sidelines of the G20 Summit in Seoul in November 2010.

While this policy is largely domestic in its scope, it also has external implications. President Lee promoted his “Low-Carbon Green Growth” vision with ASEAN partners at the Commemorative Summit in 2009, which agreed to cooperate on climate change projects. Forestry was one important area of cooperation for Korea, who proposed the creation of an “Asian Forest Cooperation Organization” at the Summit.⁴⁶ As part of its climate change agenda, the Korean government ambitions to secure one million hectares of forestation sites by 2050. Such cooperation has already been initiated with Cambodia. The Korean Forest Service concluded an MoU on forestry cooperation with the Cambodian Forestry Administration in June 2007. This was followed by another MoU in October 2009, under which Cambodia committed to provide 200,000ha of land for Korea's forestation projects.

The “Low-Carbon Green Growth” was also reflected in Korea's regional policy with its East Asia Climate Partnership. In light of the need for international cooperation on climate change, the Partnership was launched in July 2008 and Korea committed to raise USD200 million to fund projects combating climate change in developing countries in the Asian region over the next four years.

Last but not least, again relying on cooperation with the private sector, the Korean administration has increasingly pushed for overseas investment projects that fit the green growth approach: for example, plantations for biomass or other alternative energy projects, including enthusiastic support for the bio-energy market.

The biofuel investment in Cambodia of MH Ethanol provides an example of such projects, one that purports to provide economic benefits while helping to fight climate change with the production of a green fuel. The company's investment was also expected to contribute to Cambodia's socio-economic development, mainly by creating jobs and boosting the agricultural sector. However, MH Ethanol's investment has been struggling to perform as hoped and provide the benefits it was expected to.

⁴⁶ See *Joint Statement of the ASEAN-Republic of Korea Commemorative Summit*, 2nd June 2009.

III. The expansion of Korean investment in Cambodia

I. A boom to be nuanced?

As relations between Cambodia and Korea strengthened, Korean investment in Cambodia has been growing over the last decade, with a notable boom from 2005.⁴⁷ From less than USD20 million in 1997, approved investment reached peak levels ten years later, with USD828 million in 2007 and USD1.2 billion in 2008, when Korea was reported to be the second largest investor in the country. This surge was driven largely by massive investment in the real estate and construction sector, with Koreans involved in very ambitious large-scale real estate projects.

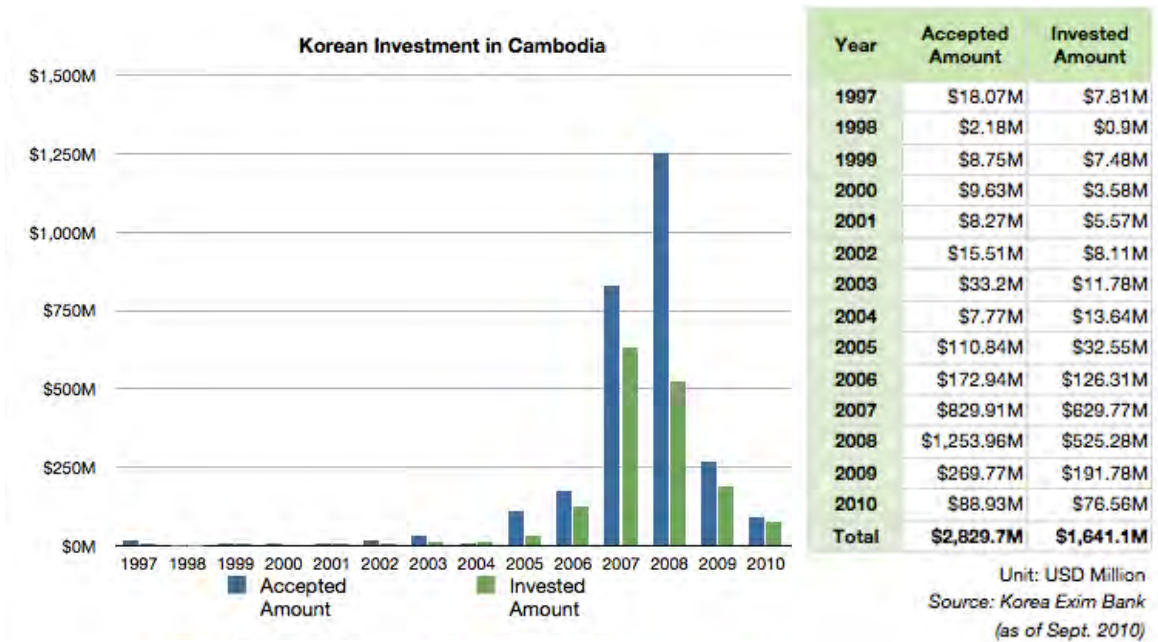
The global economic downturn brought an end to this boom in 2009, as Korean investment plummeted, with its flagship investment in real estate and construction suffering the most spectacular drop. Approved investment from Korea amounted to USD269 million in 2009 and USD64 million for the first half of 2010. However, it should be noted that the 2009 level was higher than in 2006, before the real estate and construction boom. This pointed to a persistent interest from Koreans in Cambodia and the opportunities they saw in the developing country. Continuous visits of Korean business delegations from various sectors were testament to this. For instance, garment, telecommunications and IT companies visited Phnom Penh for potential investment deals in June 2010, followed by power and energy firms in August and another garment industry delegation in September.

On the basis of the previously quoted figures, Korea has widely been portrayed as one of the top investors in Cambodia, largely due to the real estate and construction boom in 2007 and 2008. However, it is important to note that these figures referred to approved investment, not actual investment implemented in the developing nation. Although the actual investment figures also attest to a clear increase of Korean investment in Cambodia over the last decade, they are consistently inferior to the approved levels (except in 2004), oftentimes markedly so. Most notably, actual investment was a third less than the approved level in 2007 (with USD525 million against USD269 million) and less than half in record year 2008 (with USD629 million against USD1.2 billion). This meant that Korean investment actually decreased significantly from 2007 to 2008, instead of the surge shown by the approved levels. Hit by the global downturn, actual investment decreased to USD191 million in 2009, before dropping to USD52 million for the first half of 2010.

⁴⁷ Approved investment reached USD110 million in 2005, more than ten times the level of the previous year (USD7 million) and more than three times the level of 2003 (USD33 million). This kept increasing to USD172 million in 2006. Actual investment figures also show a notable boom starting in 2005.

Moving Beyond Misconceptions

A critical review of Korean investment in Cambodia



It is essentially the real estate and, to a lesser extent, the construction sector that contributed to the stark gap between approved and actual investment figures. This pointed to the existence of a non-negligible number of Korean projects which, despite being approved, were not realized for various reasons, including a failure to ensure the required funding. Therefore, it appears that the magnitude of Korean investment and their impact in Cambodia, might have been unduly exaggerated, especially its flagship involvement in real estate and construction.

2. Main sectors of investment

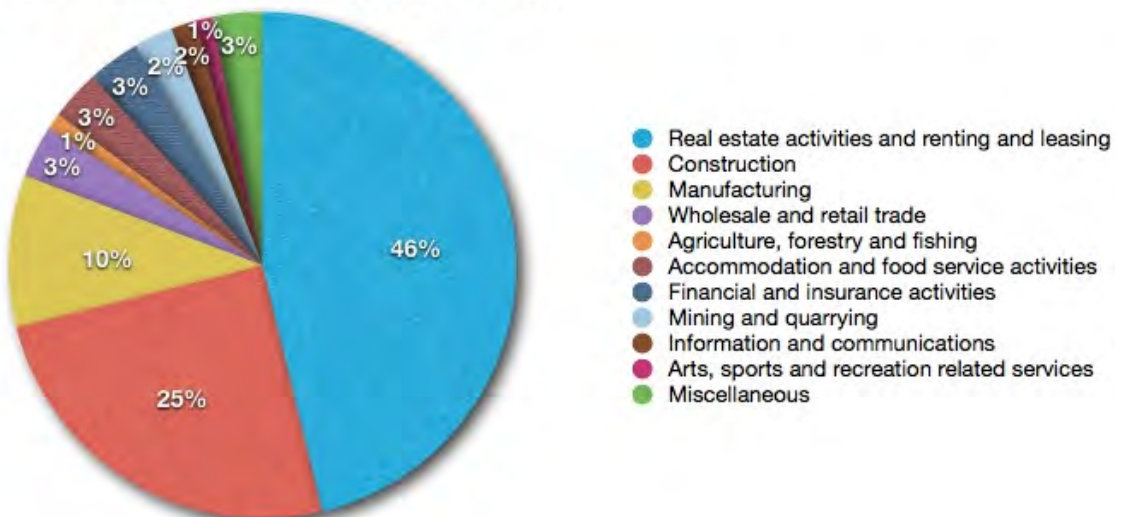
While Korean investment in Cambodia has historically focused on garment manufacturing since the late 1990s, other sectors have become more prominent with the real estate and construction sectors in particular experiencing a dramatic boom from the mid 2000s. But the diversification of Korean interests was wider and included increased activities in the financial services sector; a growing new interest for the agriculture and mining sectors, as well as significant and continuing investment related to services. This section focuses on some of the main sectors of investment.

Moving Beyond Misconceptions
A critical review of Korean investment in Cambodia

| Top ten sectors of Korean investment in Cambodia (Cumulative total as of mid-2010) | |
|---|--|
| Approved investment | Actual investment |
| 1. Real estate - \$1.44 billion 2. Construction - \$587 million 3. Manufacturing - \$212 million 4. Agriculture, forestry and fishing - \$100 million 5. Wholesale and retail trade - \$97 million 6. Accommodation and food services - \$80 million 7. Financial and insurance activities - \$73 million 8. Mining and quarrying - \$72 million 9. Professional, scientific and technical activities - \$48 million 10. Information and communications - \$30 million | 1. Real estate - \$749 million 2. Construction - \$407 million 3. Manufacturing - \$154 million 4. Financial and insurance activities - \$53.9 million 5. Wholesale and retail trade - \$53.3 million 6. Accommodation and food services - \$52 million 7. Mining and quarrying - \$40 million 8. Information and communications - \$25.7 million 9. Professional, scientific and technical activities - \$25.1 million 10. Arts, sports and recreation services - \$17 million [11. Agriculture, forestry and fishing - \$16 million] |
| Total: \$2.81 billion | Total: \$1.62 billion |

Unit: USD
Source: Korea Exim Bank

Actual Korean Investment Per Sector (Cumulative Total)



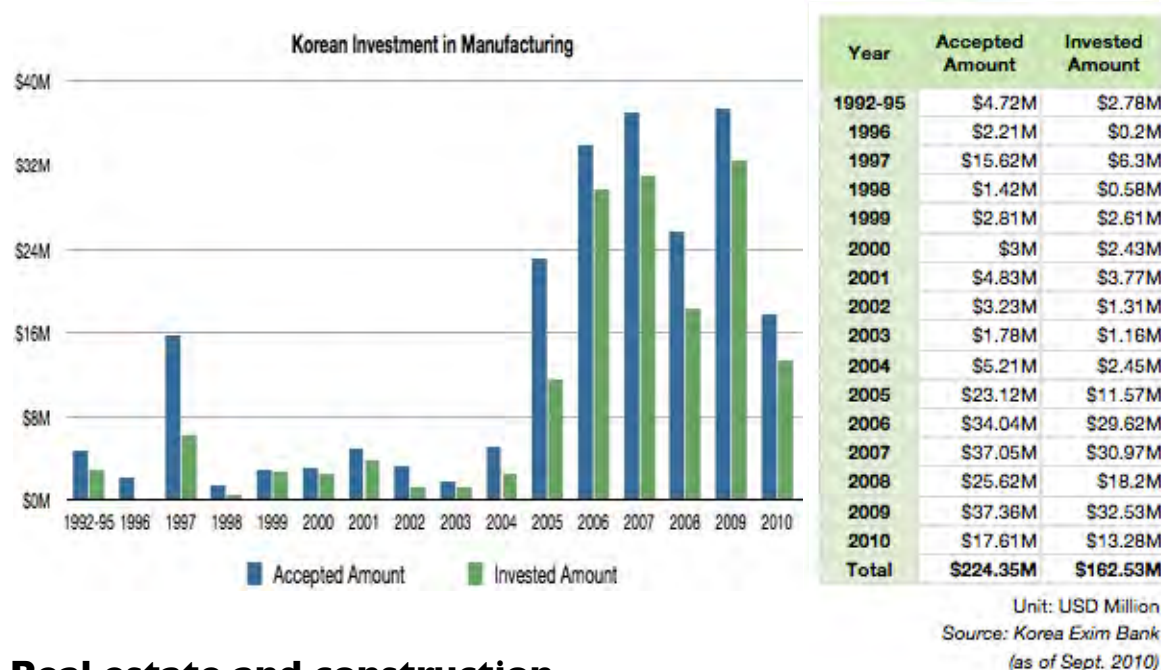
Moving Beyond Misconceptions

A critical review of Korean investment in Cambodia

Manufacturing

Koreans started investing in Cambodia in only a few sectors, mainly manufacturing, followed by wholesale and retail trade.⁴⁸ Throughout the years, manufacturing consistently remained the top sector for Korean investment until 2005, when it lost the first spot to the real estate sector. However, 2005 also marked the year Korean investment started booming in Cambodia. Accordingly, manufacturing investment experienced a more than five-fold increase that year to USD11 million and remained at consistently significant levels in the following years, even after the downturn.⁴⁹

As of mid-2010, manufacturing had received the third largest amount of accumulated total Korean investment, with USD154 million in real investment and USD212 million in approved investment.



Real estate and construction

Despite the continuing strength of Korean investment in manufacturing, it was their involvement in the real estate and construction sectors that took the limelight with respect to Korean investment in Cambodia. This is easily understandable in light of the spectacular levels reached by Korea's leading investment in the developing nation, together with the highly ambitious projects driven by Koreans. The most prominent ones include Phnom Penh's first-to-be skyscraper, the

48 Unless specified otherwise, this section will refer to actual investment amounts only as these are considered to provide a more accurate picture.

49 Investment in manufacturing were about USD30 million in 2006, 2007 and 2009. Their amount decreased to USD18 million in 2008 and USD13 million for the first half of 2010.

Moving Beyond Misconceptions

A critical review of Korean investment in Cambodia

USD250 million Gold Tower 42 started in January 2008 by Yon Woo Inc. in the heart of the capital; the USD2 billion Camko City, a 121 ha satellite city on the outskirts of town including residential, commercial and business areas;⁵⁰ and the International Finance Centre, a USD1 billion 52-floor tower project by conglomerate GS Engineering and Construction. In Siem Reap, home to the Angkor temples visited by cohorts of Korean tourists, Korean companies have also invested in tourist real estate projects, including colossal hotel projects like the USD450 million Siem Reap Lake Golf Resort built by KTC Leisure.



Promotional advertisement for the Gold Tower 42 (left) and the unfinished tower in Phnom Penh (right – source: Radio Free Asia).

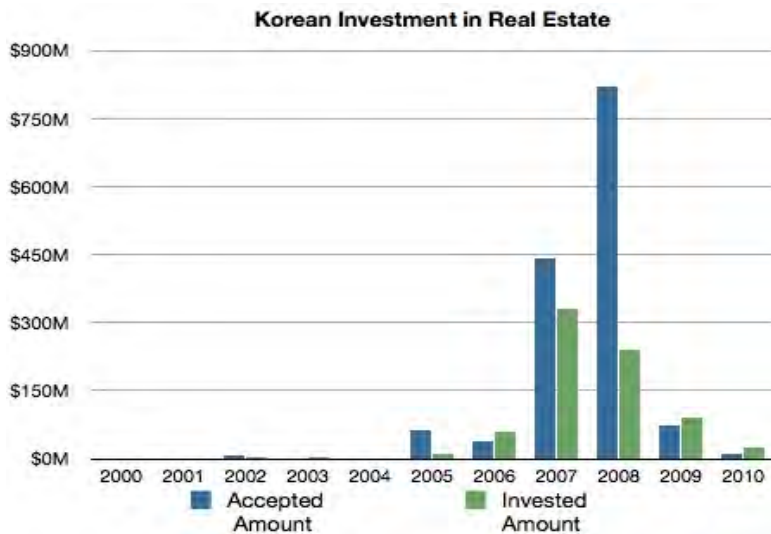
Korean investment in real estate and construction drew the most attention and praise, as they were at the heart of these sectors' growth. But they were also the ones to suffer the most severe debacle. They were badly hit by the global downturn, which resulted in the suspension or cancellation of a number of projects, including the International Finance Centre. It appeared to be the bursting of the Korean real estate bubble, which is particularly apparent when looking at the levels of approved investment in the sector: after soaring to USD442 million and USD820 million in 2007 and 2008, they dropped to USD71 million and USD11 million in 2009 and 2010's first semester. The gap with the level of actual investment in the sector also appears to point to a bubble: actual Korean real estate investment were only USD330 million and USD238 million in 2007 and 2008, and later fell to USD89 million and USD25 million in 2009 and 2010's first

⁵⁰ Camko City was chosen as the location for the future Cambodian Stock Exchange.

Moving Beyond Misconceptions

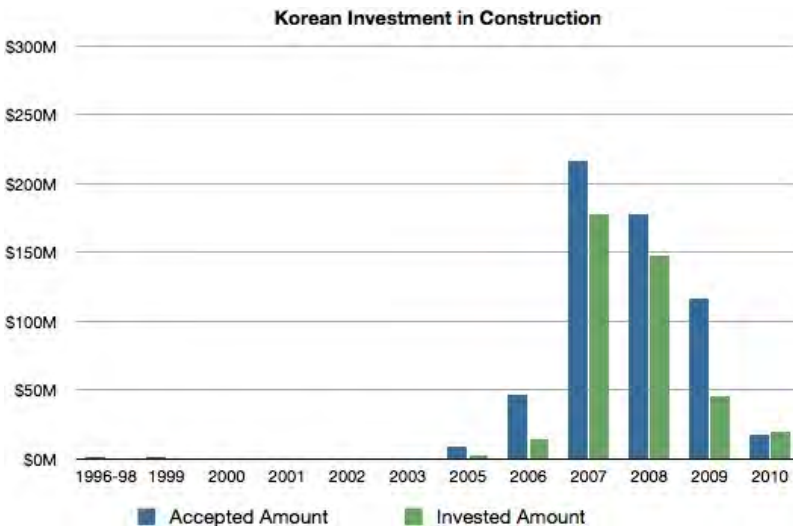
A critical review of Korean investment in Cambodia

semester. Similarly, real Korean investment in the construction sector fell sharply after the peak years of 2007 and 2008 (when it reached USD 178 million and USD 147 million respectively) to USD 89 million in 2009 and USD 25 for the first half of 2010.



| Year | Accepted Amount | Invested Amount |
|--------------|-------------------|------------------|
| 2000 | \$0.04M | \$0.04M |
| 2001 | \$0.03M | \$0.03M |
| 2002 | \$7M | \$4M |
| 2003 | \$0M | \$2M |
| 2004 | \$0.85M | \$0.85M |
| 2005 | \$62.9M | \$11.12M |
| 2006 | \$36.67M | \$59.11M |
| 2007 | \$442.96M | \$330.64M |
| 2008 | \$820.61M | \$238.65M |
| 2009 | \$71.83M | \$89.51M |
| 2010 | \$11.02M | \$25.12M |
| Total | \$1,453.9M | \$761.07M |

Unit: USD Million
Source: Korea Exim Bank
(as of Sept. 2010)



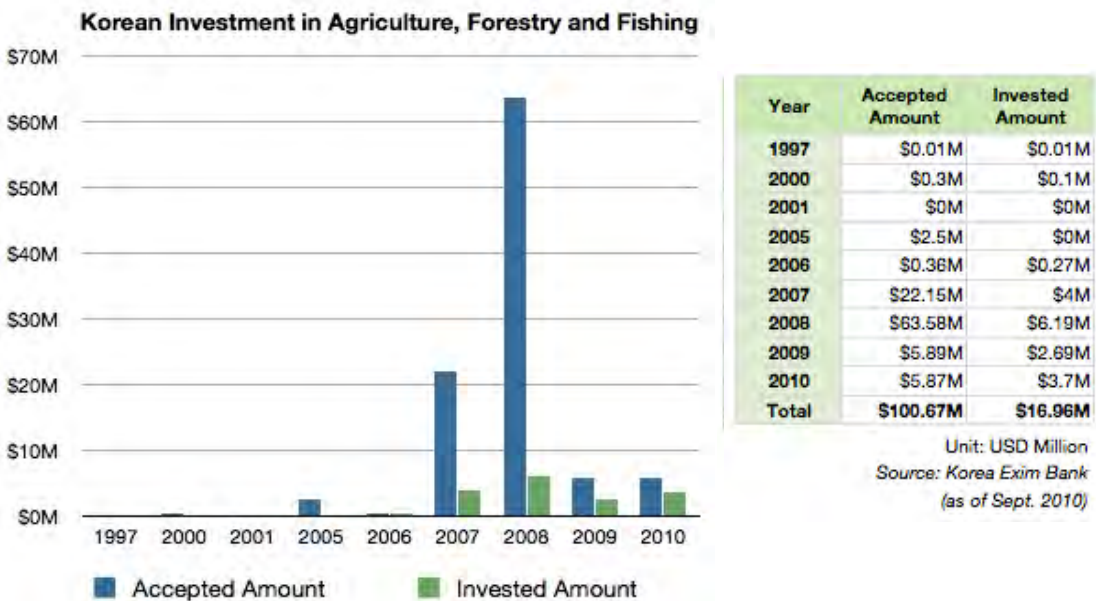
| Year | Accepted Amount | Invested Amount |
|--------------|------------------|------------------|
| 1996-98 | \$0.9M | \$0.27M |
| 1999 | \$1.5M | \$0.59M |
| 2000 | \$0.3M | \$0.06M |
| 2001 | \$0.77M | \$0.28M |
| 2002 | \$0M | \$0.27M |
| 2003 | \$0.16M | \$0.28M |
| 2005 | \$9.05M | \$2.87M |
| 2006 | \$46.88M | \$14.06M |
| 2007 | \$216.44M | \$178.17M |
| 2008 | \$177.74M | \$147.35M |
| 2009 | \$116.48M | \$45.52M |
| 2010 | \$17.93M | \$20.13M |
| Total | \$589.04M | \$410.09M |

Unit: USD Million
Source: Korea Exim Bank
(as of Sept. 2010)

This apparent bubble brings into question the seriousness of the investors in these sectors and the soundness of their projects. This came to light again more recently, when work on the Gold

Tower 42 ground to a halt in September 2010, with only two thirds of its structure completed. Similarly, a much publicized Star River project by Korean giant Posco in the capital was launched in 2010 before being suspended later in the year, before construction even began. Yet, other construction projects have been announced, such as a plan by Intercity Group to build a USD400 million grand resort complex, comprising of hotels, casino and golf course, in Siem Reap by 2012.

Agriculture



In recent years, agriculture has increasingly sparked the interest of Korean investors. Prior to 2007, there were only a rare few investment projects in this sector. Approved Korean investment in agriculture, forestry and fishery jumped from USD2.5 million in 2005 to USD22 million in 2007 and USD63.5 million in 2008.⁵¹ The global economic downturn caused these investment to fall to USD5.8 million in 2009 and again in the first half of 2010. By mid-2010, this sector ranked fourth in terms of cumulative approved Korean investment with a total of USD100 million. This clearly indicated a very strong interest on the part of Korean investors.

However, once again, not all of these approved investment turned into actual ones and the level of real investment was significantly lower, with the cumulative total for actual Korean investment only registering USD16 million. Nonetheless, even for actual investment, 2007 still marked the beginning of increased investment in the sector from Koreans, though at a much lower level: nearly USD4 million and USD6 million in 2007 and 2008 (about a tenth of the approved figures). After the downturn, figures were closer to the approved levels, with USD2.6 and USD3.7 million

⁵¹ According to the Korea Exim Bank, there were no approved Korean investment in agriculture, forestry and fishery in Cambodia from 2001 to 2004.

Moving Beyond Misconceptions

A critical review of Korean investment in Cambodia

in 2009 and 2010's first semester.

Once again, the gap between the approved and real investment may be indicative of weaknesses in the approved projects, resulting in their failure to translate into actual investment. This may be for instance an investor's lack of preparedness and knowledge about the Cambodian investment context. The case of the MH Ethanol's biofuel investment in Cambodia highlights the difficulties encountered by the company to meet its business plans, including biofuel production and export targets.

Mining

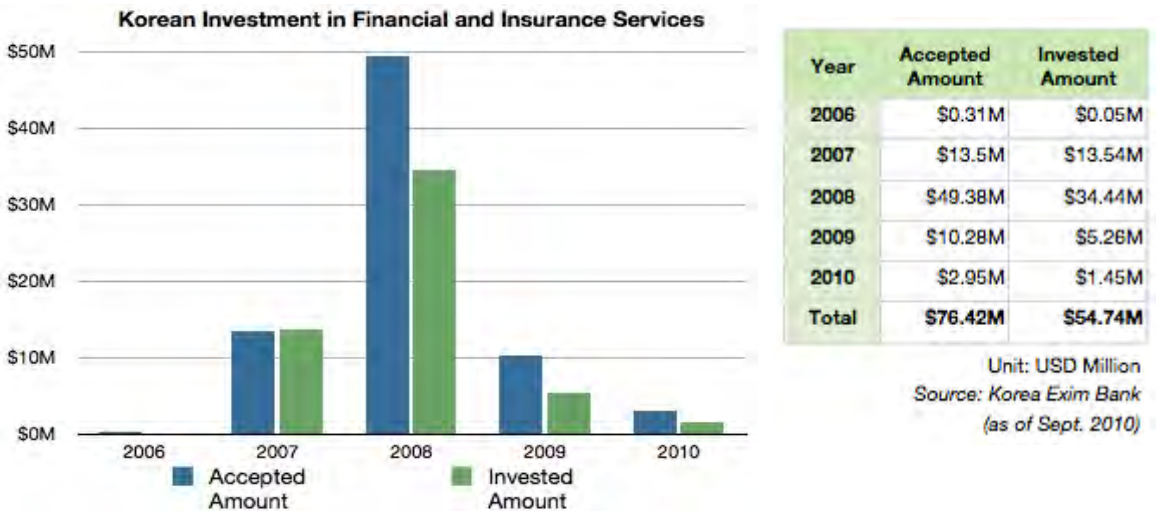


Mining represents another sector that has attracted growing interest from Koreans. Their investment truly started in 2003 at nearly USD6 million and increased to USD9 million in 2004, before falling to less than USD1 million the next year. But from 2006 until the downturn, Korean investment in mining steadily increased, from USD2 million in 2006 to USD4 million the next year and a peak of USD13 million in 2008. This might have been a reflection of the mining sector's strategic importance for the Korean administration.

The case of Kenertec's investment in Cambodia which started in 2007 and 2008 illustrates the fundamental importance attached by Korea to securing mining resources overseas and how the company was actively supported by its national government in doing so.

Significantly, Koreans had invested a cumulative total of USD40 million in the mining sector in Cambodia as of mid-2010 – the total of approved investment was nearly double at USD72 million.

Financial services



In the last four years, the financial and insurance services sector in Cambodia has seen a notable increase of Korean investment, ranking fourth in terms of cumulative total of actual investment from Koreans with USD53 million as of mid-2010 – the cumulative total of approved investment is USD73 million. After a very modest start in 2006, Korean investment jumped to USD13 million in 2007 and more than doubled to USD34 million the next year. At the time, an increasing number of Korean banks had been opening branches in the Cambodian capital. Levels then fell to USD5 million and USD1.2 million in 2009 and 2010's first semester.

This bears particular importance in light of the links between these banks and other Korean companies. Indeed, Korean banks play a role in funding and further attracting other Korean investment projects to Cambodia. For instance, Cambodia-based branch Shinhan Khmer Bank is involved in funding the Camko City real estate project in Phnom Penh. These links and the financial backing of Korean investment represent an issue that deserves further attention. This is particularly important as the decisions of these financial actors have a direct influence on the quality and soundness of investment projects.

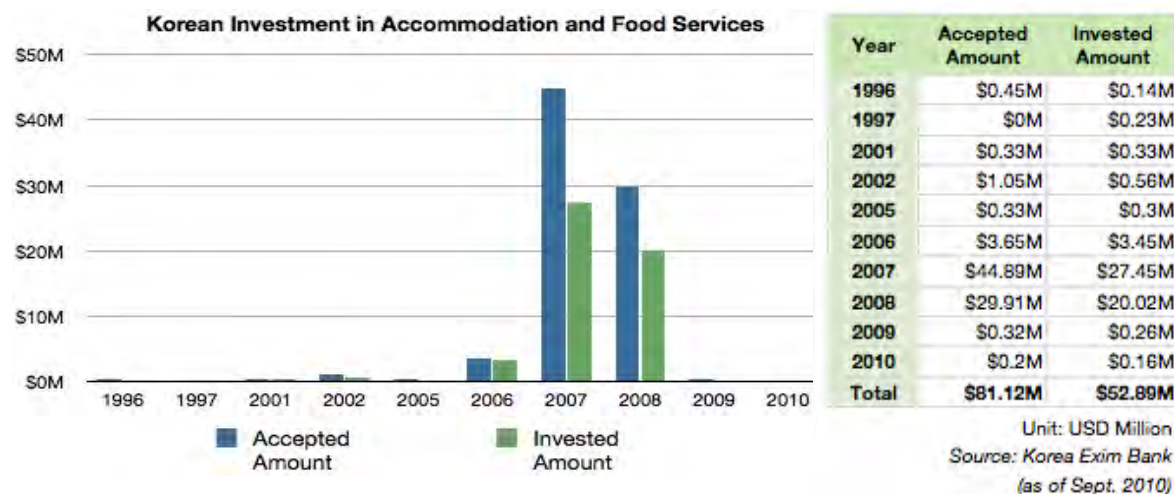
Another sign of Korea's interest in the sector lies in the involvement of the Korea Stock Exchange in the preparations to establish a Cambodian Stock Exchange since the signing of an agreement in 2008. In addition, Korean company Tong Yang Securities, a financial service provider, was one of 15 companies granted licenses to operate on the future bourse.⁵² However, the scheduled date for the inauguration of the Cambodian Stock Exchange has repeatedly been delayed. At the time of writing, it was expected to open in 2011.

⁵² Cambodia approves 15 securities firms for new bourse, Reuters, 2nd November 2010.

Moving Beyond Misconceptions

A critical review of Korean investment in Cambodia

Other services



Korea's increased presence in Cambodia has been accompanied by the creation of a range of businesses catering for the needs of the Korean community, from real estate agencies to restaurants, hotels and specialized grocery shops. Those are ubiquitous in some areas of Phnom Penh, where they are mostly targeted at business people and their families, and Siem Reap, where they serve the Korean tourists drawn by the Angkor temples. This actually represents a noteworthy economic contribution, which has been steadily growing since the early 2000s.

Significantly, wholesale and retail trade rank fifth in terms of cumulative total Korean investment in Cambodia with \$53 million, followed by accommodation and food services with \$52 million. Meanwhile, arts, sports and recreation services have received an accumulated total of \$17 million by mid 2010.

In addition, a gap should be noted in the official statistics, as the activities of many individual entrepreneurs may not be covered as they do not all register with their embassy. As of June 2009, there were over 1,540 Korean companies registered in Cambodia, with a peak of new registrations in 2007 with more than 600 new Korean enterprises that year.

3. Why the Korean investment boom in Cambodia?

Cambodia seen as a land of opportunities

Cambodia is widely seen by potential investors as a land of opportunities, a perception that endured despite the effects of the global economic downturn on the country. Commentators, along with the government, have marveled at what they see as the country's extraordinary progress from a war-torn nation to a developing country with a sustained growth. The Cambodian economy has been growing on an average of 9% for nearly ten years since the end of the 1990s, an achievement credited to more than a decade of political stability under the

unyielding rule of Prime Minister Hun Sen.

This view is exemplified in the following assessment by a business consulting firm specialized on Asia: “Cambodia is a rapidly changing society that still gets insufficient notice from investors but presents many opportunities for the investors willing to research and proceed prudently.”⁵³ In the words of the Korean International Trade Association (KITA), Korea's largest economic association which represents tens of thousands of companies involved in international trade, Cambodia is seen as one of “Asia's emerging investment destinations” for Korean companies, with many advantages in a context of political stability and high economic growth.

A context favorable to foreign investors

Cambodia's assets were traditionally deemed to be its cheap labour and abundance of natural resources. But most importantly, the government was seen as business-friendly and eager to attract foreign investment. It rapidly developed the legal framework necessary for modern market economy in a manner favorable to foreign investors. In particular, the Cambodian Investment Law provides for a low 9% corporate income tax, tax holidays of up to eight years, free repatriation of profits, and various tax and duty exemptions (for example, tax on profits or exports) for qualified investment projects. Most significantly, the law prohibits any type of discrimination against a foreign investor on the basis of nationality.

Land is the only exception to that non-discrimination rule. However, while Cambodia does not permit foreign ownership of land,⁵⁴ it does provide for a very advantageous alternative by allowing foreigners to lease land concessions for a maximum of 99 years.⁵⁵ The fees for such concessions remain very low, with a USD 1/ha deposit fee⁵⁶ and annual land rental fees going from zero to USD 10/ha according to the type of soil and due only from the third year of collecting the products of the plantation.⁵⁷ Land in Cambodia therefore remains easily accessible for foreigners at a low cost that is significantly cheaper than in its neighbors, an important factor in attracting agricultural investment.⁵⁸

Another major advantage of investing in Cambodia lies in the trade privileges it was granted by other countries, most notably the European Union (EU). As a least developed country (LDC), Cambodia benefits from the EU's “Everything But Arms” initiative, which is aimed to encourage trade with poor nations by allowing them to export their goods to the EU without being subjected to taxes or quotas, therefore making them more price competitive. The EU's preferential trade policy was instrumental in attracting sustained foreign investment to Cambodia.

53 “Why Cambodia for Investment?”, Business in Asia, http://www.business-in-asia.com/why_cambodia.htm.

54 Article 9 of the 2001 Land Law provides that only Khmer nationals have the right to own land in Cambodia.

55 Alternatively, a foreign investor may start an enterprise registered in Cambodia with a Cambodian party holding at least 51% of the shares in order for the company to own land (Article 9 of the Land Law).

56 Example of ELC Agreement with MAFF.

57 Principles for Calculating Land Rental Fee, MAFF, 13 January 1998.

58 See for example Business in Asia, http://www.business-in-asia.com/cambodia/cambodia_land.html.

Moving Beyond Misconceptions

A critical review of Korean investment in Cambodia

This was the case of MH Ethanol for instance. Its biofuel project included the acquisition of land to be turned into cassava plantations as well as the establishment of a bio-ethanol factory, which production was to be exported to European markets. The Korean company chose to invest in Cambodia due to the low cost of land and labor, which were expected to allow for cheap and abundant supplies of cassava. But MH Ethanol also clearly stressed that an even more decisive factor was Cambodia's trade privileges with the EU under the "Everything But Arms" initiative. By investing in Cambodia, the company's biofuel production would be more price competitive thanks to the tariff exemption.⁵⁹ In this context, MH Ethanol proceeded to a total of two shipments of biofuel to Europe so far.

The Korean government's active role in supporting overseas private investment

The private sector plays a key role in the implementation of the policies driven by the Korean government, including its energy or climate change agenda previously described. This close cooperation is instrumental to the success of Korean ambitions and Seoul has played a particularly active role to support its national companies and encourage them to become involved in overseas projects, particularly in the field of energy.⁶⁰ In this context, Korean companies have increasingly sought and managed to acquire ownership or control over natural resources overseas in recent years. Significantly, Korean private investment in overseas resources soared from less than a billion dollars in 2005 to \$7.2 billion in 2009.⁶¹

The Korean government has tirelessly pursued agreements to facilitate investment and trade in order to open new markets or obtain favorable conditions for its companies. Those efforts became even more pronounced in the aftermath of the economic downturn. In relation to Cambodia, Korea signed a bilateral agreement on the promotion and protection of investments to ensure positive treatment for its national companies as early as in 1997. In addition, its relations with Cambodia benefit from the array of FTAs on goods, services and investment signed between ASEAN and Korea.

There was also a more direct cooperation at work between the Korean government and its private sector. The high-level official visits at the core of President Lee's "resource diplomacy" routinely included groups of businessmen and served to open up opportunities for investments by Korean companies. For example, Lee Myung-Bak's visit in 2009 included a business luncheon with the Korean private sector in Cambodia and some of the agreements that were signed were left to Korean companies to implement.

⁵⁹ Daewoo Securities, 19 December 2008.

⁶⁰ While government support for its national private sector is far from being unique to Korea, the equation between the country's national interest and private companies' benefit is particularly strong in the case of Korea. This is possibly best epitomized by President Lee's past as chief executive officer in one of Korea's major conglomerates, Hyundai.

⁶¹ Figures from the Ministry of Knowledge Economy, quoted in *South Korea joins the natural resources race*, Joong Ang Ilbo, 22 December 2009.

Moving Beyond Misconceptions

A critical review of Korean investment in Cambodia

The Korean Embassy is also mobilized in supporting national companies, particularly its Korea Trade-Investment Promotion Agency (KOTRA). The Agency is part of the Korean Embassy and is exclusively devoted to supporting Korean investment and trade. It plays a key role in the implementation of a government strategy to increase exports and foreign investment. These goals are seen as crucial to Korea's prosperity, especially after its economy was severely hit by the 1997-98 Asian financial crisis.



President Lee's luncheon with the Korean business community in Phnom Penh (left) and tour of Korean company KTC Cable's factory (right) during his official visit in October 2009.

The case of Kenertec exemplifies such close cooperation between the Korean administration and the private sector. One of the keys to the company's winning bids over the mining concessions was the strong support it received from the Korean administration, both ministries (notably the Ministry of Foreign Affairs and Trade, the Ministry of Knowledge Economy) and the Embassy in Cambodia. An official of the Korean Embassy in Cambodia readily acknowledged their role in facilitating Kenertec's mine acquisition, saying: "*From start to finish, we were of course highly involved in this [Kenertec's success in acquiring the mine]. In any case, you have to understand that this was to help [Korea's] national interest.*"⁶² This was extolled by both the Korean government and the company as a remarkable example of fruitful cooperation, with Kenertec praising "*a successful model of government-private sector cooperation in the ever-intensifying competition for*

62 [파워중소기업] 중소기업, 석탄 20억톤 확보 (SME secures 2B tons of coal), MK News, 24 April 2008 (translated from Korean).

Moving Beyond Misconceptions

A critical review of Korean investment in Cambodia

resources and efforts to get overseas resources.”⁶³ The company further benefited from the Korean administration's strong backing for its highly ambitious investment projects to develop coal exploitation in Indonesia.

The challenges of investing in Cambodia

Observers and analysts have acknowledged the risks of investing in Cambodia. These include the hurdles related to doing business in a poor developing country, such as the lack of skilled workers and quality infrastructure, the high cost of electricity or the difficulties stemming from a deficient rule of law, including the cost of rampant corruption, and the improper implementation of relevant legislation.

Some of these challenges were recognized by KOTRA itself, in particular the lack of transparency and a widespread bribery culture in the Cambodian administration, which significantly increases the cost of doing business in the country,⁶⁴ the lack of protection for intellectual rights, and what it dubbed “high legal risks” relating to the lack of consultation before the government adopts legislative measures that may impact the private sector.

Some companies also recognized the difficulties and risks of doing business in Cambodia, as expressed by a member of a Korean garment industry delegation who visited Phnom Penh in September 2010 and complained about the lack of public economic data which made Korean companies “too scared to invest here.”⁶⁵

The difficulties met by MH Ethanol exemplify the challenges of investing in Cambodia and caution against unpreparedness to these issues. The company's plans have not been realized, neither for its cassava plantations or its biofuel plant. It initially reported meeting difficulties growing cassava on its land and complained of slow performance by local workers. Nearly ten years after they were granted, its concessions have still not been fully converted to plantations. This contributed to the company's difficulties in securing sufficient supplies of cassava for its biofuel factory. At the time of writing, less than two years after its inauguration, MH Ethanol's biofuel factory has been closed for over half a year, largely missing its production and export targets. Unlike a prior closure of the factory ordered by the government due to the environmental problems it had caused, this closure was a decision by MH Ethanol for business reasons. Overall, MH Ethanol's biofuel venture can hardly be qualified as a business success, which puts into question how well the company was aware of and prepared to the challenges of doing business in Cambodia.

Similarly, Kenertec's ambitious mining investment in Cambodia ended in failure. Less than three

63 *S Korean company wins mining rights in northern Cambodia*, Yonhap, 15 November 2007; *Kenertec takes over Rovieng iron mine in Cambodia*, Kenertec, 14 May 2008.

64 KOTRA refers to various informal fees from various government bodies, including a USD10,000-20,000 for the CDC to process investment incentive approval (compared to a USD1,750 official stamp fee), or a USD200-500 fee per hectare for ELCs demanded by MAFF as informal processing commission. See *Case study on Korean FDI in Cambodia*, KOTRA, October 2009.

65 The Phnom Penh Post, September 2010.

Moving Beyond Misconceptions
A critical review of Korean investment in Cambodia

years after the mining concessions were granted to Kenertec, they were taken over by Chinese State-owned firm Guangxi Non-Ferrous Metal Group (Cambodia) (GXNF) in early 2010. In the meantime, limited exploration activities took place in only four out of the nine concessions it controlled and Kenertec's enthusiastic plans to develop and operationalize the mines were not realized. The company's ambitions appeared unrealistic and failed to reflect the challenges of investing in Cambodian remoter areas lacking proper infrastructure. This also highlighted the company's lack of capacity as a mining developer and brought into question the government's decision to grant it so many concessions.

Problematic impact of Korean investment

In addition to the business difficulties they encountered, the two investment case studies also highlight the issues that their activities have created for local stakeholders and the environment, with little or no remedy for those affected.

Both MH Ethanol and Kenertec's concessions caused local villagers to lose land and natural resources on which they depended for their livelihoods. Due to the crucial importance of land for rural Cambodians, many families suffered a degradation of their living standards – and sometimes their food security – and were pushed into further precariousness.

MH Ethanol's biofuel plant was also responsible for a series of pollution problems due to its problematic waste water management in both of its investment sites. This resulted in health problems for villagers and their animals, but the pollution of rivers and lakes caused repeated fish kills and the loss of their livelihoods by local fishermen.

Both companies also engaged in a controversial partnership with the Cambodian military who provided security services for their investment and were responsible for abuses and intimidation against local villagers.

Meanwhile, the benefits brought by MH Ethanol or Kenertec were limited in terms of job and wealth creation, and ended with the collapse or suspension of the companies' activities.

An extensive review of the issues surrounding these investment cases can be found in “*Kenertec – Case study of a Korean mining investment in Cambodia*” and “*MH Ethanol – Case study of a Korean agro-industrial investment in Cambodia*”.

Moving Beyond Misconceptions

A critical review of Korean investment in Cambodia

Conclusion

Foreign investment has the potential to foster the socio-economic development of impoverished countries. Under President Lee's New Asia Initiative, Korea clearly ambitions to incarnate such a positive model, one that is closer to the interest of developing nations and helps them take the path of a green development. At the recent G20 Summit hosted in Korea in November 2010, Lee Myung-Bak again reaffirmed Korea's resolve to become a responsible member of the international community.

But for Korea's growing influence to match its discourse, it is indispensable that Korean investment genuinely contributes to the host country's sustainable development. Such a role for the private sector was clearly affirmed in the Seoul Consensus reached at the G20 Summit. For this to happen, it is imperative that the investment supported by the Korean administration be sound and responsible.

The scrutiny of Korean investment in Cambodia provides some illuminating findings in this regard. The magnitude of Korean investment in Cambodia appears to have been exaggerated, as a notable gap exists between the level of approved investment and actual ones. By mid-2010, their cumulative totals were respectively USD2.81 billion and USD1.62 billion, nearly half as less. This differential was particularly marked in the real estate sector, which was a flagship area of Korean investment but only saw less than half of approved investment be actualized. More recently, the agriculture sector has seen a similar gap between the two levels, with the accumulated total of real investment representing only 16% of approved investment.

To a significant extent, Korean investors' interest in Cambodia has therefore failed to turn into actual investment in the country. This may be indicative of the need for better awareness of the challenges of investing in the developing nation, such as the lack of proper infrastructure or public information, or the cost of widespread corruption. MH Ethanol's prolonged difficulties and resulting suspension of its activities appears as an example of such ill-prepared investment and its failure to bring lasting benefits to its host country.

In addition, as the Korean administration's energy and climate change agenda became increasingly prominent in recent years, it has worked in close cooperation with the private sector to implement its "resource diplomacy" and "low-carbon green growth" vision. The government has been ever more active in supporting private sector investment in these areas, including energy development projects, such as mining or oil, and investment in green energies like biofuel. Such cooperation has been at work in Cambodia, with the signing of various agreements with Korea on energy, agriculture or forestry in relation to climate change.

MH Ethanol and Kenertec provide examples of such investment, respectively in mining and bio-energy. However, the two case studies illuminate the difficulties of investing in Cambodia, as they both failed to meet their business targets and either suspended their activities or folded. In addition, they caused a range of issues affecting local stakeholders and the environment. This sheds light on the imperative need for responsible and reliable companies if the cooperation

Moving Beyond Misconceptions
A critical review of Korean investment in Cambodia

between the Korean government and private sector is to be truly successful and contribute to a sustainable and green development overseas. Otherwise, as demonstrated by the collapse of Kenertec's mining venture, the investment will also fail to serve both the interests of the company and its home country.

The concerns raised by the case studies also highlight the necessity for the Korean government to pay attention to the country situation in which its national companies invest. Their businesses also bear the influence of pervading governance, transparency and corruption issues in Cambodia. These issues create a challenging environment for investment, which is therefore not conducive for these investments to contribute to poverty reduction and sustainable development.

Through its close links with Cambodia, including its commitment to assist the country define its national development master plans and its pledge for a “rectangular cooperation”, Korea is in a privileged position to help Cambodia address these important issues. It would then live up to its aspiration to be a truly responsible leader.

Moving Beyond Misconceptions

Kenertec - Case study of a mining investment in Cambodia



Phnom Penh, Cambodia
2012

Moving Beyond Misconceptions

Kenertec – Case study of a Korean mining investment in Cambodia

Author: Ji-Sook Lee

Acknowledgement

The author would like to thank Trocaire and Heinrich Böll Foundation for supporting this research. I would also like to acknowledge and thank all individuals and organizations who supported this project with helpful discussions and comments on previous drafts, including Roger Henke, Terry Parnell, Pyrou Chung, Mark Grimsditch, Jason Jones, Dominic Renfrey, Ben Davis, Megan MacInnes, Rebecca Catalla, Andrew Cock, Ryerson Christie, Phea Chung, Fatima Ayub, Haejin Lee and Yoonjung Kim. Credit for the area maps used in the case study reports goes to Hok Menghoin, with thanks for his assistance.

I would also like to thank deeply the Lutheran World Federation and community network representatives for their invaluable help during field investigations, as well as the affected communities and individuals who took time to meet with me and answer my questions.

Finally, special thanks to Jung-Tae Lee for his never-ending clarifications and support, Katrin Seidel for the inspiring discussions and tireless encouragements and to my research assistant Vutheara Dy for her enthusiastic and unfailing collaboration.

Table of Contents

| | |
|---|-----------|
| Executive Summary..... | 3 |
| I. Introduction | 6 |
| 1. Securing natural resources overseas, a crucial Korean policy driver | 6 |
| 2. The example of Kenertec's investment in Cambodia..... | 7 |
| II. Background information on Kenertec..... | 9 |
| 1. Who is Kenertec?..... | 9 |
| 2. A company with a questionable record..... | 10 |
| 2.1 Repeated implication in bribery scandals..... | 10 |
| 2.2 Financial difficulties, bankruptcy and delisting..... | 11 |
| 2.3 Kenertec's troubling origins | 12 |
| 3. Kenertec's mining investment in Cambodia..... | 13 |
| 3.1 Subsidiary Kenertec Resources..... | 14 |
| 3.2 Joint venture Ratanak Kenertec..... | 15 |
| 4. Why Kenertec's successful start in Cambodia?..... | 17 |
| III. A critical review of Kenertec's mining investment..... | 19 |
| 1. Advisory on research difficulties..... | 19 |
| 2. Opacity and lack of public information | 21 |
| 2.1 Ratanak Stone's mines in Rovieng: a succession of partners for a limited success..... | 23 |
| 3. What progress in Kenertec's mining development plans?..... | 28 |
| 3.1 Kenertec Resources..... | 28 |
| 3.2 Ratanak Kenertec..... | 29 |
| 3.3 Kenertec's failure to implement its development plans..... | 30 |
| 4. Villagers' negative perception of the company..... | 31 |
| 5. Impacts caused by Kenertec's concessions..... | 31 |
| 5.1 A chaotic mining development scene..... | 31 |
| 5.2 Lack of information and consultation for local stakeholders..... | 32 |
| 5.3 Loss of land – or fear of land loss..... | 34 |
| <i>Loss of land or threat to land due to the concessions.....</i> | <i>34</i> |
| <i>Loss of land due to road developments</i> | <i>36</i> |
| 5.4 Decreased access to forest and its resources..... | 37 |
| 5.5 Impact on livelihoods..... | 40 |
| 5.6 Environmental impact..... | 41 |
| 5.7 Militarization of Kenertec's concessions..... | 41 |
| 5.8 Renewed difficulties with GXNF's takeover..... | 44 |
| IV. Conclusion: The multidimensional failure of Kenertec's investment | 46 |

Executive Summary

The crucial importance of natural resources for Korea

Securing natural resources has been a crucial priority for resource-scarce Korea in order to sustain the needs of its highly industrialized economy (97% of its energy needs are met through imports). As a result, the development of energy-related projects overseas has been identified as a major objective for Korean policy. The administration of current President Lee Myung-Bak has pursued a vigorous “*resource diplomacy*” which has resulted in a string of mining, oil and gas cooperation agreements with resource-rich nations across the world, including Cambodia.

While the government has driven this policy, it has worked closely with the Korean private sector for its implementation. Significantly, Korean private investment in overseas resources soared from less than a billion dollars in 2005 to \$7.2 billion in 2009. The Cambodian mining and quarrying sector has attracted growing interest from Koreans since 2003 and received a cumulative total of USD40 million in actual investment from Koreans as of mid-2010 (while attracting a cumulative total of USD72 million in approved investment).

The case of Kenertec's investment in Cambodia

Against this backdrop, Kenertec presents an interesting case in point. Despite its lack of mining experience, the Korean company – through its subsidiary, Kenertec Resources – won the rights to eight mining lots covering a total area of more than 1,500km² in northern Cambodia in November 2007. Kenertec boasted strong support from its national government and its success was originally hailed by both the Korean company and government as a remarkable model of successful cooperation on overseas energy development projects between the Korean administration and private sector. In 2008, Kenertec and Cambodian company Ratanak Stone established joint venture Ratanak Kenertec, in order to acquire an additional iron mine. However, a closer scrutiny reveals a controversial record, both for the company and its investment.

Kenertec's questionable record

A medium-sized company, Kenertec was officially founded in 1997 and originally did not specialize in mining, but in the manufacturing of heating equipment and green energy technologies. The company appeared to be incredibly successful and became increasingly involved in recent years in ambitious energy resource development projects overseas, such as its mining plans in Cambodia, for which it received active support from its national government, including the Korean embassy.

However, further investigation into Kenertec has revealed that the company routinely engaged in bribery to secure contracts in Korea and became implicated in a series of corruption scandals dubbed the “*Kenertec-gate*”. Its president was arrested and sentenced in several cases, along with executives of other firms and government officials. The scandals raised questions over the manner in which Kenertec consolidated its business, but also the soundness and reality of the company's apparent success. This was soon exposed by its financial difficulties and eventual bankruptcy in 2010. Last but not least, Kenertec's origins also appeared to be controversial, as it

Moving Beyond Misconceptions

Kenertec – Case study of a Korean mining investment in Cambodia

was the new incarnation of Goshin, a company previously gone bankrupt under the weight of a massive debt. Some observers even suspected that the company name was changed to avoid paying Goshin's creditors.

The problematic development of the Cambodian mining sector

Cambodia's mining sector has developed rapidly since the mid-2000s, attracting a growing interest from foreign companies. However, this fast-paced development has been viewed with alarm by Cambodian civil society due to a lack of transparency, public information, and adequate legal framework for mining as well as environmental and social safeguards.

This opacity is not conducive to a sound and stable development of the mining sector, as illustrated for example by the successive involvement of no less than three groups, including Kenertec, to try and develop the same mine, in a partnership with Ratanak Stone, over five years. The lack of transparency about mining concessions creates significant challenges for companies who may have competing claims in overlapping areas, those in government or civil society seeking to research or monitor mining activities in Cambodia, and most importantly, local stakeholders. The latter are left in profound ignorance of major developments affecting their lives (such as the granting of concessions or building of roads), and deprived of the opportunity to have any say about such developments. Instead, villagers are caught in a web of chaotic mining developments by different companies which threaten or impact their land and livelihoods, meaning that in many areas affected by mining developments, people lived in uncertainty – and fear – over their future as they were routinely not informed, nor was their consent sought, before the company undertook exploration activities.

The issues around Kenertec's concessions

Kenertec exemplifies these issues. Due to the general opacity, contradictory details have prevented attempts to ascertain fundamental aspects such as the type of license received by the company, the size of potential reserves, the location or size of the concessions, or even their exact number. For instance, while Kenertec consistently referred publicly to one mine being acquired through its joint venture, it was revealed that two mines in separate locations were actually being developed. In addition, the concessions' impact on both land and access to the forest resulted in decreased livelihoods for local villagers living in the area.

Last but not least, Kenertec was engaged in a controversial partnership with the Cambodian military, who were part and parcel of its operations in various with Ratanak Stone, a company connected to General Pol Saroeun, the Commander-in-Chief of the Royal Cambodian Armed Forces (RCAF). It is of particular concern for a company to partner with a country's army, especially one has been accused of abuses and illegal activities. By basically sub-contracting military services for its benefit, Kenertec stands to be associated with any abuses the soldiers may commit and bear some complicity in them.

While there was a general sense of powerlessness amongst local villagers about mining developments, some community representatives made remarkable efforts to try and mobilize their fellow villagers, including protests over the impact they suffered or feared. Their actions voiced a demand for a better development in which communities have a say in developments that affect their lives.

The failure of Kenertec's investment in Cambodia

Less than three years on, the choice of Kenertec to develop so many mines appears to have been anything but well-founded. Only three out of Kenertec Resources' eight concessions had reportedly seen some exploration activities, whereas progress on Ratanak Kenertec's two sites appeared to have been limited – local communities had nonetheless suffered from the company's operations or its association with the military. In addition, Kenertec eventually collapsed and its concessions were taken over in early 2010 by a Chinese State-owned firm, Guangxi Non-Ferrous Metal Group (Cambodia) (GXNF), bringing to an end the Korean company's short-lived venture into mining in Cambodia. GXNF has since been very active in the mining sites, contrasting with the lack of progress under Kenertec's tenure. However, the Chinese company's arrival also came with renewed restrictions and difficulties for local villagers, as the presence of soldiers guarding the sites increased and people were banned from using a company road.

Kenertec's poor record raises questions over the Cambodian government's decision to grant so many concessions to this newcomer to the mining sector, as well as the active support the company received from the Korean administration. It emphasizes the importance of selecting responsible and competent companies for mining investment to contribute to government objectives, such as sustainable development of the sector or the securing of a stable source of minerals.

I. Introduction

I. Securing natural resources overseas, a crucial Korean policy driver

For modern Korea, the securing of natural resources overseas is of crucial importance. The country, which had the 15th largest GDP in the world in 2009,¹ is only poorly endowed in natural resources on its own territory, while its highly industrialized economy is a heavy consumer of natural resources. This has left Korea extremely dependent on overseas sources for its energy needs (97% of them are met through imports) and therefore vulnerable to increases in the prices of raw material and energy.

As a result, ensuring stable energy supplies has been a fundamental priority for the Korean government since the early 2000s. This was reinforced under current President Lee Myung-Bak, who identified as a major objective the development of energy-related projects overseas. His administration has been pursuing a vigorous “resource diplomacy” which resulted in a string of mining, oil and gas cooperation agreements with resource-rich nations across the world.² Cambodia was no exception, with the signing of agreements related to mining during Lee Myung-Bak’s official visit to Cambodia in October 2009.

While the government has driven this policy, it has worked closely with the Korean private sector for its implementation. Groups of businessmen have routinely accompanied government officials in their visits overseas and Seoul has encouraged national companies to become involved in energy development projects outside of Korea. Significantly, Korean private investment in overseas resources soared from less than a billion dollars in 2005 to \$7.2 billion in 2009.³

The Cambodian mining and quarrying sector has attracted growing interest from Koreans since 2003 (see table). From 2006 until the downturn, Korean investment in mining steadily increased, from USD2 million in 2006 to USD4 million the next year and a peak of USD13 million in 2008. Significantly, Koreans had invested a cumulative total of USD40 million in the mining sector in Cambodia as of mid-2010 – the total of approved investment was nearly the double at USD72 million.

Against this backdrop, Kenertec’s mining investment in Cambodia represent an interesting case in point. The Korean company boasted strong support from its national government, which was instrumental in Kenertec’s initial

| Year | Accepted Amount | Invested Amount |
|-------|-----------------|-----------------|
| 1997 | \$0.43M | \$0M |
| 2003 | \$29.1M | \$5.97M |
| 2004 | \$0M | \$9.28M |
| 2005 | \$1M | \$0.87M |
| 2006 | \$13.7M | \$2.39M |
| 2007 | \$6.57M | \$4.61M |
| 2008 | \$19.51M | \$13.14M |
| 2009 | \$2.15M | \$2.14M |
| 2010 | \$0.6M | \$2.64M |
| Total | \$73.06M | \$41.03M |

Unit: USD Million

Source: Korea *Exim* Bank
(as of Sept. 2010)

1 According to data from the World Bank or International Monetary Fund.

2 For example, a Korean delegation comprising of both government officials and company representatives accompanied Lee Myung-Bak in resource-rich Uzbekistan and Kazakhstan in May 2009, while another one visited Venezuela, Bolivia, Ecuador and Mexico, all rich in oil, gas and minerals. See for example, *Korean ‘Caravan’ Boosts Resource Diplomacy*, The Korea Times, 24 June 2009.

3 Figures from the Ministry of Knowledge Economy, quoted in *South Korea joins the natural resources race*, Joong Ang Ilbo, 22 December 2009.

success in winning the rights to eight mining lots in Cambodia. This was originally hailed as a remarkable model of successful cooperation on overseas energy development projects between the Korean government and private sector.⁴ However, as shown by this research, the company's mining venture failed to live up to these expectations and was instead fraught with issues.

2. The example of Kenertec's investment in Cambodia

Much to the surprise of observers, and despite intense competition from Chinese and Vietnamese companies, Kenertec won “*exclusive mining rights*” to an impressive eight mining concessions reputed to be rich in mineral deposits in northern Cambodia in mid-November 2007. In April the following year, the Korean company acquired another iron mine through a joint venture with a Cambodian partner, Ratanak Stone. These developments were unexpected because Kenertec had no prior experience in the mining sector. This inevitably raised questions over the basis for the company's success and its capacity to develop the mines.

This research seeks to illuminate the reasons why Kenertec was chosen by the Cambodian government, including the support the company received from the Korean administration. It also presents background information on Kenertec, which hardly qualifies as a responsible or sound company, embroiled as it was in a series of corruption scandals in Korea and financial difficulties that eventually resulted in its bankruptcy.

Less than three years on, the choice of Kenertec appears to have been anything but well-founded, as the company collapsed and its concessions were taken over by a Chinese State-owned firm, Guangxi Non-Ferrous Metal Group (Cambodia) (GXNF), in early 2010, bringing to an end the Korean company's short-lived venture into mining in Cambodia.

In addition, the case study examines relevant developments and issues about the company's activities, which are part of wider problematic trends relating to mining in Cambodia. This includes the concessions' impacts on local stakeholders – mainly a loss of livelihoods caused by land loss and decreased access to the forest – as well as issues caused by the military's involvement in the company's operations. It also looks at the problematic lack of transparency regarding mining developments in the country. This opacity has presented a challenge not only for this research itself, but most importantly, for concerned stakeholders to influence developments that drastically affect their lives and future. Additionally, it also penalizes mining companies seeking to operate in Cambodia.

By offering an in-depth examination of the issues surrounding the mining investment of a questionable company in Cambodia, this study is hoped to highlight the importance of attracting responsible and reputable companies if the mining sector in Cambodia is to develop in a way that is sustainable and benefits the country and its population.

⁴ *S Korean company wins mining rights in northern Cambodia*, Yonhap, 15 November 2007. Additionally, Kenertec also benefited from strong backing from the Korean government in relation to its energy development projects in Indonesia.

Moving Beyond Misconceptions

Kenertec – Case study of a Korean mining investment in Cambodia

Methodology

This case study is based on more than one year of work, combining desk research, press monitoring, interviews with relevant stakeholders, and several field investigations in two areas where Kenertec was granted concessions. These included discussions with local authorities and villagers. Community representatives active in the areas visited gave precious help with information and further assistance, whereas a Cambodian research assistant provided tremendous support in preparing and carrying out the field trips.

Due to resource constraints and the sheer number and total area of Kenertec's concessions (officially covering more than 1,550 km²), it was not possible to carry out an exhaustive survey of the company's activities and their impact. However, the research team managed to visit three villages in Chey San district in December 2009 and five villages in Rovieng district in June 2010.⁵ First-hand information was gathered in those villages through individual interviews and group discussions. These focused on the impact of Kenertec's concessions, as villagers had limited information about the company itself.

Notes:

- The names of those interviewed have been changed in order to protect their identity.
- Unless specified otherwise, all pictures and illustrations are the author's own except for the area maps credited to the Land Information Centre at NGO Forum on Cambodia.

5 The research team visited Thmear, Chamraeun and Chrach villages in Chey San district, and Boeung, Phal Haal, Dong, Bak Kdaum and O villages in Rovieng district.

II. Background information on Kenertec

I. Who is Kenertec?

Kenertec was officially founded in 1997 with a capital of 6.7 billion won (nearly USD6 million) and listed on the Kosdaq (one of the Korean stock exchange markets) since 2003. As already mentioned, Kenertec did not specialize originally in mining. The Korean medium-sized company was initially a manufacturer of heating equipment (such as industrial burners and energy-related equipment), which specialized increasingly in environment-friendly energy-saving technologies, such as power co-generation systems and biomass co-generation. Kenertec worked with some large Korean conglomerates on various projects in Korea – for instance, it developed furnaces for Posco.⁶



Kenertec sought to cultivate a reputation as a green company. (Capture from Kenertec's website)

Kenertec appeared to be an incredibly successful company and saw a five-fold increase of its stock price in the five years following its introduction on the Kosdaq.⁷ The company soon purported to become “one of the leaders in global energy business in the 21st century”⁸ and, over recent years, became increasingly involved in overseas energy resource development projects, which were particularly ambitious in scale. In addition to its investment in Cambodia, Kenertec was also engaged in colossal resource development projects in Indonesia from 2007.⁹ Agreements on these projects – as well as others – were signed during a bilateral summit between Indonesia and Korea, another illustration of the cooperation between the Korean government and the country's private sector to secure energy sources overseas.¹⁰

⁶ See Kenertec website, <http://www.kenertec.co.kr/english>.

⁷ [한국 100대 CEO] 정복임 케너텍 사장 (Chung Bok-Im, Kenertec CEO), MK News, 30 April 2008.

⁸ Kenertec slogan as seen on its website.

⁹ In July 2007, Kenertec signed a massive USD5.5 billion agreement for a coal liquefaction (ie. extraction of crude oil from coal) project in East Kalimantan province, Indonesia, which was one of the largest such plants planned in the world. The company formed a consortium with Korean conglomerates Posco Engineering and Construction and Samsung Securities to carry out the project, in cooperation with Indonesia's PT Nuansa Cipta Coal Investment. A second USD2 billion project aimed to develop coal mines and build a 350km railway for the transportation of the coal, which was to be developed by Posco and Kenertec in cooperation with Indonesian companies PT Kereta Api Indonesia and Nuansa Cipta Coal Investment. See for example *S.Korea group, Indonesia in \$5.5 bln coal-liquids deal*, Reuters, 25 July 2007.

¹⁰ In addition, in August 2007, Kenertec secured a 40% stake in an Indonesia coal mine owned by Nuansa Group for USD2 million, a deal which was to support Korea's goal of ensuring half of its domestic coal demand through mines owned or operated by Korean firms by 2016. See *Update 1, Kenertec secures 40%*

Moving Beyond Misconceptions

Kenertec – Case study of a Korean mining investment in Cambodia

Significantly, some welcomed the Indonesian projects with questions and doubts over their feasibility and realism as neither Kenertec or its Korean partners had proven experience in the required technology (ie. coal liquefaction technology) and there was a huge differential between Kenertec's market capitalization of USD346 million and the magnitude in scope and cost of the Kalimantan projects. One analyst quoted by Reuters even questioned Kenertec's real motivations for its Indonesian plans, explaining that many small Korean companies were "trying to use resource development projects as a way to boost their stock price."¹¹ These questions were also relevant to Kenertec's investment in Cambodia.¹²

2. A company with a questionable record

Further investigation into Kenertec has revealed a highly questionable record for the company. Its dubious practices of routine bribery came to light through several high profile scandals in Korea which implicated the company, other firms and government officials. They raised questions over the manner in which Kenertec consolidated its business, but also the soundness and reality of the company's apparent success. This was soon exposed by its financial difficulties and its eventual bankruptcy. Last but not least, Kenertec's origins also appeared to be controversial, as it was the new incarnation of a company previously gone bankrupt.

2.1 Repeated implication in bribery scandals

Kenertec has been involved in several corruption scandals in Korea and accused of raising slush funds and using bribes to obtain contracts. The first major scandal broke out over the summer of 2008. It had political ramifications and concerned Kangwon Land, the only casino in Korea open to Korean nationals. Kangwon Land was suspected of inflating the cost of the construction of a cogeneration plant to provide power to the casino, a contract awarded to Kenertec in June 2008.¹³

Kenertec was the object of an official investigation by prosecutors, who searched its Seoul offices in August 2008. The company's President, Lee Sang Sun, was arrested the following month and eventually sentenced to prison in 2009. He was accused of bribing several people to win the Kangwon Land bid, including Chung Kang-Sup, the former President and Chief Executive Officer (CEO) of Korea Midland Power, one of the main power companies in Korea,¹⁴ and high officials

stake in Nuansa coal mine, Reuters, 9 August 2007.

11 *Korean deals may come to nothing: Kadin*, The Jakarta Post, 27 July 2007; Reuters, 25 July 2007.

12 Kenertec also reported other projects or plans which struck by their ambitious scope and the diversity of the activities purported, thereby raising questions on the realism of these plans and actual motivations of the company. In particular, Kenertec reported signing an agreement on bio-ethanol with the Nigerian government in 2006 through a 30-year lease of 60,000ha for cassava plantation and the construction of an ethanol factory. The company also claimed they were in negotiations for oil field development in Nigeria, a petrochemical plant in Turkmenistan, and considering mine development in Uzbekistan and Kazakhstan (see Kenertec website). However, these reports were unconfirmed by other sources.

13 The contract was valued at 25.8 billion won (about USD23 million), more than twice the actual construction cost, which was only about 11 billion won (about USD9.4 million). The police believed the money partly went into the lobbying and bribing of high officials in the government. See *Roh Associates Under Scrutiny*, The Korea Herald, 28 August 2008.

14 Chung was arrested in late September 2008 over allegations of receiving bribes from Kenertec. But a

in former President Roh Moo-Hyun's administration, including Kim Young-Chul, former deputy head of the Prime Minister's office. Kim was regarded as Prime Minister Han Seung-Soo's right hand and had accompanied the Korean Prime Minister in official trips abroad, including in Central Asia. His influence was believed to be the reason why he was suspected to have received bribes. Kim Young-Chul committed suicide in October 2008 after suspicions against him became public.¹⁵

Prosecutors' investigation into this scandal uncovered that Kenertec had a 7 billion won (about USD6 million) slush fund. This developed into a wider “Kenertec-gate” as Kenertec was implicated in other bribery cases and a number of executives and government officials were arrested and charged. In one of these cases, Kenertec's President was again sentenced to two years of prison for bribing an official of the Ministry of Knowledge Economy in exchange for favors in the bidding of a contract.¹⁶ In another, Kenertec was suspected in September 2008 of being unfairly favored by the Korea Energy Management Corporation – which operates a government fund to support Energy Saving Companies (ESCOs) – and receiving more than 200 billion wons (more than USD170 million) from the fund.¹⁷

2.2 Financial difficulties, bankruptcy and delisting

Following Kenertec's implication in these scandals, the company's stock price plunged at the Kosdaq.¹⁸ The company also suffered plummeting sales in 2008 and 2009.¹⁹ This resulted in increasingly grave financial difficulties for Kenertec, which experienced net loss both in 2008 and 2009.²⁰

In an attempt to protect itself from bankruptcy, Kenertec applied in court for corporate turnaround on 11 March 2009.²¹ The court initially granted protection to Kenertec in April, but withdrew its protection on 25 August 2009. The court considered that the estimated value of Kenertec's survival was inferior to that of its liquidation. The company lodged an appeal, but it was rejected by the court in mid November 2009.

This paved the way for Kenertec's liquidation, which eventually led to the sale of the company's assets, including its overseas investment in Cambodia. Indeed, Kenertec's mining concessions in Cambodia were taken over by Chinese company GXNF in early 2010, although the details of the

criticized January 2009 court verdict saw him acquitted of those charges, while at the same time Kenertec's President was sentenced to two years of prison, precisely for bribing Chung. See ‘이상한’ 판결... 뇌물공여 유죄-수수 무죄 (“Bizarre” verdict), Donga Ilbo, 29 January 2009 (in Korean).

15 Former PM Secretary Kim Dead in Apparent Suicide, The Korea Times, 10 October 2008.

16 Donga Ilbo, 29 January 2009.

17 ‘케너텍 게이트’ 어디까지 번지나 (Where will “Kenertec-gate” stop?), Chosun Monthly, December 2008 (in Korean); Kenertec was selected as an ESCO in April 1999 and obtained an excellent ESCO certificate in September 2006, according to the company's website.

18 Stocks of Rogue Firms Plummet, The Korea Times, 30 September 2008.

19 The company's sales fell dramatically from 893 billion won (less than USD770 million) in 2008 to 59 billion won (about USD50 million) in the first half of 2009.

20 Kenertec's loss worsened from 625 billion won (less than USD540 million) to 732 billion won (about USD630 million) in the first half of 2009.

21 In a process similar to the US Chapter 11, Korean courts can allow a company to restructure – and thereby suspend the payment of its debts – as a chance to avoid liquidation.

Moving Beyond Misconceptions

Kenertec – Case study of a Korean mining investment in Cambodia

negotiation and sale, such as the agreed price, are unknown.

Also, following the court's decision, the company stopped trading on the Kosdaq from 26 August 2009 and was delisted from the stock exchange on 13 October 2009, a decision confirmed in November after a company appeal was dismissed.

2.3 Kenertec's troubling origins

Another controversy relates to Kenertec's origins, as it proved to be the new incarnation of a company that had previously gone bankrupt. Goshin Heat Management went into bankruptcy in May 1992, under the weight of a 40 billion won debt (about USD3.5 million), and tried to reorganize before eventually being shut down in August 1998. Prior to its closure, it created a subsidiary named Goshin Engineering in September 1997, which was renamed Kenertec in January 2000.²²

The company was suspected of changing its name in order to avoid paying its creditors, with some observers suspecting a “*disguised bankruptcy*”. Indeed, Goshin's debts remained unpaid after a court dismissed the request from some of its creditors that Kenertec be held responsible for them.²³ While Kenertec took over Goshin's factory, staff and intangible assets like intellectual property rights, it was free of its debts. One observer considered it to be not only an “*immoral act*” but also contrary to the law.²⁴

Quite significantly, Kenertec itself also ended in bankruptcy, which seems to indicate continuous mismanagement that went unchecked.

22 While the companies' names and business registration numbers differed, they had the same activity (the manufacturing of industrial burners and heating equipment) and the same management, office and factory addresses or telephone number.

23 케너텍 기업세탁 거액 채무 회피? (*Did Kenertec change its name to avoid huge debt?*), Donga Ilbo, 11 November 2008 (in Korean).

24 Communication with Korean business expert with years of experience in the Korean corporate world, November 2010.

3. Kenertec’s mining investment in Cambodia

**Background: Cambodia’s mining sector,
developing at a fast pace but in a context of opacity**

Due to its troubled history, Cambodia’s mineral resources had remained largely unexplored until recently. However, the sector has developed rapidly since the mid-2000s, with an increasing number of exploration licenses being granted, especially from 2006. International mining firms appeared to see Cambodia as “*a new frontier that has yet to be explored*”²⁵ and an increasing number of them reached agreements with the Cambodian government for large-scale exploration projects. Kenertec was no exception, nor was the Korean government, which saw opportunity in the fact that “[T]he area ha[d] been relatively unexplored in the past because it was a military-controlled zone and off-limits to civilians” and the military were taking steps to allow development there, according to a Korean government official.²⁶

In addition, Cambodia was reportedly “*the only country in South East Asia that allows 100 per cent foreign ownership [of mining entities], [hence] overseas mining companies have been keen to invest.*”²⁷

However, this fast-paced development has been viewed with alarm by Cambodian civil society, as it is taking place in the absence of an adequate legal framework for mining and with scant regard for environmental and social safeguards.²⁸ In addition, the mining sector is characterized by a lack of transparency and non-governmental organizations (NGOs) are gravely concerned over the lack of public information from relevant ministries or the companies themselves. This has made it difficult to monitor mining developments and assess their compliance with legal standards or their environmental and social impacts.²⁹

Civil society has also stressed the need to improve and consolidate the institutional capacity of the relevant authorities in charge of overseeing the mining sector, including the Ministry of Industry, Mines and Energy (MIME), in order to help the sector develop in a more responsible and effective way. Kenertec exemplifies a number of those issues and highlights the need for better management of the sector.

25 See Invest in Cambodia, government website on investment and trade in Cambodia, page on mining, <http://www.investincambodia.com/minerals.htm> (last accessed September 2010).

26 Yonhap, 15 November 2007. However, the quote revealed little awareness of the deeper complexity of the actual situation on the ground, including the presence of protected areas or forests, or local communities and their rights.

27 See Invest in Cambodia.

28 Mark Grimsditch, *Draft analysis of the legal framework related to mining in the Kingdom of Cambodia*, April 2010.

29 NGO Forum on Cambodia, *Environmental and Social Impacts of Expansion of the Extractive Industries Sector*, November 2008.

Moving Beyond Misconceptions

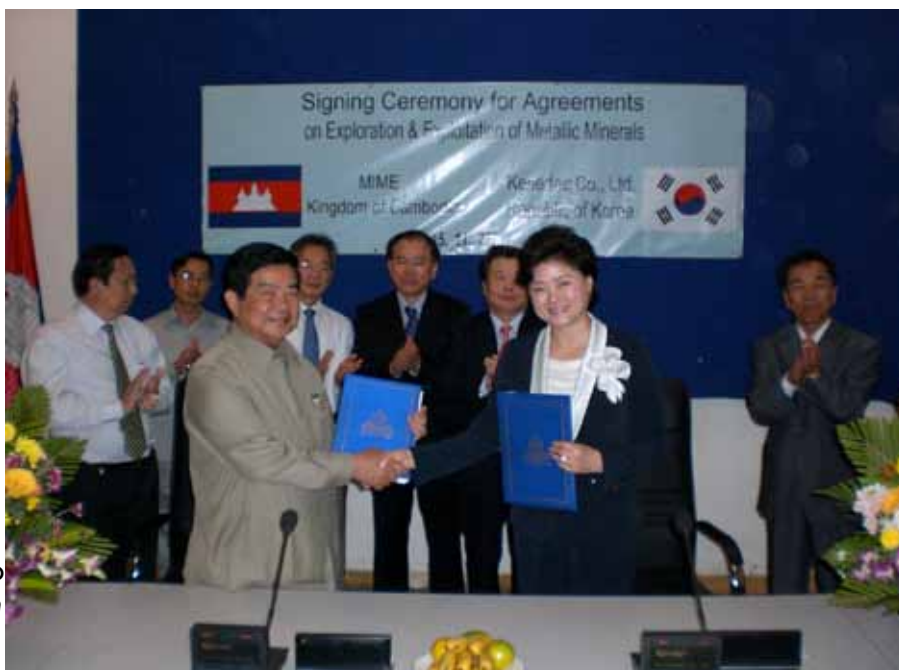
Kenertec – Case study of a Korean mining investment in Cambodia

3.1 Subsidiary Kenertec Resources

Kenertec's investment in Cambodia unfolded in two stages, with the creation of one subsidiary and one joint venture.³⁰

First, it established a fully-owned Korean subsidiary Kenertec Resources in mid-November 2007 with an initial investment of three million US dollars. Strangely for a company that was to be “mainly engaged in the biomass cogenerations businesses [in Cambodia]” (sic),³¹ it was announced on

15 November 2007 that Kenertec Resources had been granted exclusive mining rights in eight mines in the north of the country. Kenertec extolled that its concessional areas were rich in minerals, and in support of this claim, it stressed that a detailed survey done by Chinese companies in 2002 in an adjacent area had discovered reserves of about 600 million tons of iron ore. Kenertec claimed the concessions totaled 1,520km², “twice the size of Seoul” and were located near the Mekong river, with “very good inland [and water] transportation conditions.”³² The company planned to pursue exploration for another two to six years.

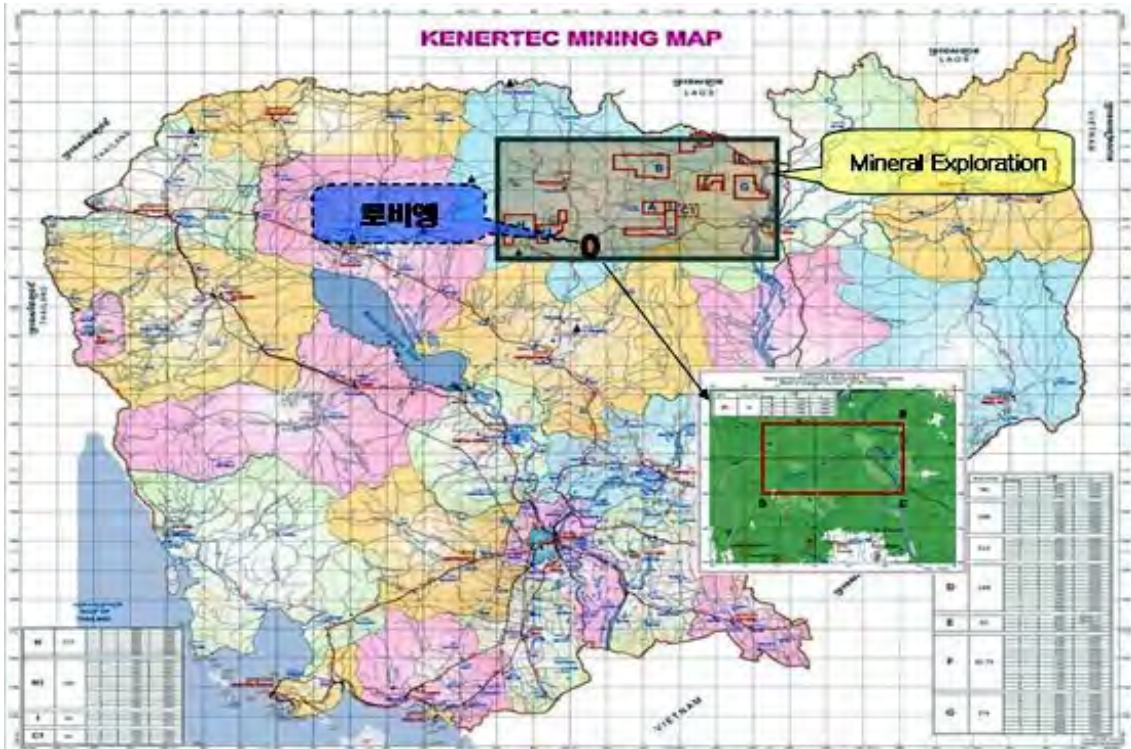


Signing ceremony for agreements on exploration and exploitation of metallic minerals between MIME and Kenertec on 15 November 2007. (Source: Kenertec website)

³⁰ However, subsidiary Kenertec Resources and joint venture Ratanak Kenertec are actually one company, with the same management and offices. The president of Kenertec Resources is also the director of Ratanak Kenertec. The case study will hereafter refer to Kenertec to designate either Kenertec Resources or Ratanak Kenertec.

³¹ *Kenertec Co., Ltd. to Establish New Subsidiary in Cambodia*, Reuters, 8 November 2007.

³² See Yonhap, 15 November 2007; *Kenertec obtains the rights to explore and develop 8 mines in Cambodia*, Kenertec, 12 December 2007. Individual concession sizes ranged from 55km² for the smallest to 398 km² for the largest (several were about 160 or 200km²).



Company map showing Kenertec's purported investment in Cambodia. (Source: Kenertec's website)

It was not revealed if those concessions had been taken over from another company. However, local villagers in one of the concessional areas reported the concessions belonged to Ratanak Stone, which is a Cambodian company connected to the top commander of the Royal Cambodian Armed Forces (RCAF) that became Kenertec's partner in a joint venture the next year.³³

3.2 Joint venture Ratanak Kenertec

On 23 April 2008, Kenertec Resources signed a contract with Ratanak Stone Cambodia Development to create a joint venture named Ratanak Kenertec Resources, in order to obtain the rights to an iron mine in Rovieng district, Preah Vihear province.³⁴ Kenertec acquired an 85% stake in the joint venture for about USD15 million. The agreement was settled at the end of

³³ Interviews with villagers in Chey San district, Preah Vihear province, December 2009. Villagers had heard this from the soldiers guarding the concession. The company reportedly arrived in 2004. Further details on Ratanak Stone are provided in Section II.3.2.

³⁴ See *Fair disclosure statement*, Kenertec, 23 April 2008 (in Korean). The statement refers to Ratanak Stone Cambodia Development's owner as being Noup Sidara, the wife of General Pol Saroeun. The latter was then Deputy Commander-in-Chief and Chief of Joint Staff of the RCAF and was later promoted to Commander-in-Chief of the RCAF in January 2009. General Pol Saroeun is reputedly close to the Cambodian Prime Minister. More details on military involvement in Section III.5.7.

Moving Beyond Misconceptions

Kenertec – Case study of a Korean mining investment in Cambodia

August 2008, upon payment of the USD 15 million, which – despite its high amount – was made in cash.³⁵

The concession reportedly measured 35.75km² and Kenertec initially estimated the deposit to contain about 200 million tons of iron ore, more than 65% of which was claimed to be high quality hematite and magnetite. It also touted favorable “*surface transportation*” to the Mekong river, 80km away, and the “*good condition for transportation*” offered by the river.³⁶ The company enthusiastically expected the mine to produce two million tons of iron ore, along with annual sales of USD 150 million (at a rate of USD 80/ton) and yearly profits of USD 40 million.³⁷

Kenertec’s agreement for a 60,000ha bio-complex, another ambitious and problematic project

In 2008, it was announced that Kenertec Resources reached an agreement with the Council for the Development of Cambodia (CDC)³⁸ to develop a 60,000ha (about 600km²) “*bio-complex*” separate from their mining investment. The company planned to cultivate land described as “*scrubland*” with rubber trees, cassava and jatropha, and build a power plant using the biomass produced by the plantations. It was hailed as “*the stepping stone for Kenertec’s new renewable energy projects in overseas (sic).*”³⁹



Presentation of Kenertec’s bio-complex project at Prime Minister Hun Sen’s residence on 28 April 2008. (Source: Kenertec website)

³⁵ See *Fair disclosure statement*, Kenertec, 23 April 2008 (in Korean).

³⁶ *Kenertec takes over Rovieng iron mine in Cambodia*, Kenertec, 14 May 2008. Information made public by the company usually did not specify the exact location of the mine in Rovieng district, which left the door open to a possibly deliberate misrepresentation of the actual situation on the ground. More details in Section III.2.

³⁷ *Kenertec takes over Rovieng iron mine in Cambodia*, Kenertec, 14 May 2008; *Kenertec develops a bio-complex in Cambodia*, Kenertec, 14 May 2008.

³⁸ The CDC is a Cambodian government body in charge of investment related issues. One of its main tasks is to evaluate and approve investment project applications.

³⁹ *Kenertec develops a bio-complex in Cambodia*, Kenertec, 14 May 2008.

Once again, the company reported receiving support from the Korean Embassy in Cambodia for this agreement, which was seen as a model of cooperation between the Korean government and private sector for energy and resource development overseas. The agreement was presented to Prime Minister Hun Sen at his official residence on 28 April 2008, five days after the company had acquired an iron mine in Preah Vihear through a joint venture with Ratanak Stone. The Prime Minister declared that he expected widespread benefits from the bio-complex project, including for local farmers, and instructed his government to support the project.

While it was not clear whether the agreement was followed by the actual acquisition of an economic land concession (ELC – the mechanism used for granting large-scale leases for agro-industrial exploitation), it constituted a first step towards that goal. However, the agreement immediately raised issues of transparency as there were no public details on the location envisaged for the bio-complex.⁴⁰ Also, the legality of the agreement was questionable as the size announced was six times above the maximum limit set in the Cambodian Land Law for an ELC.⁴¹ Even if the ELC had not yet been granted, it was cause for concern that a project entailing a serious breach of Cambodian law should be given such support from the highest level of government.

4. Why Kenertec's successful start in Cambodia?

Kenertec's success in winning the rights for a total of at least nine mining concessions and obtaining government support for a massive 60,000ha bio-complex project raise questions about the reasons why the company was able to make such an impressive start in Cambodia. It was particularly surprising that an unknown company with no experience in mining managed to secure such momentous deals in the country, despite reportedly intense competition, including from Chinese and Vietnamese companies. Two main elements of explanation are suggested here.

The first was the active support Kenertec reportedly received from the Korean administration. As previously stressed, Seoul has viewed the securing of overseas natural resources – and energy sources in particular – as a key priority and has pursued this goal through an offensive resource diplomacy and cooperation with the private sector. For both its investments to develop the exploitation of coal in Indonesia or iron ore in Cambodia, Kenertec benefited from this larger framework of cooperation and praised its own ventures as successes both for itself and the Korean government. It hailed its winning bid on the Rovieng mine as “*a successful model of government-private sector cooperation in the ever-intensifying competition for resources and efforts to get overseas resources*” and credited its success “*despite the aggressive foreign moves (sic)*” on the Korean government's active cooperation, notably the Ministry of Foreign Affairs and Trade, the

40 It was only on the subsidiary's little-publicized website and in the company's quarterly report that brief mentions were found alleging the company was doing “*bio-business*” in Preaek Prasab district, Kratie province, without any further details. See Kenertec Resources website and *Quarterly Report*, Kenertec, September 2009 (in Korean), available on DART website, <http://dart.fss.or.kr> (maintained by the Korean Financial Supervisory Service and offering a “*Repository of Korea's Corporate Filings*” for listed companies).

41 Kenertec later published corrective information to clarify that the legal analysis of its land lease with the Cambodian government had actually not been completed. See *Quarterly Report*, Kenertec, September 2009 (in Korean).

Moving Beyond Misconceptions

Kenertec – Case study of a Korean mining investment in Cambodia

Ministry of Knowledge Economy and the Korean Embassy to Cambodia.⁴² An official of the Korean Embassy in Cambodia readily acknowledged the Embassy's role in facilitating Kenertec's acquisition of the Rovieng mine and stressed that this was in line with the Korean administration's resource diplomacy. He was quoted as saying “*From start to finish, we were of course highly involved in this [Kenertec's success in acquiring the Rovieng mine]. In any case, you have to understand that this was to help [Korea's] national interest.*”⁴³

Another element is provided by Kenertec's previously described background. As already explained, the company was repeatedly suspected of bribing other firms as well as government officials in order to win contracts. The pattern of systemic corruption in Cambodia is well-known and its mining sector is plagued by opacity and allegations on the necessity to pay informal fees to secure or operate mines. In this context, Kenertec's triumph over serious competition despite its lack of mining experience inevitably raises questions over the means used by the company to ensure its success in Cambodia.⁴⁴

⁴² *Kenertec takes over Rovieng iron mine in Cambodia*, Kenertec, 14 May 2008.

⁴³ [파워중소기업] 중소기업, 석탄 20억톤 확보 (*SME secures 2B tons of coal*), MK News, 24 April 2008 (in Korean). Translation of the quote by the author.

⁴⁴ Kenertec was reported to have paid a USD1 million “*bonus*” to receive permission to start work in its Rovieng mine. See Ben Doherty, *Tea-time free for all*, The Age, 15 May 2010.

III. A critical review of Kenertec's mining investment

I. Advisory on research difficulties

This section endeavors to present a picture of the developments related to Kenertec's mines, including the reality of progress achieved in contrast to the company's original plans, as well as the impacts of its concessions and activities at the local level. Due to resource and time constraints, it was impossible to undertake an exhaustive review of the ground situation for all of Kenertec's concessions. Instead, the investigations focused on two concessions. One was a Kenertec Resources concession in Chey San district (marked as Kenertec A on the map on the next page), where some exploration activities had reportedly taken place, and the other was the Ratanak Kenertec concession in Rovieng district, both in Preah Vihear province (see map in Section III.3.2). The research team carried out investigations in Chey San district in December 2009, including visits to three villages (Thmear, Chamraeun and Chrach), as well as in Rovieng district in June 2010, including visits to five villages (Boeung, Phal Haal, Dong, Bak Kdaum and O).

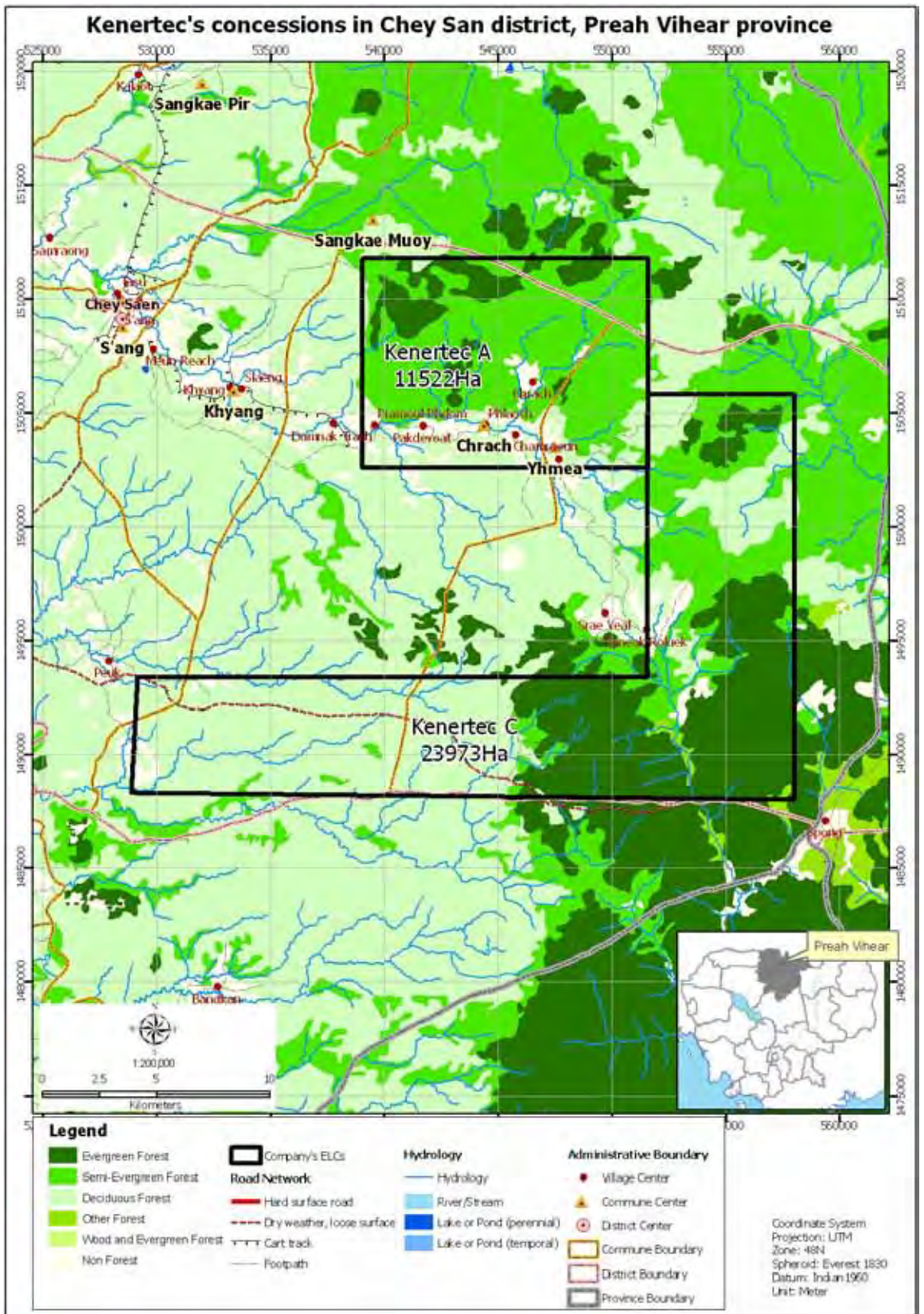
It should be stressed that these investigations were made extremely difficult by the opacity and lack of public information regarding mining developments in Cambodia, a situation described in more details below. This opacity also has had the serious effect of leaving local stakeholders, including affected communities and local authorities themselves, in profound ignorance of major developments affecting their lives and future, and depriving them of the opportunity to have any say about such developments. Villagers whose land and livelihoods were affected by a concession usually had no information – or sometimes outdated or inaccurate information – on the company's identity or the boundaries of the concession.⁴⁵

Special care went into seeking to confirm and verify the findings below to the greatest extent possible. This included cross-checking communities' accounts with NGO information or the few available details from the company or government.

⁴⁵ Based on interviews with villagers in Thmear and Chrach villages, Chey San district, in December 2009. In one area, many villagers believed the company was Ratanak Stone and had never heard of Kenertec.

Moving Beyond Misconceptions

Kenertec – Case study of a Korean mining investment in Cambodia



As pointed out by Cambodian civil society, while the number of mining concessions granted in Cambodia has surged, there is almost no information made publicly available by MIME.⁴⁶ This has meant that data available to researchers is often limited to the partial information released by the companies themselves (when any) or secondary sources such as the testimonies of affected communities.

This poses a serious challenge to ascertaining essential details about mining developments, such as the status of a company's operations and the type of mining rights they have been granted (ie. exploration or exploitation). The exact location and boundaries of concessions and the type of minerals being sought are also extremely hard to verify, which is not conducive to adequate development and monitoring of the mining sector in Cambodia. This lack of transparency has opened the door to potential overlaps between different concessions and confusion over companies' rights. For example, Thmear villagers reported that a Chinese company, Cambodia Hua Yi Mining, arrived in December 2009 to carry out exploration activities in an area covering Thmear, Chrach, Khiang and Putrea communes. The company reportedly had an authorization letter from the provincial governor. However, part of that area overlapped with a Kenertec concession, with no clarity over the two companies' respective rights.⁴⁷ There is also anecdotal evidence that mining concessionaires have come into conflict with owners of ELCs in some areas.

In this context, it is especially problematic when companies release information that is inaccurate, confusing or contradictory – whether out of mistake or intent – due to the difficulty to verify those statements.⁴⁸ A cursory analysis of available public information on Kenertec's concessions is sufficient to reveal discrepancies or contradictions on important aspects, including the following:

- **Status and type of licenses:** While Kenertec declared it had acquired mining exploration and exploitation licenses for all its concessions, both for Kenertec Resources and Ratanak Kenertec,⁴⁹ the company conversely indicated in a 2009 quarterly report that it only had exploration rights for the Rovieng mine and would apply for a mining (ie. exploitation) license in the future.⁵⁰ Also, one source reported that Kenertec's licenses were valid until 15 November 2009, but contained no information on the authority that issued them, the conditions that had to be met, or the status of the company's licenses

46 NGO Forum on Cambodia, *Environmental and Social Impacts of Expansion of the Extractive Industries Sector*, December 2008.

47 Based on interviews in Thmear village in December 2009.

48 A company may exaggerate certain information to make its investment appear more lucrative than may be certain, in order to boost its stock price. Quite tellingly, Kenertec presented its Cambodian mining investments as particularly profitable and secure, stating that the minerals were “evaluated to be free of any risk”. The company boasted that the minerals in the Rovieng mine could be very easily extracted as they were reportedly located at a maximum of 150m underground, with “more than 65% of the high quality hematite exposed to the surface.” It also claimed the ore could be commercialized without treatment. However, the context of opacity makes it difficult for observers to verify whether the company's claims were well-founded. See *Kenertec takes over Rovieng iron mine in Cambodia*, Kenertec, 14 May 2008; *Kenertec develops a bio-complex in Cambodia*, Kenertec, 14 May 2008.

49 Based on unpublished report obtained by the researcher.

50 *Quarterly Report*, Kenertec, September 2009 (in Korean).

Moving Beyond Misconceptions

Kenertec – Case study of a Korean mining investment in Cambodia

after their expiration date.⁵¹

- **Minerals sought:** The Rovieng mine was consistently referred to as an iron ore mine, more than 65% of which was purported to be high quality hematite and magnetite. In contrast, there were contradictory reports concerning the eight concessions granted to Kenertec Resources. At one point, the company claimed that two mines were for copper and zinc, three for iron and manganese and three for silica and “jewel” (sic).⁵² However, in initial statements, Kenertec referred to reserves of “copper, zinc and iron ore”⁵³ and then later stated that all mines were for the exploration of iron and copper, with gold as a by-product.⁵⁴
- **Potential reserves:** In its original statements, Kenertec assessed the Rovieng mine to hold about 200 million tons of iron ore,⁵⁵ but in another statement issued on the same date, the estimate was inflated to 300 million tons.⁵⁶ As for the Kenertec Resources concessions, the company estimated the areas to hold about 100 million tons of copper and zinc and about one billion tons of iron and manganese.⁵⁷
- **Location and size of the concessions:** Kenertec reported misleading or discordant details on the location of its concessions. Whereas all its concessions are in Preah Vihear and Stung Treng provinces in the north of Cambodia, the Kenertec Resources website mistakenly presented the eight mining blocks as being located in Kompong Thom and Battambang provinces.⁵⁸ However, the names of the location for each concession matched those reported by the company in an unpublished report seen by the researcher, except for one concession.⁵⁹ Also, while the company originally stated its eight concessions totaled 1,520km², in later reports, the same eight concessions covered only a total of 1,396km², that is 124km² less.⁶⁰
- **Number of concessions:** A Kenertec map even raised questions over the actual number of concessions received by the company, as it showed more concessions than officially granted which is cause for concern. In addition to the eight recognized blocks marked A to H, the company map shows four other concessions marked H, H1, R1 and R2 (an explanation for the last two is provided below).

51 Based on unpublished report obtained by the researcher.

52 See *Kenertec takes over Rovieng iron mine in Cambodia*, Kenertec, 14 May 2008. This might have been sapphire, as reported in one of Kenertec's quarterly reports which referred to exploration for sapphire in one of its concessions that remained unidentified. See *Quarterly Report*, Kenertec, September 2009 (in Korean).

53 Yonhap, 15 November 2007.

54 Based on unpublished report obtained by the researcher.

55 *Kenertec takes over Rovieng iron mine in Cambodia*, Kenertec, 14 May 2008.

56 *Kenertec develops a bio-complex in Cambodia*, Kenertec, 14 May 2008.

57 *Kenertec obtains the rights to explore and develop 8 mines in Cambodia*, Kenertec, 12 December 2007.

58 See Kenertec Resources website, <http://kenertec.site50.net> (last accessed September 2010).

59 All concessions except one were concordantly reported to be located either in Chhaeb, Chrach or Chey San districts in Preah Vihear province or in Thalabarivat district in Stung Treng province.

60 See Kenertec Resources website.

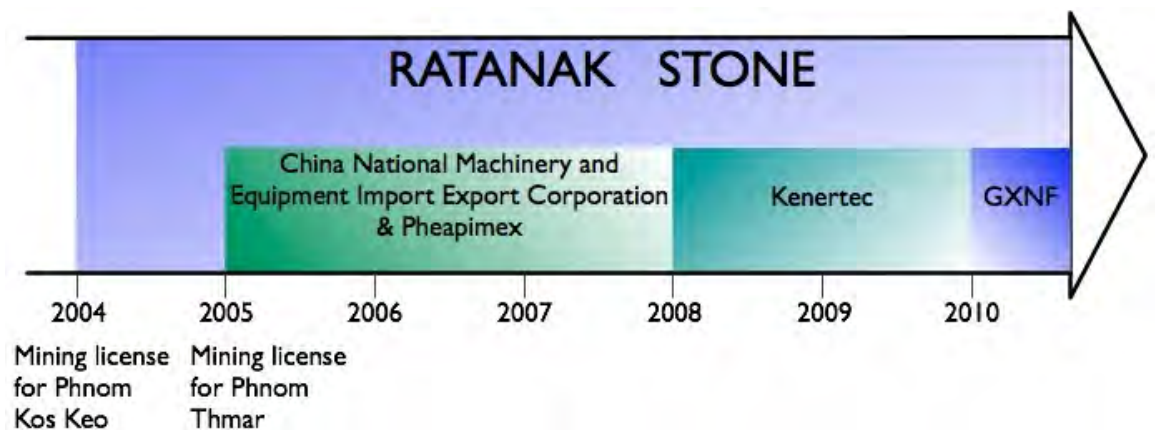


Kenertec map of its eight mining blocks. But four additional concessions can be seen in the bottom left corner. (Source: Kenertec website)

2.1 Ratanak Stone's mines in Rovieng: a succession of partners for a limited success

The reason for Kenertec's joint venture with Cambodian company Ratanak Stone was to acquire the latter's rights to an iron mine in Rovieng district – though further investigation revealed there were actually two separate mines (for more, see box below). Ratanak Stone had been granted a mining license for an iron mine in Phnom Kos Keo in 2004 and another license also for an iron mine in Phnom Thmar in 2005, both located in Rovieng district, Preah Vihear province.⁶¹

But Kenertec was neither the first or last foreign investor to be involved in these mines, which actually proved to have a complicated and unstable history: no less than three different groups partnered with Ratanak Stone and sought to develop the mines over a period as short as five years (see timeline below). This is a particularly poor record, especially when bearing in mind that proper mining development is a long-term venture that may take up to ten years.



⁶¹ MIME quoted in John C. Wu, *The Mineral Industry of Cambodia*, in U.S. Geological Survey Minerals Yearbook, 2006.

Moving Beyond Misconceptions

Kenertec – Case study of a Korean mining investment in Cambodia

Prior to the joint venture with Kenertec in 2008, Ratanak Stone had partnered with Chinese State-owned company China National Machinery and Equipment Import and Export Corporation and Cambodian company Pheapimex.⁶² The three companies signed in March 2005 a Memorandum of Understanding for exploration in the Rovieng mines, which received the expressed support of the Cambodian Prime Minister. The companies declared they were ready to invest in an iron and steel smeltery if the survey showed promising results.⁶³

After less than two years of involvement by Kenertec, a new Chinese State-owned company GXNF took over in early 2010 and started intensive drillings in the Rovieng mines.⁶⁴



Entrance of the Kos Keo (erroneously marked as Koh Ker) concession in Rovieng district with a Ratanak Kenertec sign in August 2008 (left) and a GXNF sign in June 2010 (right).

The Rovieng mines provide a startling example of the opacity surrounding mining in Cambodia and how it is not conducive to sound development of the sector. For instance, it is unknown when the first group of investors decided to pull out, what results their exploration activities yielded and whether disappointing conclusions might have caused their withdrawal and the

⁶² Pheapimex is considered one of the most powerful companies in Cambodia and headed by Cambodian People's Party (CPP) Senator Lao Meng Khin known to be closely associated with Prime Minister Hun Sen. The company has been accused by civil society of intensive illegal logging in its concessions and extensive use of the military force to protect its interest. See for example *Yeay Phou's Pheapimex Continues to Fell Cambodian Trees in Kratie Worth Millions of Dollars*, Khmer Amatak, 26 June 2001 (reprinted in *The Mirror*, No. 218, 24-30 June); Scroggins, Hurley, *Pms Aid Beleaguered Timber Company*, The Phnom Penh Post, 30 May-12 June 1997.

⁶³ *Cambodia, China to cooperate on iron ore exploration*, Xinhua, 20 March 2005; *Cambodge Soir*, 21 March 2005. Kenertec would later make similar development plans, including a steel mill factory.

⁶⁴ Based on field observations and interviews with Rovieng villagers, June 2010.

Moving Beyond Misconceptions

Kenertec – Case study of a Korean mining investment in Cambodia

takeover by another company. Likewise, the details of Kenertec's sale of the mines to GXNF were not disclosed.

This opacity is obviously problematic, not only for the government, civil society and affected stakeholders seeking to monitor relevant developments, but also for mining companies themselves, as they may not have full and clear information about the history of a mine.



Ratanak Kenertec's office in Rovieng town in August 2008 (left), taken over by GXNF in June 2010 (right).

The Rovieng deal, two concessions in one?

While all the information made publicly available, including by the company, referred simply to an iron ore mine in Rovieng district, a field trip to the area in June 2010 revealed that there were actually two sites in Rovieng district where Kenertec was active. One was in Phnom Kos Keo, Reak Reay commune, and the other in Phnom Thmor, Robieb commune, both in Rovieng district (see map on next page).⁶⁵ The location of both sites matched the R1 and R2 blocks marked on the company map mentioned in Section III.2. Interviews with local villagers in both areas confirmed that the sites were owned by a Korean company that had succeeded to a Chinese one and was recently replaced by another Chinese group.⁶⁶

In an unpublished document obtained by the researcher, Kenertec reported that its 35.75km² concession was located in Phnom Thmor, in Rovieng district, and made the confusing statement that it “held one concession” which was “two different concessions.” However, it remained unclear

⁶⁵ Based on field investigations in Rovieng district, Preah Vihear province, June 2010.

⁶⁶ Interviews with villagers in Rovieng district, June 2010.

Moving Beyond Misconceptions

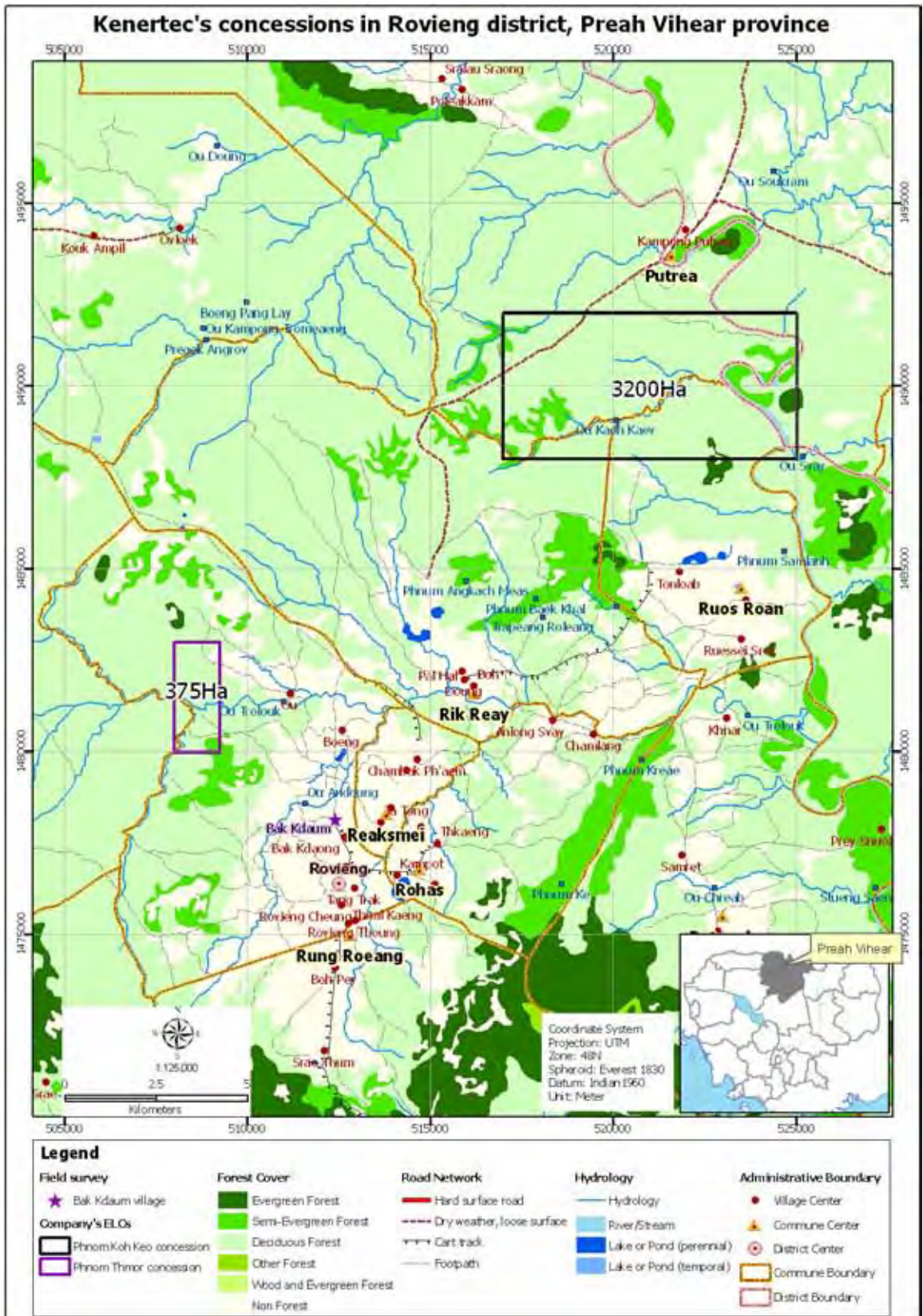
Kenertec – Case study of a Korean mining investment in Cambodia

what rights or licenses Kenertec had acquired for each site, which are in two different locations.

The lack of clarity again poses a great challenge to proper assessment of the company's mining rights and makes monitoring of developments in relation to a mining site extremely difficult for both for government and civil society.

Moving Beyond Misconceptions

Kenertec – Case study of a Korean mining investment in Cambodia



Moving Beyond Misconceptions

Kenertec – Case study of a Korean mining investment in Cambodia

3. What progress in Kenertec's mining development plans?

3.1 Kenertec Resources

When it obtained the rights to the eight mines in 2007, Kenertec boasted that its concessional areas were rich in mineral deposits on the basis of preliminary surveys, which were carried out since April 2007 according to the company.⁶⁷ However, there was extremely limited information about these surveys, including whether or not all of the eight mines were surveyed. Kenertec planned to send resource development experts to Cambodia in order to start physical exploration and geographical survey of the existing mine lots. It planned to conduct more detailed “seismic studies” beginning in 2008 for two to six years to ascertain the size of the mineral deposits as well as an economic assessment of the exploration costs.⁶⁸ The full-scale development of the mines would occur after completion of the detailed survey and feasibility study.⁶⁹

Unsurprisingly, given the high number of concessions it was granted and the extremely vast area they represented, Kenertec reported by late September 2008 that reconnaissance activities had taken place in only three of the eight mines, while the others had remained untouched.⁷⁰ Those that had been explored were the 55km² concession in Phnom Koun Hi in Chhaeb district, Preah Vihear province, and Thalabarivat district, Stung Treng province; the 160km² concession in Phnom Thnot, Sangkom Thmei district, Preah Vihear province; and the 96km² concession in Chrach, Chhaeb and Chey San districts, Preah Vihear province.⁷¹

After careful analysis and comparison of maps, including one from the company, it was ascertained that the Chhaeb and Chey San concession matched the description and location of a concession designated as Phnom Thmor by local villagers, located in Thmear and Chrach communes, Chey San district. This area was visited during a field trip in December 2009, which included discussions with farmers in three villages affected by the concession, namely Thmear, in Thmear commune, and Chamraeun and Chrach villages, in Chrach commune, all in Chey San district (see map in Section III.1).

Chrach villagers reported that the company had built some infrastructure inside its concession located in a forested mountain, clearing forest land to build an office and a small airport in January 2008, and upgrading a road leading to Stung Treng in 2009. Kenertec had not yet moved into actual mining operations, though villagers feared the repercussions it may have on their lives, should that happen. Accordingly, the impact they suffered due to the company's presence appeared to be related more to abuses committed by the military hired by the company rather than any mining activity itself.⁷² Section III.5 offers further information on the impacts.

⁶⁷ *Kenertec takes over Rovieng iron mine in Cambodia*, Kenertec, 14 May 2008.

⁶⁸ *Kenertec obtains the rights to explore and develop 8 mines in Cambodia*, Kenertec, 12 December 2007.

⁶⁹ See for example Yonhap, 15 November 2007.

⁷⁰ Based on unpublished report obtained by the researcher. However, this did not appear to prevent Kenertec from applying for four more mining concessions.

⁷¹ Based on unpublished report obtained by the researcher.

⁷² Interviews, December 2009.

3.2 Ratanak Kenertec

As for the Ratanak Kenertec concession in Rovieng district, the company stated that it had conducted geographical and physical surveys on this mine and planned to carry out “close investigation, drilling and feasibility” in 2008, before beginning exploitation from early 2009.⁷³ As of September 2008, Kenertec confirmed deep drillings were being conducted at the Phnom Thmor mine,⁷⁴ but gave no information regarding its other Rovieng mine, located in Phnom Kos Keo.

Kenertec also had highly ambitious plans for a large-scale infrastructure development that would allow for the proper exploitation of the Rovieng mine in the future. This included plans for the construction of a road connection to the Mekong, the building of a steel mill factory, and river transportation by 200-ton barges which would require the dredging of the river – something which would have potentially tremendous impact on the environment and the livelihoods of rural Cambodians.⁷⁵ This contrasted with Kenertec's early depiction of favorable “surface transportation” to the Mekong river and the “good condition for transportation” offered by the river.⁷⁶

Discussions with local villagers who lived and farmed close to the two concession sites during a field trip to Rovieng district in June 2010 indicated what appeared to be limited progress in the exploration and development of the mines under Kenertec's tenure. Villagers witnessed drillings and other exploration activities on both Phnom Thmor and Phnom Kos Keo, sometimes on the land they farmed. In some cases, their crops were damaged by company staff exploring and marking the area. But villagers consistently depicted a suspension of activities from some time in 2009 until early 2010,⁷⁷ when the number of both staff (including foreigners) and soldiers working for the company decreased and activities ground to a halt in the sites. This was also observed directly during a field trip to the area in December 2009.⁷⁸ In contrast, after the two mines were taken over by new Chinese company GXNF, the villagers reported a dramatic increase in the activities on both sites.

As for infrastructure development, a few roads were built or upgraded in the area by company workers, but it was not possible to determine with certainty the identity of the company responsible. For instance, a road was developed to connect the two mining sites in Phnom Thmor and Phnom Kos Keo in 2007, but villagers did not know which company was responsible for it. The road constructions often entailed loss of land for local villagers, who had not been notified, consulted or compensated for their loss. More information on impacts is found in Section III.5.

⁷³ *Kenertec takes over Rovieng iron mine in Cambodia*, Kenertec, 14 May 2008.

⁷⁴ Based on unpublished report obtained by the researcher.

⁷⁵ See Kenertec Resources website.

⁷⁶ *Kenertec takes over Rovieng iron mine in Cambodia*, Kenertec, 14 May 2008.

⁷⁷ Interviews with Boeung and O villagers, June 2010.

⁷⁸ Field trip observations in Rovieng district, December 2009. For example, the entrance to the Kos Keo site was no longer guarded by a soldier, as was the case in the past, whereas company equipment, such as bulldozers, remained at a company office near the Kos Keo site which had become nearly deserted.

Moving Beyond Misconceptions

Kenertec – Case study of a Korean mining investment in Cambodia



Drillings carried out by GXNF on Phnom Thmor (left) and Phnom Kos Keo (right), June 2010.

3.3 Kenertec's failure to implement its development plans

Overall, Kenertec's plans were not implemented successfully, as progress was slow in carrying out exploration in its mining concessions. It is unknown what results the drillings yielded and whether they had a role in the suspension of activities observed in Preah Vihear province. In any case, Kenertec failed to start generating revenues from its mining activities in 2009, as it had planned. Its bankruptcy in Korea also likely prevented it from carrying its projects further.

This brings into question whether Kenertec was truly prepared to take over and develop as many mines it had secured. The company's lack of mining experience and awareness of the poor quality of infrastructure in Cambodia – and the high cost entailed by their development – plainly appears in its overly ambitious and optimistic plans. These patently failed to reflect how demanding mining operations are in terms of costs and time, while industry experts insist that a mining operation is a long-term investment that may take up to ten years to become operational and turn a profit.⁷⁹

In this light, Kenertec's failure to successfully develop its mines may not be all that surprising and draws attention to the need for a stronger selection process in granting mining licenses in Cambodia. Despite the limited mining activities in Kenertec's concessions, local communities

⁷⁹ Significantly, a Rovieng-based NGO worker reported meeting in late 2009 a Chinese investment group who came to the area to assess investment opportunities. The group decided against investing in iron mining in Preah Vihear because the cost of extracting, processing and transporting the mineral was deemed too high – due to the lack of infrastructure among others – and therefore unprofitable, especially in light of the falling price of iron ore on international markets in 2009. Based on discussion in December 2009.

nevertheless suffered an impact on their livelihoods and land due to developments imputable to the company or to the presence of soldiers hired to guard its concessions.

4. Villagers' negative perception of the company

While local authorities dismissed any complaints from villagers about a concession by saying the company would bring development that would benefit all, through jobs or infrastructure developments, villagers felt differently.

Villagers in Dong and Phal Haal reported being encouraged by local authorities – in particular district and village chiefs – to thumbprint a document agreeing to become a worker for the company. However, it is not clear what the document actually said as most villagers could not read and simply trusted what they were told. Also, while some local villagers were hired by a company, most workers actually came from Rovieng town, not the villages near the concessions which were affected by them.⁸⁰ “*When the company came, we didn’t get any jobs, only problems,*” said Phan, a farmer living in Dong.⁸¹

As for the development of infrastructure, villagers resented the fact that roads had only been built or upgraded for the benefit of the company, not the villagers’. They also objected to what they perceived to be disrespect and contempt for them in the way the companies used the roads. Their cars and trucks would drive at high speed on the roads, raising dust all over their village.⁸²

Overall, there was a profound gap between companies and the villagers living near their concessions, with no or limited contacts between them. This fed into mutual misunderstanding and mistrust, with communities decrying the companies’ “*bad behavior*” which made their lives more difficult. The impacts villagers suffered due to the presence of the company and the military working for them only compounded these feelings.

5. Impacts caused by Kenertec’s concessions

5.1 A chaotic mining development scene

When looking at the impact of Kenertec’s concessions and activities on the ground, it proved extremely difficult to separate it from the impact of other companies in the area. The reason for this is the lack of information – which represents a significant challenge to ascertaining which company is operating where or responsible for which developments (such as roads) – but it is also a result from the chaotic development of mining operations on the ground, where companies appeared to have competing claims over some areas.

In light of this context, it was decided to present in this section general information about the impacts suffered by villagers, even if they may not have been caused specifically by Kenertec. This is because it was not possible to determine with certainty the identity of the company responsible for particular developments, but also because it was considered important to

80 Interviews in Dong village, June 2010.

81 Interview, June 2010.

82 Interviews in Dong village, June 2010.

Moving Beyond Misconceptions

Kenertec – Case study of a Korean mining investment in Cambodia

provide a fuller and better picture of the situation on the ground. Villagers are caught in a web of chaotic mining developments by different companies which threaten or impact their land and livelihoods from various directions. This was especially noticeable in Rovieng district, where villages visited were affected not only by Kenertec, but also by the activities of other companies, including Chinese ones.

5.2 Lack of information and consultation for local stakeholders

Before addressing the identified impacts of these mining operations, a first major issue for the people living in the area is the lack of information and consultation surrounding these developments. As already mentioned, the lack of transparency has left local stakeholders, including affected villagers and local authorities (especially at the commune level), deprived of crucial information regarding developments affecting them or even the identity of the company responsible for them. For instance, in various villages, people had commonly never heard of Kenertec and did not know the identity of the company affecting their lives or believed it to be Ratanak Stone.⁸³ When they were aware that a new company had taken over from Ratanak Stone, they usually did not know its name and simply referred to it as “*the Chinese*” or “*the Koreans*”.⁸⁴ The information villagers had about the company typically came from NGOs or discussions with soldiers working for the company.⁸⁵

“When people in Phnom Penh give out concessions to companies, they don’t realize it affects us and our land because we are just dots on a map,” said Thong, a community representative from Rovieng district. His words reflected a widespread feeling amongst villagers of being ignored and having no say in developments that affected their lives and land.⁸⁶

This meant that in many areas affected by mining developments, people lived in uncertainty – and fear – over their future. Oftentimes, they were aware that a company had been granted a large concession which they believed to include the land they farmed and worried their land might be confiscated in the future. In some areas, fears of losing their land were compounded by the fact that company staff marked some areas, took measurements and pictures, or even performed drillings on their land, as was reported in various villages in Rovieng district. The villagers were routinely not informed, nor was their consent sought, before the company undertook such exploration activities.

Where local authorities – particularly at the higher levels of the district or province – provided information, it was generally to praise the benefits the company would bring and reassure people that they would suffer no harmful impacts. According to a local NGO worker based in Rovieng, local environmental officials also carried a reassuring message, claiming that only exploration was taking place and it did not threaten people or the environment, and that if minerals were found,

83 Interviews in Thmear village, December 2009, as well as Dong, Boeung, Bak Kdaum, O villages, June 2010.

84 Interviews with villagers in Rovieng district, June 2010.

85 For example, Chrach villagers learned from the military that the company used to be Ratanak Stone and had sold their concession to Kenertec.

86 Group discussion in Dong village, June 2010.

proper negotiations would take place.⁸⁷

This contrasted with the serious issues or fears reported by villagers in relation to the company's concessions or activities. In order to better understand the impact suffered by local communities, it is necessary to realize the crucial importance of land for rural Cambodians.

The centrality of land for rural Cambodians

In a traditionally rural country like Cambodia, land is of utmost importance for the overwhelming majority of the population as their main source of livelihoods. More than 80% of Cambodians depend on agriculture and many rely on their land to grow crops as a means to feed their families and/or to earn an income. They commonly have a ricefield as well as chamkar land (farming land) where they may cultivate rice, and other crops such as soybeans, cashew nuts, fruit trees or vegetable. Land farmed by villagers may routinely be located several kilometers from their village, as people have ventured further away in search of available or cultivable land. Therefore, even if a concession is located at a distance from nearby villages, it may still affect their land, as has been the case for villagers in Rovieng district for instance.⁸⁸



Chamkar land farmed by villagers, close to drilling site beyond the trees (left), and rice growing on villager's chamkar (right), Phnom Kos Keo, June 2010.

87 Communication with Rovieng-based NGO worker, December 2009.

88 Same goes for forest resources used by villagers, which may be quite remote from their village but crucial to their daily livelihoods nonetheless.

Moving Beyond Misconceptions

Kenertec – Case study of a Korean mining investment in Cambodia

Accordingly, land is people's main or only wealth and property. Particularly in the countryside, it is the principal inheritance from one generation to the next, as parents divide and split their land amongst their children. This means that for rural families, losing their land represents a tremendous blow as they lose their main source of livelihoods, which may jeopardize their food security and future.

However, the crucial importance of land for Cambodians is not matched by an awareness of the law or their rights. In most cases, people's rights over the land they have lived on or farmed for years are not properly documented or given legal recognition, which facilitates the dispossession of their land, including in the context of concessions granted to companies. Indigenous groups are particularly vulnerable to this trend.

Cambodians have commonly lost their land without receiving proper compensation, such as equivalent plots of land. This leaves them with no choice other than to find ways to make up for their loss by themselves, usually by finding new land to clear and farm where they see it as available, typically in the forest. This is doubly problematic as families who do so will find themselves in an illegal and precarious situation – it is against the law to clear forest land and they will have no rights of ownership or possession over their new plots under the Land Law.⁸⁹ In addition, the new land is usually still located within a company's concession, which means they may be again dispossessed of their land in the future.

5.3 Loss of land – or fear of land loss

Loss of land or threat to land due to the concessions

The mining concessions awarded to Kenertec were granted at the expense of local communities as they included land farmed by villagers for a long time. In Rovieng district, some families lost land to the concession itself or to company road developments. Others could still farm their land but worried for their future as their plots were inside the concession and they had been forbidden



Land cleared on Phnom Thmor, June 2010.

⁸⁹ Under the Cambodian Land Law, one of the conditions for possession rights is that people must have begun using or living on their land before the Land Law was passed in 2001.

Moving Beyond Misconceptions

Kenertec – Case study of a Korean mining investment in Cambodia

by the military from cultivating their land.

The Phnom Thmor concession affected villagers from nearby O and Bak Kdaum villages, who farmed chamkar land there, some for more than ten years. Six or seven families from Bak Kdaum who grew fruit trees and cashew on plots of 0.5ha to 3ha lost their land around 2006, when the military arrived and claimed that the land on Phnom Thmor belonged to a company. They demanded the villagers leave their land and offered monetary compensation.⁹⁰



Chamkar land farmed by villagers in the foreground, close to land cleared by the company in the background, beyond the trees (left) and rice growing on villager's chamkar (right), Phnom Thmor, June 2010.

Villagers initially refused, but soon relented and accepted payments ranging from one to 1.5 million riels (about USD250-375).⁹¹ “The military told us that we would not be allowed to farm our land, if we refused the compensation. So, even if we weren't happy with their offer, we took the money anyway because we were afraid we would not get anything otherwise,” said Khun, a villager from Bak Kdaum who was one of those who received payment for his lost land. This was the only case in which people who lost land to the company were offered and received compensation. The land was later cleared to make way for mining operations, with drillings starting in 2007 or 2008 according to villagers.

Most of those Bak Kdaum families started farming other plots close to their former land, whereas three or four families from O village and others from Boeung village also continued to

⁹⁰ According to a Bak Kdaum villager, the military presented himself as General Pol Saroeun's bodyguard. He was the one to offer and pay the compensation to the villagers. Based on interview in June 2010.

⁹¹ According to a local NGO worker, good quality land such as the orchards cultivated by these families were worth about two million riels per hectare. He reported that the villagers used the money they received to buy wood for their houses and they eventually found new land to clear and farm.

Moving Beyond Misconceptions

Kenertec – Case study of a Korean mining investment in Cambodia

farm their chamkar land in Phnom Thmor. However, they feared problems in the future after being told by military that the land belonged to the company. Similarly, a dozen families from from Dong and others from Phal Haal who farmed land within Kenertec's concession in Phnom Kos Keo – sometimes very close to drilling sites – feared the military might later prevent them from accessing and farming their land, as they were aware their land was within the area granted to the company. *“The company came and cleared land at the top of Phnom Kos Keo, but maybe one day, they’ll do the same with my land if they think it has minerals,”* said Sareth, a villager from Phal Haal who farmed a few hectares of rice fields in the area and currently harvested enough rice to feed her family and sell surplus.⁹²

These fears were compounded by company exploration activities – such as measurements or drillings – on or near their plots, which made it clear to the villagers that the company claimed control over their land. Nevertheless, they continued to farm their plots as they felt they had no choice if they wanted to make a living. *“The company put a marker stone on my land to say it belonged to them, but I just took it out and continued to farm it,”* said Vann, a villager from Phal Haal, stressing that she needed to grow food for her family.⁹³

As for the villages visited in Chey San district (Thmear, Chamraeun and Chrach), people had no yet lost land to the company, though they believed Kenertec's concession encompassed the land they farmed. However, they were also anxious they might lose their land in the future, should the company decide to start exploitation. This prospect worried many villagers as their land was very fertile and allowed them to grow enough rice to sell surplus. Many feared they would not be able to find such productive land elsewhere. Also, another cause for concern amongst villagers was the previously mentioned arrival in December 2009 of a new Chinese company, reportedly authorized by the provincial governor to carry out exploration in the area.⁹⁴

Loss of land due to road developments

The development of roads by companies also caused land loss for villagers in the area. At least five families from Boeung, another five from Bak Kdaum, and ten from O village lost part or all of their ricefields in 2006 because of a road construction that went through their land. They received no compensation for their loss. As previously mentioned, it was difficult to ascertain which company was responsible and this illustrated the vulnerability of those villages that lie in the middle of a chaotic development of the mining sector in Cambodia.

92 Interview, June 2010.

93 Interview, June 2010.

94 Interview with Thmear villager, December 2009. Also see Section III.2.



Road built by company workers in 2006 through the ricefields of villagers from Boeung, but no longer used by company, June 2010.

5.4 Decreased access to forest and its resources

Many villagers identified the main impact caused by the concessions on their lives to be a reduced access to the forest, which was another major source of livelihood for them.

“Our Forest”, important in more ways than one

The forest represents a major source of livelihoods for rural Cambodians. Even when the forest is located some distance from a village, people will travel there in order to gather forest products. For example, the forest in Phnom Thmor is 15km away from Thmear, Chamraeun and Chrach villages, yet people routinely go there for a wide range of resources, to collect wood and NTFP (Non Timber Forest Products) such as vines and other material for their houses, edible and/or medicinal plants, hunt wild animals (wild pigs, chicken, turtles, frogs) and fish, take their cattle to graze, and last but not least, tap resin from trees.

Resin is a very important resource for villagers, whether it provides a source of revenues or is used for household needs (villages lack electricity and most villagers are too poor to afford generators). Some villagers only occasionally worked 10 or 20 trees, while resin tapping was a major activity and source of income for other farmers, who could make up to USD 100 per

Moving Beyond Misconceptions

Kenertec – Case study of a Korean mining investment in Cambodia

month from collecting and selling resin.⁹⁵

In addition, in areas such as Chey San district, which were populated primarily by indigenous groups like the Kuy, the forest also had a spiritual dimension and parts of it were considered sacred and a spirit house was built to hold traditional ceremonies. Indigenous villagers had a particularly extensive knowledge of the forest and its resources, with one Thmear villager boasting that they used over 100 varieties of plants from the forest for medicinal purposes. Indigenous people considered the forest in Phnom Thmor to be part of the wider Prey Long forest, which means “Our Forest” in the Kuy language.



Spirit house near Thmear village, Chey San district, December 2009.

Prey Long is recognized as one of the most important lowland evergreen forest still left in South East Asia. It was reported to originally cover about 3,600km² in the north of Cambodia and be home to extraordinary bio-diversity, including endangered species such as elephants, tigers, rare crocodiles, and other wildlife.⁹⁶ Up to 700,000 mostly indigenous people live in and around the forest and depend on it for their livelihoods.

They therefore see concessions overlapping with Prey Long, such as Kenertec's, as threats to the forest, where logging has kept increasing. Indeed, observers have suggested that at least half of the forest has been lost to logging – particularly valuable trees – while larger mammals are close to extinction. These concerns have been echoed by indigenous representatives. “How many years does the forest have left? How long can Prey Long survive? (...) From the mountain to the

⁹⁵ Communication with local NGO worker, December 2009.

⁹⁶ This included bears, gaurs, banteng, gibbons, as well as hornbills, vipers, wild pigs, turtles, otters and frogs. For more details, see *Prey Land – One Forest, One Future*, documentary film by Jocelyn and Ben Pederick, <http://mouthtosource.org/rivers/preylang/the-video-documentary/>.

Moving Beyond Misconceptions

Kenertec – Case study of a Korean mining investment in Cambodia

plains, the trees have been cut down,” a Stung Treng villager said in a video documentary about the forest, while another explained, “Everything we need comes from the forest. You can’t put a value on the forest. It is equivalent to life itself.”⁹⁷

Access to the forest and its resources was a major concern for people in Chey San district as it became impacted by Kenertec’s concession in Phnom Thmor. Even though it was only at the exploratory stage, the company had four or five armed soldiers guarding its concession area. Villagers in Chrach reported that part of the forest where they used to go to for NTFP had been cleared to make way for the company’s office and a small airport in January 2008, as well as to upgrade a road to Stung Treng in 2009. This forced villagers to travel further away to collect resources.

In general, while people could still go to the forest, they had to pay fees to the military guarding the company office, either in cash (up to 50,000 riels – about USD12 – per m³) or in kind, to be allowed to cut wood there. This represented a significant burden for the villagers, who felt the situation was unfair. “*It’s our forest. Why should we have to ask for the soldiers’ authorization?*”, complained Rotha, a villager from Chamraeun. Even more worryingly, Chamraeun villagers reported they were forbidden in late 2009 by the military from entering the forest around the office, which stirred fears for the security of their livelihoods. Mony, a commune counselor from Chamraeun, explained their predicament, “*If we lose the forest, we have no idea where to go for our livelihoods.*”⁹⁸

Villagers also described widespread illegal logging in the area, which targeted precious wood (such as *beng, ningnuin, krogneung* or *koki*) used to make furniture. Those trees have even nearly vanished from the forest, according to a villager in Thmear. People blamed the logging on both the military and outsiders. Resin trees have also become rarer in parts of the forest. While Thmear villagers still had resin trees they could go and tap, villagers from Chamraeun reported that resin trees in their area of the forest had nearly disappeared. They were no longer able to collect enough resin for their daily needs and had to buy resin from Thmear or other villagers for 2,000 riels a torch (half a US dollar). In other words, they suffered a significant income loss while incurring more expenses. Villagers blamed the company or the soldiers for cutting down the resin trees, though it was difficult to confirm who was responsible.

Similarly, in Rovieng district, villagers in Boeung and Dong complained about losing access to the NTFP they used to collect in the forest in Phnom Thmor and Phnom Kos Keo,



Traces of illegal logging in the forest in Chey San district, December 2009.

⁹⁷ See *Prey Land – One Forest, One Future*.

⁹⁸ Interview, December 2009.

Moving Beyond Misconceptions

Kenertec – Case study of a Korean mining investment in Cambodia

after it was cleared by the company to make way for their mining operations.⁹⁹ It was also reported that extensive illegal logging around Phnom Kos Keo wrecked the local resin industry as resin trees were cut, resulting in loss of livelihoods for local villagers.¹⁰⁰ While villagers could still go to other forests, they complained those were not as rich in resources, which meant a decrease in their livelihoods.

It is believed Kenertec bore some responsibility in the abuses committed by the military and the resulting difficulties for local villagers as the soldiers worked for them. More details on militarization are found in Section III.5.5.7.

5.5 Impact on livelihoods

The concessions' impact on both land and access to the forest resulted in decreased livelihoods for local villagers. Indeed, these are the two main sources of livelihoods which rural Cambodians and indigenous people depend on to provide for themselves and their families. It also affected villagers' food security in some cases or caused serious fears amongst villagers that they might not be able to feed their families in the future if they lost their land. Despite receiving money for the land he lost to the concession, Bak Kdaum villager Khun saw his living standards deteriorate. *"After I lost my chamkar on Phnom Thmor, I've no longer been able to grow enough food for my family. So, I've had to get rice from the village rice bank and start working for other villagers to make money,"* he said.¹⁰¹ Other families in the village similarly complained that their ability to grow enough food had been affected by the loss of land they suffered because of road construction.

As a matter of course, the concessions represented a source of anger and worries among villagers, since, as bluntly summarized by Seng, who lives in Dong village, *"Giving our land [to the company] is the same as killing us, because it is taking away our livelihoods."* Ravy, a farmer from Boeung, clarified the type of development they yearned for. *"If a company comes and respects the law and our rights, we will welcome it. But that's not been the case so far,"* he said.

As previously noted, the fundamental importance of land for rural Cambodians has meant that villagers who lost land sought new plots to farm. But in an area covered by concessions, they commonly ended up clearing a patch of land further in the forest, oftentimes still within a company's concession. For instance, this was the case of villagers in Tunlop, Rovieng district, who had lost farming land to a road construction and later cleared forest land within the concession.¹⁰² However, this meant they had no legal rights over their new land and may lose it to the concession in the future – some companies reportedly stated they have the right to take over any land more than 7km from a village or land that was cleared for farming after 2001.¹⁰³

This revealed how the inadequate process in granting concessions – in particular the lack of adequate consultation with local communities – had the effect of harming or threatening the livelihoods of villagers but also further pushing them into a precarious and illegal situation.

⁹⁹ However, this appears to have occurred before Kenertec took over the concessions.

¹⁰⁰ Communication with local NGO worker, September 2010.

¹⁰¹ Interview, June 2010.

¹⁰² Interview with Tunlop villager, in Rovieng district, December 2009.

¹⁰³ Communication with local NGO worker, September 2010.

5.6 Environmental impact

Kenertec's ambitious development plans as well as the scope of its concessions raised serious concerns regarding their environmental impact, since the concessions overlapped with forest land, including highly sensitive Prey Long, one of the last lowland evergreen forests in the region. Mining developments as well as the presence of military suspected of participation or complicity in illegal logging created serious threats to the forest and its critical bio-diversity.

However, despite its potential impact on the forest, the company was not known to have completed any environment impact assessment (EIA), or planned any mitigation measures, although the 1996 Law on Environment Protection and Natural Resource Management provides that *“an EIA shall be done on every project and activity, private or public, and shall be reviewed by the Ministry of Environment before being submitted to the Royal Government for decision.”*¹⁰⁴

5.7 Militarization of Kenertec's concessions

The military have been part and parcel of Kenertec's operations in various ways, from the involvement of their top commander in a joint venture to the provision of security services for the company. In the words of Sarun, a local farmer from Dong village, *“When the company came, the military also came.”*¹⁰⁵

The first link between Kenertec and the RCAF was the joint venture with Ratanak Stone, which is registered as owned by the wife of General Pol Saroeun, the Commander-in-Chief of the RCAF, who reportedly visited the mining site in early 2008.¹⁰⁶ Interestingly, in one of its quarterly reports, Kenertec stated that the establishment of the joint venture with a 15% stake for the Cambodian party was a condition set by the Cambodian government, and that Ratanak Stone was responsible for any affairs with the government regarding rights transfer.¹⁰⁷ This highlights one considerable advantage a foreign company may benefit from in partnering with an influential local associate who is able to provide connections and assurances for the investment to run smoothly.

It may be safely assumed that Kenertec's partnership with the Supreme Commander of the Cambodian military resulted in the presence of soldiers guarding the company's various sites, including the company's local office in Rovieng town. Following the trend of militarization of mining sites observed with concern by Cambodian civil society,¹⁰⁸ all of the three Kenertec's concessions visited in field trips were guarded by armed Cambodian military working for the company. Soldiers readily acknowledged that they received two salaries, one from the government and one from the company.

104 Article 6 of Law on Environment Protection and Natural Resource Management. The public nature of any EIA is however made unclear by a contradicting provision in the Mining Law, which conditions the public release of information related to environmental and social issues to the permission of the Minister in charge of the mineral sector, ie MIME (Article 20).

105 Interview, June 2010.

106 Based on discussions with local villagers in Rovieng district, June 2010.

107 *Quarterly Report*, Kenertec, September 2009 (in Korean).

108 See for example NGO Forum on Cambodia, *Position Paper on the Environmental and Social Impacts of Expansion of the Extractive Industries Sector*, 2009.

Moving Beyond Misconceptions

Kenertec – Case study of a Korean mining investment in Cambodia

It is deeply disquieting that military in charge of protecting the nation find themselves employed in the service of a private company.

The security services provided by the military included for the most part guarding the company's concessions or office, but also protecting company activities, such as the construction of roads. Soldiers also prevented people from growing crops or a local NGO from digging fish ponds for villagers on land considered to be the company's.¹⁰⁹ The military's presence also likely served as a factor of intimidation – as shown in Bak Kdaum villagers's eventual agreement to a compensation they were unhappy with – and a deterrent to protests from communities.



A military control point near Kenertec's Kos Keo concession, December 2009.

Moreover, the military appeared to draw benefits for themselves from their presence in the area by routinely taking fees from villagers for going into the forest to collect wood (see Section III.5.4). People in all villages consistently complained of this abuse, which imposed a serious burden on their livelihoods, sometimes forcing them to borrow money and leaving them with no or little recourse. Thmear villagers took their complaint to their commune chief, but to no avail. “We have no power while the military are strong,” local farmer Sok complained.¹¹⁰

Finally, the RCAF's implication in illegal logging and rights abuses has been long decried by Cambodian civil society. It is of particular concern for a company to partner with a country's army, especially one embroiled in accusations of abuses and illegal activities. By basically sub-contracting military services for its benefit, Kenertec stands to be associated with any abuses the soldiers may commit and bear some complicity in them.

The challenge of mobilizing affected communities

As described previously, villagers living close to Kenertec's concessions suffered loss of livelihoods due to the company's activities or the presence of soldiers hired by the company. Without receiving information or being consulted, people lived in uncertainty about their future and feared they might lose their land or suffer additional impacts if the company decided to develop its operations further.

¹⁰⁹ Based on interviews with villagers and discussion with local NGO worker, June 2010.

¹¹⁰ Interview, December 2009.

However, while villagers felt anger over developments that were seen to benefit outsiders but not themselves, the general sense was one of powerlessness, as people felt that the company had strong backers, whereas villagers received no support. This was compounded by the generally pro-company discourse of local authorities, who praised the benefits to be brought by the company and stressed the importance not to stand in the way of development.¹¹¹ “We went to complain to the commune chief about losing our land because of the road being built by the company. But he told us we should accept our loss because it was in the name of Cambodia's development,” recounted Hong, a farmer from Bak Kdaum. “But why should I suffer to help the country's development? How about the country's development helps me?”, he asked.¹¹²

Mobilization of villagers to protect their land was difficult where there was a low level of education and very limited awareness of the law and their rights. This was compounded by practical difficulties stemming from poor transport and communication infrastructure – for instance, inadequate roads made it difficult for people to travel between villages, especially during the rainy season. In many cases, villagers had limited availability to protest as they had to farm their land and provide for their families. As a result, there was a lack of strong connections between similarly affected communities in different villages. For instance, while they faced the same issues or threats due to the same company, the villages near Phnom Thmor and those near Phnom Kos Keo had little connection with one another.

Despite these difficulties, there were remarkable efforts by some community representatives to try and mobilize their fellow villagers, especially where community networks or local NGOs provided support. They sought to raise awareness and document their communities' rights. For example, in Thmear, villagers made a map of the area around their village to show the location of their land and natural resources they used, most notably the forest.

The activism of community representatives was also instrumental in attempts to protest and raise concerns over the impact villagers suffered. For instance, they convinced villagers in the area to join coordinated complaints highlighting issues caused by concessions and signed by communities all over the country. About 1,000 people from various villages in Thmear commune and 700 in Chrach commune thumbprinted the complaint.¹¹³ “It was easy to get people to thumbprint the complaint, because they are worried and they feel they have suffered because of the presence of the company and the soldiers,” explained Dara, a local community representative who was active in gathering villagers' support for the complaints. The complaints were presented to various ministries in Phnom Penh, including the Ministry of Agriculture, Forestry and Fisheries.

Some representatives also sought to work together with their local authorities and get their support. The commune level showed some understanding and concern, but it was difficult for these officials to convey their concerns to higher authorities at the district or provincial levels. A Chrach commune counselor recalled being rebuked by the District Governor after the latter had received a complaint from villagers.¹¹⁴

These were remarkable efforts on the part of those community representatives, who had to

111 Interview with Dong villager quoting commune chief, June 2010.

112 Interview, June 2010.

113 Interviews with Thmear villagers, December 2009.

114 Interview, December 2009.

Moving Beyond Misconceptions

Kenertec – Case study of a Korean mining investment in Cambodia

deal with limited resources and information, material difficulties, or threats against them. The fact that their activism continued despite the challenges they faced is a powerful indication of what is at stake for communities affected by mining concessions, that is, their livelihoods and their future. It also represents a demand for a better development in which communities have a say in developments that affect their lives.



Community map drawn by villagers in Thmear, December 2009.

5.8 Renewed difficulties with GXNF's takeover

Since its takeover in May 2010, Chinese company GXNF has been very active in both Phnom Thmor and Phnom Kos Keo in Rovieng. Over a month starting from May 2010, GXNF performed a dozen drillings in Phnom Kos Keo and several in Phnom Thmor, hiring workers from the area and elsewhere.¹¹⁵ Local villagers reported the company was active day and night, seven days a week.¹¹⁶

GXNF's arrival also came with renewed restrictions and difficulties for local villagers, as the presence of soldiers guarding the sites increased and people were banned from using a company road in the Kos Keo area. Villagers even reported the presence of Chinese men in military

¹¹⁵ Based on interviews with villagers in Dong village, June 2010. Drillings were also observed directly in field trips to Phnom Thmor and Phnom Kos Keo, in June 2010.

¹¹⁶ Interviews with O villagers, June 2010.

Moving Beyond Misconceptions

Kenertec – Case study of a Korean mining investment in Cambodia

uniforms and an instance of armed threat by one of them against people digging a pond.¹¹⁷ Also, one villager working for the Chinese company reported that chemicals were used during drillings, prompting worries over potential health impact in the future.¹¹⁸



Chinese men in military uniform seen at drilling on Phnom Thmor, June 2010 (right: close-up view).

117 Interview with Phal Haal villager, June 2010.

118 Interviews with villagers in Rovieng district, June 2010.

IV. Conclusion: The multidimensional failure of Kenertec's investment

Kenertec's ambitious mining investment in Cambodia ended in failure. Less than three years after the first mining concessions were granted to Kenertec, they passed to Chinese company GXNF. The company's troubles in Korea following its implication in high profile bribery scandals and its eventual bankruptcy likely played a part in its Cambodian debacle.

It is clear in retrospect that the decision to award these concessions to Kenertec was not a sound choice, neither as a competent company to develop the mines or as a responsible company. While it is not entirely clear how much progress the company made in its concessions, it is manifest that Kenertec's enthusiastic plans were not realized, whereas local communities suffered from the company's operations or its association with the military.

This inevitably raises questions over the Cambodian government's decision to grant so many concessions to this newcomer to the mining sector, as well as the active support the company received from the Korean administration. It emphasizes the importance of selecting responsible and competent companies to receive backing from governments, both the Cambodian and Korean ones. This was not the case with Kenertec, which did not contribute to the development of mining in Cambodia or secure a stable source of minerals for Korea.

For Cambodia, this misguided decision also highlights the imperious need to improve the capacity of relevant institutions, including MIME, to develop the mining sector in a responsible and sustainable way. This must include an informed assessment of the most efficient way of harnessing the country's resources, and truly take into account local stakeholders and the need to preserve their livelihoods. This is only possible by making the changes required to attract responsible companies to the sector, such as tackling corruption issues or improving the country's infrastructure so that mining developments may be more profitable. Local villagers also expressed their conviction it was the responsibility of the government.

Mining investments have the potential to contribute to Cambodia's development, but only if they are carried out by companies that are responsible, both socially and environmentally.



Moving Beyond Misconceptions

MH Ethanol – Case study of a Korean agro-industrial investment in Cambodia

Phnom Penh, Cambodia
2012

Moving Beyond Misconceptions

*MH Ethanol – Case study of a Korean agro-industrial investment
in Cambodia*

Author: Ji-Sook Lee

Acknowledgement

The author would like to thank Trocaire and Heinrich Böll Foundation for supporting this research. I would also like to acknowledge and thank all individuals and organizations who supported this project with helpful discussions and comments on previous drafts, including Roger Henke, Terry Parnell, Pyrou Chung, Mark Grimsditch, Jason Jones, Dominic Renfrey, Ben Davis, Megan MacInnes, Rebecca Catalla, Andrew Cock, Ryerson Christie, Phea Chung, Fatima Ayub, Haejin Lee and Yoonjung Kim. Credit for the area maps used in the case study reports goes to Hok Menghoin, with thanks for his assistance.

I would also like to thank deeply the Lutheran World Federation and community network representatives for their invaluable help during field investigations, as well as the affected communities and individuals who took time to meet with me and answer my questions.

Finally, special thanks to Jung-Tae Lee for his never-ending clarifications and support, Katrin Seidel for the inspiring discussions and tireless encouragements and to my research assistant Vutheara Dy for her enthusiastic and unfailing collaboration.

Table of Contents

| | |
|---|-----------|
| Executive Summary..... | 3 |
| I. Introduction..... | 6 |
| 1. Rising interest of Korean investors in agriculture in Cambodia..... | 6 |
| 2. The case of MH Ethanol's investment in Cambodia..... | 7 |
| II. MH Ethanol in Cambodia: From cassava to biofuel..... | 10 |
| 1. Who is MH Ethanol?..... | 10 |
| 2. MH Ethanol's investment in Cambodia..... | 11 |
| 2.1 MH Bio-Energy's biofuel plant..... | 12 |
| 2.2 CJ Cambodia/MH Agro-System's cassava plantations..... | 12 |
| 3. High-level support for MH Ethanol's investment..... | 13 |
| 4. MH Ethanol's partners in Cambodia..... | 14 |
| 4.1 The Royal Cambodian Armed Forces (RCAF)..... | 14 |
| 4.2 Te Haing Development Co. and SBM Cambodia | 14 |
| III. Critical review of MH Ethanol's investment in Cambodia..... | 16 |
| 1. A controversial partnership with the RCAF..... | 16 |
| 1.1 An early cooperation with the RCAF..... | 17 |
| 1.2 RCAF services in the land concessions..... | 17 |
| 1.3 “Exclusive supply contract” with the RCAF..... | 17 |
| 1.4 Other military abuses | 18 |
| 2. MH Ethanol's failure to meet its business goals..... | 18 |
| 2.1 MH Bio-Energy misses biofuel production and export targets..... | 18 |
| 2.2. CJ Cambodia/MH Agro-System's difficult venture into cassava farming..... | 19 |
| 3. Limited benefits of MH Ethanol's job creation..... | 22 |
| 4. A missed opportunity to boost Cambodia's agriculture?..... | 24 |
| 4.1 MH Bio-Energy's cassava needs, an opportunity for Cambodia..... | 24 |
| 4.2 A precarious and inconsistent demand for cassava..... | 25 |
| 5. Land disputes and impact on local livelihoods..... | 25 |
| 5.1 CJ Cambodia's concessions no exception to heavy trends..... | 25 |
| 5.2 Legal compliance of CJ Cambodia's ELCs..... | 29 |
| 5.3 The impact of CJ Cambodia's ELCs on local villagers..... | 30 |
| 5.3.1 Loss of land and access to forest, decreased livelihoods..... | 30 |
| 5.3.2 Absence of adequate resolution and remedies..... | 31 |
| 5.4 The case of Krol Tunsorng: Different fates for relocated and resisting villagers..... | 33 |
| 5.4.1 History of the village and start of land dispute..... | 33 |
| 5.4.2 Resettlement in “New Krol Tunsorng”, a non-solution..... | 34 |
| 5.4.3 Resisting villagers' remarkable struggle despite difficulties | 35 |
| 5.4.4 Update: A derailed solution..... | 36 |

Moving Beyond Misconceptions

MH Ethanol – Case study of a Korean agro-industrial investment in Cambodia

| | |
|--|-----------|
| 5.5 The case of newly affected Prak Kaye..... | 37 |
| 5.5.1 History of the village and start of land dispute..... | 37 |
| 5.5.2 Accusations against the military..... | 38 |
| 5.5.3 Land loss and fears for the future..... | 38 |
| 6. MH Ethanol's alarming environmental record..... | 38 |
| 6.1 MH Ethanol's environmental claims and CDM application..... | 39 |
| 6.2 MH Bio-Energy's trail of pollution in Kandal..... | 39 |
| 6.2.1 First pollution: Samraong Lake, September 2008..... | 43 |
| 6.2.2 Second pollution: Tonle Sap, August-September 2009..... | 43 |
| 6.2.3 Third pollution: Tonle Sap, March 2010..... | 48 |
| 6.3 A second trail of pollution in Kompong Speu..... | 50 |
| 6.3.1 Worrying waste water management in the concessions..... | 50 |
| 6.3.2 Environmental hazards and harmful health impact on villagers and animals..... | 53 |
| 6.3.3 Solution or respite?..... | 55 |
| 6.4 Environmental obligations under the Cambodian law..... | 58 |
| 6.4.1 Relevant legal framework..... | 58 |
| 6.4.2 Compliance of MH Ethanol's activities with the legal environmental framework..... | 59 |
| IV. Conclusion: A struggling investment with a controversial record... | 61 |

Executive Summary

What is MH Ethanol's investment in Cambodia?

MH Ethanol's investment in Cambodia came to prominence in November 2008, when it inaugurated the country's first bio-ethanol factory in Kandal province, close to Phnom Penh. The Korean company was to produce biofuel from cassava and export it to European markets, benefitting from tariff exemptions under the European Union (EU) “*Everything But Arms*” (EBA) initiative.

But the factory was only the crown of MH Ethanol's investment in the developing country. The Korean group's first move was to acquire land for cassava plantations. It was involved since the early 2000s in a Korean-Cambodian joint venture company called CJ Cambodia, which was granted two Economic Land Concessions (ELCs) of 3,000ha and 5,000ha (for a total of 80km²) in Kompong Speu province, 90km south-west of Phnom Penh. MH Ethanol later took full control of CJ Cambodia and renamed it MH Agro-System. Typically for a Korean chaebol, MH Ethanol also established other subsidiaries in charge of other activities, such as transportation, trade and equipment.

Great expectations for the development of Cambodia

The inauguration of the biofuel factory in Kandal was attended by the Cambodian Prime Minister and other government officials. MH Ethanol's investment was praised by both the company itself and the Cambodian authorities for the great contribution it was to make to the country's socio-economic development. In particular, it was to open new opportunities for Cambodian workers as well as farmers as it would create increased demand for locally-grown cassava (the raw material for the bio-ethanol) and thereby boost the development of the agricultural sector. The manufacturing in traditionally rural Cambodia of higher value-added biofuel was expected to become a source of enhanced revenues for the developing country. In reflection of these ambitions, MH Ethanol's slogan boasted that it would “*Make New History*” in Cambodia. In December 2009, it proceeded to its first export of Cambodia-made biofuel, an occasion saluted as a historic success.

An example of Korean investors' rising interest in agriculture and green projects

As a producer of a professed green fuel, MH Ethanol's investment is an example of the green investment projects fiercely pushed by the Korean administration as part of its ambitious “*Low-Carbon Green Growth*” climate change agenda. Such projects are expected to bring economic benefits while contributing to fight climate change.

Also, MH Ethanol's biofuel factory and cassava plantations are testament to the rising interest of Korean investors in agriculture in Cambodia. Agriculture, forestry and fishery rank fourth in terms of cumulative approved investment from Koreans with a total of USD100 million. However, the level of actual investment is significantly lagging behind with only USD16 million, which may indicate weaknesses in the approved projects that fail to turn into real investment. In this context, it is interesting to take a look at the performance of MH Ethanol's investment in Cambodia and examine how such an ambitious so-called green project has fared.

Moving Beyond Misconceptions

MH Ethanol – Case study of a Korean agro-industrial investment in Cambodia

A struggling investment...

Far from “*Making New History*”, the Korean company has failed to deliver on its promises. At the time of writing, less than two years after its inauguration, MH Ethanol's biofuel factory has been closed for half a year, largely missing its production and export targets. From 2008 until now, the company proceeded to only two shipments of biofuel to Europe, exporting a total of only 29,600 tons of bio-ethanol. This contrasted starkly with MH Ethanol's expectation to export 40,000 tons in 2010. Meanwhile, its concessions have still not been fully converted to plantations, nearly ten years after they were granted. This hardly qualifies MH Ethanol's struggling investment as a business success, which brings into question how well the company was aware of and prepared to the challenges of doing business in Cambodia.

As its struggled businesswise, MH Ethanol failed to make a positive and durable contribution to Cambodia's development. While it created jobs as well as increased demand for cassava, these benefits proved to be precarious and ultimately did not last as the factory indefinitely suspended its operations. As for the jobs created on its plantations, these hardly contributed to rural development and poverty reduction. More than half of the Cambodians employed were actually migrant families who were particularly poor and vulnerable. In addition, a number of workers were hired only on a part-time basis, which meant that they were unable to make a proper living on the basis of their incomes from the company only.

... fraught with issues and controversies

MH Ethanol's activities have caused a range of social and environmental issues, with no or little remedy for the affected communities. The company's ELCs were mired in land disputes with several villages, which caused people to lose land without proper remedy. In light of the crucial importance of land for rural Cambodians, this loss represented a severe blow to their livelihoods and pushed the worst affected families into further poverty and precariousness.

In addition, MH Ethanol's highly questionable waste management practice resulted in repeated pollution and serious environmental and health hazards in both Kandal and Kompong Speu. The biofuel factory was responsible for at least three major instances of pollution of the nearby lake and river, which repeatedly caused mass fish kills and harmed the livelihoods of local fishermen. MH Ethanol also transported waste water to its concessions, where it was stored in canals and ponds dug directly into the ground without any infrastructure to contain and isolate the waste water. This resulted in run-offs that contaminated nearby lakes and streams, creating health problems for both villagers and animals in the area. Despite this alarming environmental record, MH Ethanol failed to address properly the issues caused by its activities.

Last but not least, the company engaged from early on in a highly controversial association with the Royal Cambodian Armed Forces (RCAF). The RCAF are part and parcel of the company's operations on the concessions and were responsible for intimidation and threats against local villagers, forcing a number of them to accept inadequate relocation that turned out to be unsustainable. Questions were also raised over a so-called “*exclusive supply*” contract for the provision of cassava by a Cambodian military routinely accused of involvement in land-grabbing and other abuses.

Conclusion

Overall, MH Ethanol appears as another example of poorly planned investment that failed to make a strong contribution to Cambodia's sustainable development. This case study highlights some of the major issues that arise with investment in the developing country, especially for agro-industrial ventures which are bound to have an impact on land and natural resources, and those depending on them. Such investment are likely to keep coming to Cambodia in the absence of responsible governance and proper implementation of legal protections for local stakeholders. For investment to contribute genuinely to Cambodia's development, it is critically important that these governance issues are addressed properly in order to attract sound and responsible companies.

I. Introduction

I. Rising interest of Korean investors in agriculture in Cambodia

In traditionally rural Cambodia, the agriculture sector is a priority for the government and a central pillar of its most important economic policy document, the Rectangular Strategy. The Cambodian government has therefore encouraged investment in agriculture, especially projects that include some level of industrialization, as they are expected to develop the sector and enhance agricultural productivity, therefore contributing to economic growth.

In recent years, agriculture has increasingly sparked the interest of Korean investors, whose presence in Cambodia has kept expanding over the last decade. Approved Korean investment in agriculture, forestry and fishery leaped from USD2.5 million in 2005 to USD22 million in 2007 and USD63.5 million in 2008.¹

The global economic downturn caused these investment to fall to USD5.8 million in 2009. However, the agriculture sector has been one of the few areas of the Cambodian economy that has continued to experience growth after the downturn, making it even more important for the Cambodian government. Indeed, the first half of 2010 recorded nearly the same level as the previous year with USD 5.4 million of approved Korean investment.

| Year | Accepted Amount | Invested Amount |
|-------|-----------------|-----------------|
| 1997 | \$0.01M | \$0.01M |
| 2000 | \$0.3M | \$0.1M |
| 2001 | \$0M | \$0M |
| 2005 | \$2.5M | \$0M |
| 2006 | \$0.36M | \$0.27M |
| 2007 | \$22.15M | \$4M |
| 2008 | \$63.58M | \$6.19M |
| 2009 | \$5.89M | \$2.69M |
| 2010 | \$5.87M | \$3.7M |
| Total | \$100.67M | \$16.96M |

Unit: USD Million

Source: Korea Exim Bank (as of Sept. 2010)

Korean investment in agriculture, forestry and fishery.

By mid-2010, this sector ranked fourth in terms of cumulative approved Korean investment with a total of USD100 million. This clearly indicated a very strong interest on the part of Korean investors. However, it should be noted that the level of actual investment was significantly lower, with cumulative actual Korean investment only registering USD16 million. This may be indicative of weaknesses in the approved projects, resulting in their failure to translate into actual investment.

In addition, President Lee Myung-Bak's administration has embraced an ambitious climate change agenda for Korea known as the "Low-Carbon Green Growth" vision and aiming to set the country on the path of a wholly green economic development.² In this context, so-called green projects based on new and renewable energies have drawn rising support from the government and interest from the private sector. While this policy is largely domestic in its scope, the Korean administration has also increasingly pushed for overseas projects that would fit the green growth

1 According to statistics from the Export-Import Bank of Korea (Korea Exim Bank, www.koreaexim.go.kr), which compiles data on Korean foreign investment, there was no approved Korean investment in agriculture, forestry and fishery in Cambodia from 2001 to 2004. All investment figures quoted here are taken from the Korea Exim Bank.

2 In January 2010, the Korean government adopted a "Low Carbon, Green Growth" law committing the country to spend 2% of its GDP for eco-friendly business projects contributing to reduce greenhouse gas emissions. See S. Korea authorizes "low carbon, green growth" law, Xinhua, 13 January 2010.

approach, such as plantations for biomass or other alternative energy projects like bio-energy.

2. The case of MH Ethanol's investment in Cambodia

MH Ethanol's investment in Cambodia includes cassava plantations and a factory producing bio-ethanol by processing cassava. As such, it stands as an example of the green projects pushed by the Korean government, one that purports to provide economic benefits while helping to fight climate change with the production of a green fuel.

MH Ethanol's activities in Cambodia came to prominence in November 2008, when one of its subsidiaries opened the country's first bio-ethanol factory in Kandal province, close to the capital Phnom Penh. Its investment was praised by both the company itself and Cambodian authorities for its expected contribution to the country's socio-economic development. It was to create jobs and boost the agricultural sector through increased demand for locally-grown cassava. It was also hoped to pull Cambodia up the industrial ladder by providing a place for the industrial processing of the agricultural raw material into higher value-added biofuel. Until then, like most of the country's crops, cassava was predominantly exported raw at very low prices to neighboring Thailand or Vietnam, where it was processed and given added-value. The benefits derived from the industrial processing of Cambodian crops were therefore reaped in these countries rather than in Cambodia. Reflecting these ambitions, MH Ethanol's slogan boasted it would "*Make New History*" in Cambodia.

Why invest in Cambodia?

Cambodia is widely seen by potential investors as a land of opportunities, a perception that endured despite the effects of the global economic downturn on the country. Commentators, along with the government, have marveled at what they see as the country's amazing progress from a war-torn nation to a developing country consistently enjoying a double-digit economic growth in the mid-2000s. This was credited to more than a decade of political stability resulting from the unyielding rule of Prime Minister Hun Sen. This view is exemplified in the following assessment by a business consulting firm specialized on Asia: "*Cambodia is a rapidly changing society that still gets insufficient notice from investors but presents many opportunities for the investors willing to research and proceed prudently.*"³

Cheap labor, land and natural resources, and a favorable legal framework

Cambodia's assets are conventionally deemed to be its cheap labor and abundance of natural resources. But most importantly, the government is seen as business-friendly and eager to attract foreign investment, as it rapidly developed the legal framework necessary for a modern market economy in a manner that is favorable to foreign investors. In particular, the Cambodian Investment Law provides for a low 9% corporate income tax, tax holidays of up to 8 years, free repatriation of profits, and various tax and duty exemptions (for example, tax on profits or exports) for qualified investment projects. Most significantly, the law prohibits any type of discrimination against a foreign investor on the sole basis of its foreign nationality, meaning that foreign investors will suffer no disadvantage simply because they are not Cambodian.

3 See for example "*Why Cambodia for Investment?*", Business in Asia, http://www.business-in-asia.com/why_cambodia.

Moving Beyond Misconceptions

MH Ethanol – Case study of a Korean agro-industrial investment in Cambodia

Land is the only exception to that non-discrimination rule. However, while Cambodia does not permit foreign ownership of land,⁴ it provides for a very advantageous alternative by allowing foreigners to lease land concessions for a maximum of 99 years.⁵ The fees for such concessions remain very low, with a deposit fee of one US dollar per hectare⁶ and annual land rental fees going from zero to USD10/ha according to the type of soil and due only from the third year of collecting the products of the plantation.⁷ Land in Cambodia therefore remains easily accessible for foreigners at a low cost that is significantly cheaper than in its neighbors, an important factor in attracting agricultural investment.⁸ In the case of MH Ethanol, while the company is officially reported to have paid deposits for its concessions,⁹ it claimed to have received “cassava plantation (...) free of charge from the Cambodian government.”¹⁰

Cambodia's trade privileges with other countries

The above was instrumental in MH Ethanol's decision to invest in Cambodia, in particular the prospect for cheap and abundant supplies of cassava and the low cost to acquire land. But an even more decisive factor highlighted by the company itself was the trade privileges granted to Cambodia by other countries, most notably the European Union (EU). As a least developed country (LDC), Cambodia benefits from tariff exemption under the EU's “*Everything But Arms*” (EBA) initiative. The EBA is aimed to encourage trade with poor nations by allowing them to export their goods to the EU without being subjected to taxes or quotas. It makes exports from Cambodia more price competitive, which was clearly an important factor in MH Ethanol's decision to invest in biofuel production in Cambodia.¹¹ A company statement calculated that while the cost of producing ethanol was higher in Cambodia than in Brazil, the world's main producer and exporter of ethanol, it was ultimately more competitive to export ethanol from Cambodia than Brazil due to the former's geographical proximity to Europe – hence lower logistics and transport costs – but most importantly, to its exemption of tariffs under the EBA initiative. Thanks to the EBA, the company concluded, it could sell Cambodian ethanol at a lower price than Brazil.¹²

The granting of such trade advantages to developing nations is designed to help their development. But this goal is not necessarily achieved, especially where there is a lack of responsible governance and proper implementation of legal protections for local stakeholders, as in Cambodia. MH Ethanol's investment illustrates these issues, as detailed in this case study.

Despite its economic growth and the advantages it offers investors, Cambodia nonetheless remains a developing nation with the associated hurdles, such as the poor quality of infrastructure (including roads and electricity) or low level of skilled labor. In addition, the

4 Article 9 of the 2001 Land Law provides that only Khmer nationals have the right to own land in Cambodia.

5 Alternatively, a foreign investor may start an enterprise registered in Cambodia with a Cambodian party holding at least 51% of the shares in order for the company to own land. See Article 9 of Land Law.

6 Example of ELC Agreement with MAFF.

7 *Principles for Calculating Land Rental Fee*, MAFF, 13 January 1998.

8 See Business in Asia, http://www.business-in-asia.com/cambodia/cambodia_land.html.

9 See *Economic land concessions in Cambodia – A human rights perspective, Annex I*, United Nations (UN) Special Representative of the Secretary-General for human rights in Cambodia, June 2007.

10 *Bio-ethanol exports to Europe begin*, Daewoo Securities, 19 December 2008.

11 Daewoo Securities, 19 December 2008.

12 *The first successful export of ethanol*, MH Ethanol, 2nd January 2009.

country is beset with pervading issues of governance and transparency, resulting in failures to implement the law and widespread corruption. The latter is widely seen as one of the major issues holding Cambodia back.¹³ It is a serious concern for civil society, but also for the business community as it represents a real and repeated burden for the private sector operating in the country.

The present research seeks to determine whether, in this context, the great expectations surrounding MH Ethanol's investment in Cambodia were met and if the Korean company made a positive contribution to the country's sustainable development. In particular, did the company's investment bring benefits to Cambodia, such as the lasting creation of jobs or new opportunities for local farmers? What was the social and environmental impact of its activities, both on its cassava plantations and its biofuel factory, and did this include any harmful effects? Last but not least, was its investment a success? To answer these questions, an in-depth critical review looks at the company's business performance as well as the impact of its activities.

Methodology

This case study is based on more than one year of work, combining desk research, press monitoring, interviews with relevant stakeholders, and several field investigations in the areas of MH Ethanol's biofuel factory in Kandal and land concessions in Kompong Speu. These included discussions with local authorities and villagers as well as, in Kompong Speu, NGO staff and military working in the area. A Cambodian research assistant provided tremendous support in preparing and carrying out the field trips, while a local contact in Kompong Speu proved to be an invaluable source of information.

Due to resource constraints and the sheer size of MH Ethanol's investment, in particular its land concessions covering a total of 8,000ha (80km²), it was not possible to carry out an exhaustive survey into all villages affected by the company's activities. However, the research team managed to visit five villages in Kompong Speu during trips in February and June-July 2010, and four villages in Kandal during trips in December 2009 and May-June 2010.¹⁴ First-hand information was gathered in those villages through individual interviews and group discussions. These focused on the impact of MH Ethanol's activities, as villagers had limited information about the company. As for local authorities, they appeared to struggle with a lack of coordination and communication between various government levels and institutions, which hampered attempts to gather official information.

Notes:

- The names of those interviewed have been changed in order to protect their identity.
- Unless specified otherwise, all pictures and illustrations are the author's own except for the area maps credited to the Land Information Centre at NGO Forum on Cambodia.

13 See Transparency International.

14 The research team visited Samaki, Trapeang Saray, Aya, Krol Tunsong and Prak Kaye villages in Kompong Speu, and Duong, Krous, Thmei and Pou Mongkol villages in Kandal.

Moving Beyond Misconceptions

MH Ethanol – Case study of a Korean agro-industrial investment in Cambodia

II. MH Ethanol in Cambodia: From cassava to biofuel



MH Ethanol's investment in Cambodia, including some of the company's known cassava supply flows.

I. Who is MH Ethanol?

Korean conglomerates (known as chaebols) are large corporations which comprise of a number of companies with different activities, but usually all controlled by the conglomerate's founding family, directly or through subsidiaries.¹⁵ MH Ethanol is a medium-sized chaebol, which originally specialized in alcohol manufacturing, particularly Korean traditional alcohol such as *soju*. It was established in Masan, South Korea, under the name of Muhak Alcohol by founding Chief Executive Officer (CEO) Choi Wee Sung in July 1978, before being renamed MH Ethanol in

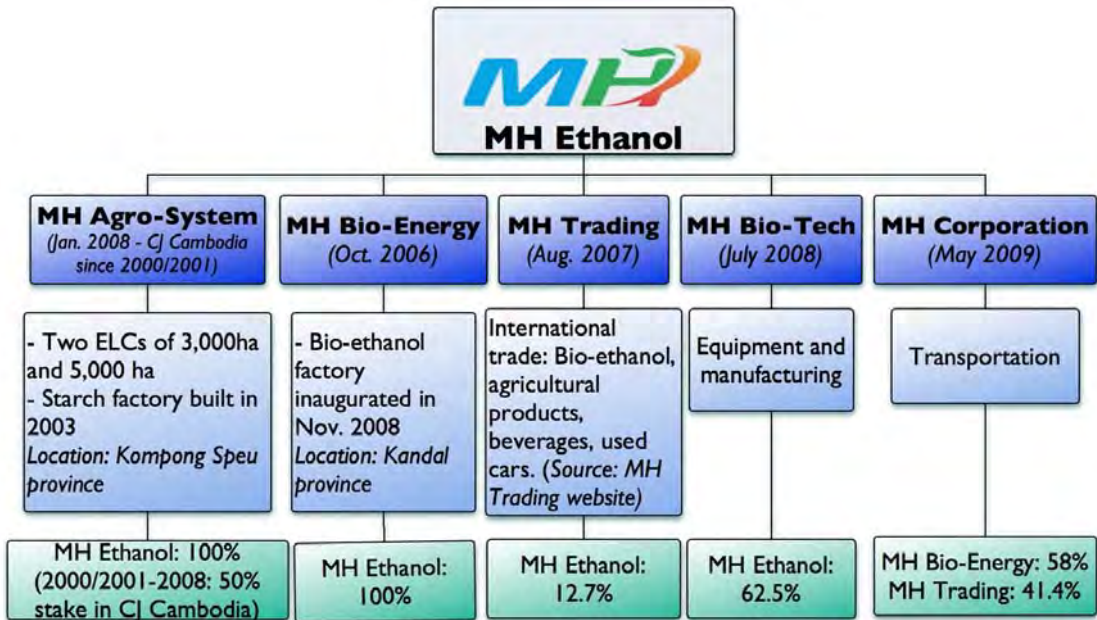
15 For MH Ethanol, Choi Dong Ho, the company's current CEO and son of its founder, held 50.44% of the company shares, while other majority shareholders included Korea Investment Value Asset Management (with 12.49%). See *Quarterly Report*, MH Ethanol, 31 March 2010 (in Korean), available on DART website, <http://dart.fss.or.kr> (maintained by the Korean Financial Supervisory Service and offering a "Repository of Korea's Corporate Filings" for listed companies).

March 2008.¹⁶ The company is publicly traded on the Korean Stock Exchange.

As the ethanol market became increasingly competitive in Korea, MH Ethanol sought to diversify its activities and became interested in bio-ethanol. The group saw it as a promising market and believed it was well-positioned to enter that market due to its experience of manufacturing ethanol, resulting in its investment in Cambodia.¹⁷

2. MH Ethanol's investment in Cambodia

Unsurprisingly for a Korean chaebol, MH Ethanol appeared keen to extend its control over the most important aspects of its business in Cambodia and established several subsidiaries with this purpose. The chart below presents an overview of MH Ethanol's subsidiaries in Cambodia, including their date of creation and known details about its ownership structure.¹⁸



MH Ethanol's subsidiaries in Cambodia.

This section presents further details on MH Ethanol's two main subsidiaries, MH Bio-Energy and MH Agro-System (formerly known as CJ Cambodia).

16 Muhak Alcohol was itself a subsidiary of the larger Muhak Group, founded in 1973 by the same Choi Wee Sung. Muhak Group also has a non-ethanol branch with MH Steel, specialized in electrical steel sheets.

17 *Muhak Alcohol Enters Bio-Methanol (sic) Market with Full Force by Establishing Strategic Alliance with Cambodia*, Muhak Alcohol, 1st November 2006.

18 Company ownership figures are quotes from *Quarterly Report*, MH Ethanol, 31 March 2010 (in Korean).

Moving Beyond Misconceptions

MH Ethanol – Case study of a Korean agro-industrial investment in Cambodia

2.1 MH Bio-Energy's biofuel plant

Subsidiary **MH Bio-Energy** was established by the Korean group in October 2006 for the purpose of producing bio-ethanol in Cambodia. It opened the developing country's first biofuel factory in Kandal province, which aimed to produce biofuel by processing cassava and export it to European and other markets.

Reported to be worth USD40 million, the biofuel factory represents MH Ethanol's largest investment in Cambodia. The group's ambitions were visible in the Kandal factory's size, described by the company as being three times as large as its refinery in Masan, Korea. At the time, MH Ethanol claimed that it was "*the biggest Korean investment in Cambodia.*"¹⁹ However, the bio-ethanol factory was only the crown of MH Ethanol's investment in Cambodia. It was actually part of a larger investment scheme started earlier by the Korean group.



MH Bio-Energy's factory in Kandal, June 2010.

2.2 CJ Cambodia/MH Agro-System's cassava plantations

Reflecting the strategic importance of securing sources of cassava, the first Cambodian investment of MH Ethanol (then Muhak Alcohol) was to assume control of cassava plantations in Kompong Speu province through its participation in CJ Cambodia.²⁰

CJ Cambodia was granted two Economic Land Concessions (ELCs – the mechanism used for granting large-scale leases for agro-industrial exploitation) by the Cambodian government for 70 years each, for the purpose of growing cassava. It signed a first agreement with the Ministry of

¹⁹ North Korean company sets up biofuel factory in Cambodia, DPA, 16 July 2008. Note: the article mistakenly refers to MH Bio-Energy as a North Korean company, instead of South Korean.

²⁰ CJ Cambodia was initially established in 1999 as a joint venture with Cheil Jedang (a different Korean conglomerate) and an unidentified Cambodian partner holding a 5% stake. See Profile of CJ Cambodia, MAFF website on ELCs, www.elc.maff.gov.kh/profiles.html.

Agriculture, Forestry and Fisheries (MAFF) for 3,000ha (ie. 30km²) on 15 November 1999, followed by a second agreement with MAFF for 5,000ha (ie. 50km²) on 20 April 2001.²¹ The two ELCs are adjacent to each other and located in Phnom Srouch district, Treng Trayeung commune, Kompong Speu province, about 90km from Phnom Penh. In addition to the cassava plantations, CJ Cambodia built a USD4 million starch factory on one of its concessions in 2003.²² The plant was intended to process into starch the raw cassava harvested on the plantations.

MH Ethanol's involvement in CJ Cambodia unfolded in two stages: first, it acquired a 50% stake in 2000 or 2001,²³ before taking full control of the company in January 2008 and renaming it MH Agro-System.

3. High-level support for MH Ethanol's investment

MH Ethanol secured high-level support for its investment, not only in the Cambodian government but also the Royal Cambodian Armed Forces (RCAF). The ground-breaking ceremony for its bio-ethanol factory in November 2006 was attended by Minister of Commerce Cham Prasidh as well as four-star general Meas Sophea, then Army Chief of Staff and Army Commander in the RCAF, who declared his belief that “[the investment would] help employ Cambodian workers and help reduce poverty”.²⁴ General Meas Sophea had previously gone to Korea in September 2006 to sign a so-called “exclusive supply deal” with MH Ethanol (then Muhak Alcohol). Cham Prasidh also travelled to Korea in April 2007 and visited the company's refinery in Masan.

MH Ethanol also secured the government's support to encourage the culture of cassava in Cambodia. In 2006, MAFF sought to promote the growing of that crop at a time when the company reportedly struggled to harvest enough cassava.²⁵ Later, Chairman Choi Wee Sung met with Prime Minister Hun Sen in July 2008 to urge him to encourage Cambodian farmers to grow cassava, which the Cambodian leader did during his inauguration speech a few months later.

On 17 November 2008, the bio-ethanol factory's inauguration ceremony was attended by the Cambodian Prime Minister, the Minister of Industry, Mines and Energy, Suy Sem, the Minister of Commerce, other senior ministers and government officials, as well as company representatives.



Prime Minister Hun Sen and Chairman Choi Wee Sung during the inauguration ceremony, November 2008.

21 See MAFF website on ELCs.

22 CJ Cambodia received a USD4 million investment credit from the Korea Exim Bank for the construction of the starch factory. See *Overseas Companies Backed by Korea Exim Bank (July 2002)*, Korea Exim Bank, 23 August 2002.

23 Company documents refer to both dates.

24 See Kay Kimsong, *South Korean firm to build ethanol factory in Kandal*, November 2006. General Meas Sophea was since promoted to one of the Deputy Commanders-in-Chief in January 2009, while remaining Commander of the Army, comforting his position as one of the top commanders in the RCAF.

Moving Beyond Misconceptions

MH Ethanol – Case study of a Korean agro-industrial investment in Cambodia

MH Ethanol's investment was praised as a positive development which would boost Cambodia's agriculture sector – through increased demand for cassava – and contribute to the country's industrialization. In the words of the Prime Minister, “[The] factory [would] provide significant benefits to Cambodia’s economy, including income generation, enhancement of trade balance [through the export of high value-added biofuel], and employment for our workforce.”²⁶ In recognition of these benefits to be reaped, the Prime Minister awarded both the company's chairman and its CEO, respectively Choi Wee Sung and Choi Dong Ho, medals for their contribution to the development of Cambodia. One month later, in December 2008, when MH Bio-Energy's biofuel production left the port of Sihanoukville for Switzerland, Cambodian government officials were present and praised this first export as a historic success.²⁷

4. MH Ethanol's partners in Cambodia

4.1 The Royal Cambodian Armed Forces (RCAF)

In the words of a local military chief working for MH Ethanol in Kompong Speu province, the military are “the company’s business partner.”²⁸ The association between MH Ethanol and the RCAF culminated with the signing in September 2006 of an “exclusive supply” contract for cassava signed by General Meas Sophea, who attended the factory's groundbreaking ceremony the following November.

But this partnership has a longer history and the military have been part and parcel of MH Ethanol's operations on the ground, with local military chiefs acting as company representatives in the concession area.



Signature of contract between President and CEO Choi Dong-Ho and General Meas Sophea in September 2006.

However, it is a cause for serious concern that a company chooses to partner so closely with a Cambodian military that has been widely accused of being involved in land-grabbing and other rights abuses. The main issues surrounding MH Ethanol's association with the RCAF are detailed in Section III.1.

4.2 Te Haing Development Co. and SBM Cambodia

Other cassava supply deals were made with local companies, notably Te Haing Development Co. and SBM Cambodia based in Banteay Meanchey and Battambang provinces respectively.

²⁵ *Essor de la culture de manioc a Kampong Speu*, Agence Kampuchea Press (AKP), 14 February 2006.

²⁶ *Prime Minister Hun Sen's Address at the Inauguration Ceremony of MH Bio-Energy's Bio-Fuel Factory*, 17 November 2008.

²⁷ 바이오에탄올 첫 수출 성공한 MHe탄올 (*The first successful ethanol export*), MH Ethanol, 2nd January 2009.

²⁸ Interview with local military chief working for the company in Kompong Speu, February 2010.

In September 2009, MH Bio-Energy signed a deal with Te Haing Development Co. for the supply of 6,000 tons of dry cassava every couple of months at USD92 per ton. This meant a projected average of 28,800 tons per year for a total worth of at least USD2.6 million. For its part, Te Haing committed to pay local farmers USD38-44 per ton of fresh cassava.²⁹ MH Bio-Energy spent one million dollars to build a warehouse and a 5ha drying court with a capacity of up to 1,000 tons of cassava per day for Te Haing. The Cambodian company also planted cassava over 1,000ha close to their drying site, and was to begin supplying MH Bio-Energy after the end of the rainy season in 2009.³⁰

Te Haing Development Co. is however not any ordinary company. It is registered as owned by a former RCAF colonel of the same name, a native from Banteay Meanchey province. Notably, former Colonel Te Haing was the first of only three senior officials to be arrested in March 2007 during a short-lived crackdown on land-grabbing led by the Cambodian Prime Minister. Although Te Haing was arrested for encroaching state land and clearing forest over more than 1,500ha for agricultural purposes,³¹ he still had not appeared before a court by the end of 2007 and it is unclear if he ever did, and whether he received any penalty for the alleged encroachment.

This background raises some concerns and again, to demonstrate it is a responsible company, MH Ethanol should make sure its supplier Te Haing Development Co. has not been involved in any land-grabbing to grow the cassava it supplies to the company.

In addition, MH Bio-Energy signed a contract with local corporation SBM Cambodia for the supply of 30,000 tons of cassava per year.³² SBM-Cambodia Group is a cassava starch company set up by non-governmental organization (NGO) CWARS-Cambodia (Cambodian War Amputees Rehabilitation Society),³³ in order to allow the organization to become financially independent. While the NGO claimed on its website that it produced starch from cassava grown by local farmers trained by the organization in Battambang province, near the Thai border, it was not possible to ascertain these claims.

29 *Cambodia supplying cassava for South Korean ethanol production*, Biofuels Digest, 2nd October 2009.

30 *MH Bio-Energy agrees new cassava deal*, The Phnom Penh Post, 1st October 2009.

31 *Cambodia arrests senior officer in war against land grabbers*, Xinhua, 12 March 2007.

32 Kay Kimsong, November 2006.

33 SBM is registered as owned by Sam Oeurn Pok, a CWARS employee who is also the company's president.

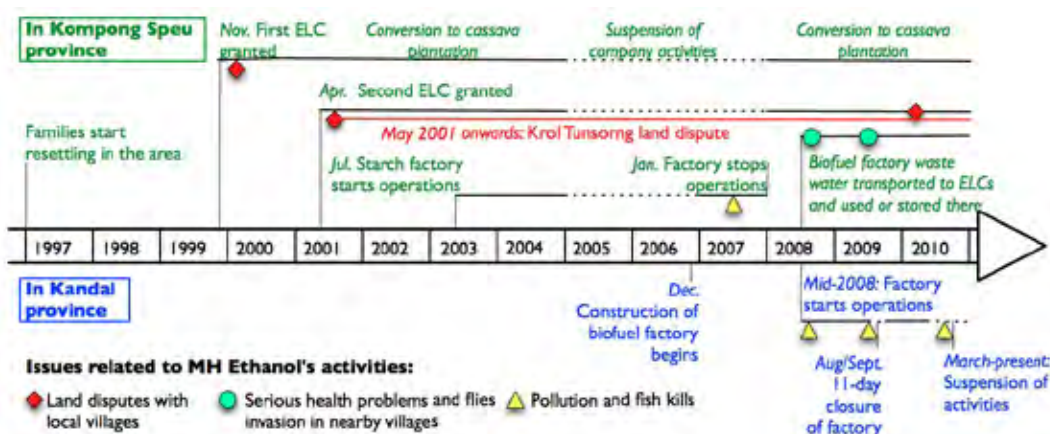
Moving Beyond Misconceptions

MH Ethanol – Case study of a Korean agro-industrial investment in Cambodia

III. Critical review of MH Ethanol's investment in Cambodia

As detailed in the rest of this section, MH Ethanol's investment in Cambodia has failed to live up to expectations. The company has met with business difficulties, resulting in a repeated and prolonged suspension of its operations. This has meant that the benefits purported to be brought by MH Ethanol were not lasting, such as job creation or increased demand for cassava. In addition, the company's association with the RCAF raises a number of serious concerns, while its activities have caused a range of social and environmental problems, including land disputes and pollution problems which harmed local livelihoods and/or created health problems.

The timeline below highlights the issues that have surrounded MH Ethanol's activities both in Kompong Speu and Kandal provinces.



MH Ethanol, a history of controversies.

I. A controversial partnership with the RCAF

As previously mentioned, MH Ethanol has a close and historic partnership with the RCAF, ranging from cooperation to secure the concession land to a contract for the supply of cassava as well as the provision of security services on the concessions.

This is a cause for serious concern in light of the RCAF's history of involvement in abuses and land-grabbing documented by Cambodian civil society. Emblematically, the company's local representatives are the military chiefs of the Development Committee of Brigade 31 of the Naval Infantry.³⁴ Worryingly, this particular Brigade has a documented record of rights abuses and involvement in land disputes, most notably violent intervention in two evictions in Kampot, on the southern coast of Cambodia, in 2008.³⁵ Their association with MH Ethanol illustrates yet again this controversial pattern.

34 Based on interviews with concerned military chiefs.

35 D. Gillison, *Is U.S. Training Cambodian Troops Linked to Abuses?*, Time, 19 November 2010.

I.1 An early cooperation with the RCAF

The local military authorities appear to have played an active and significant role in procuring the land for the company. The first concession-related agreement was a letter of the Council of Ministers dated 10 September 1999 on the approval of the cooperation between the company (CJ Cambodia at the time) and Military Region 3 for a cassava plantation.³⁶ Military Region 3 includes Kompong Speu province, where the concessions are located. A military chief working for MH Ethanol acknowledged that the military were the ones to “*find the land for the company’s concessions.*”³⁷

Problematically, the concession was approved around the same time that villagers already living in the area granted to the company were receiving informal land titles from the Military Region authorities (see Section III.5). At the very least, there was a deep disconnect between two decisions affecting the same area, one economic to grant an agro-industrial land concession, the other social to give land to demobilized soldiers and their families. This eventually resulted in the land disputes that arose around the company’s concessions.

I.2 RCAF services in the land concessions

According to a local military chief, the role of the military was to protect the company’s land and property. In reality, the military basically worked to ensure that the operations of the company – first CJ Cambodia, now MH Agro-System – could proceed. This included intimidation and threats to force villagers to accept inadequate relocation or compensation options.³⁸ The military’s active role in intimidation or deceitful tactics used to try and force villagers out or dispossess them of their land is presented in more detail in Sections III.5.4 and III.5.5, in the cases of Krol Tunsong and Prak Kaye villages. Soldiers also prevented villagers from accessing their land and farming it³⁹ and protected company operations, for example when workers cleared land or dug canals around the concession. They also ensured villagers protests remained limited or non-existent. A villager from Aya indicated that he put an end to his activism after hearing that the military made threats against him.

For the services they provided, the military were paid by the company, thereby receiving a supplementary income in addition to their government salary as soldiers. “*The company is good, because they help poor soldiers make more money,*” said a local military chief. The money was reportedly paid to the headquarters of the ground forces in Phnom Penh – headed by General Meas Sophea – before trickling down to the local level in Kompong Speu.⁴⁰

I.3 “Exclusive supply contract” with the RCAF

In September 2006, MH Ethanol (then Muhak Alcohol) signed an “*exclusive supply contract*” with RCAF General Meas Sophea, for the Cambodian Army to provide the company with cassava for

36 MAFF website on ELCs.

37 Interview, February 2010.

38 This was commonly reported in a number of villages during field trips. In the case of Krol Tunsong, it was also mentioned in UN Special Representative of the Secretary-General, 2007.

39 See *Land concessions for economic purposes in Cambodia – A human rights perspective*, UN Special Rapporteur of the Secretary-General for human rights in Cambodia, November 2004.

40 Interview with local military chief, February 2010.

Moving Beyond Misconceptions

MH Ethanol – Case study of a Korean agro-industrial investment in Cambodia

five years. The contract was reported to be worth USD20 million and the company proclaimed that “the success of the bio-ethanol business [relied on] a stable supply of raw materials” and this had been ensured through the RCAF supply deal.⁴¹

At the bio-ethanol factory's groundbreaking ceremony two months after the signing of the contract, it was disclosed that MH Bio-Energy was to receive a yearly 50,000 tons of cassava from the RCAF, with General Meas Sophea stating that the military owned farmland in Kompong Speu.⁴²

No further details about this contract were made available and it is unclear how this contract was implemented.⁴³ In light of the RCAF's controversial record, any responsible company should make sure that no violations occurred in the process of supplying this cassava, including by disclosing further information on this contract and its implementation – for instance, the origin of the cassava supplied or how it is grown.

1.4 Other military abuses

The military also appeared to perpetrate abuses for their own benefit. They maintain control points all over the concession land and demand that villagers pay them informal fees of up to 50,000 riels (about USD12.50) for transporting wood. Also, allegedly acting upon company instructions to keep animals off its concession, soldiers seize cows that stray onto company land and demand bribes ranging from 50,000 to 100,000 riels (about USD12.50 to USD25) to return them to their owners. Villagers reported paying the money to the soldiers at the company's factory.

In Aya village, people also claimed they had been asked by the military to return some land as well as the informal land titles they had been given, with the promise they would later get money for it. However, the villagers never received anything, while the land was sold by the military to a wealthy outsider. “The military cheated us of our land,” they complained.

2. MH Ethanol's failure to meet its business goals

2.1 MH Bio-Energy misses biofuel production and export targets

MH Bio-Energy's plans in Cambodia were very ambitious. The company boasted that its bio-ethanol factory had the capacity to produce 40,000KL (about 34,000 tons) of biofuel⁴⁴ and make 60 billion won (about USD50 million) in revenues each year. In a later estimate in June 2008, the company expected potential first-year sales of up to USD10 million. The factory was to operate

41 See Muhak Alcohol, 1st November 2006; 무학주정 '바이오 에탄올' 사업 진출 (*Muhak goes into bio-ethanol business*), Kyungnam Ilbo, 1st April 2008.

42 Kay Kimsong, November 2006.

43 For example, it is unclear what period is covered by the contract. While the cassava was expressly sought as the raw material for ethanol, MH Ethanol's bio-fuel factory was yet to be built and it would be another nearly two years before it became operational.

44 This was down from an original estimate of a capacity of 60,000KL (about 51,000 tons) of biofuel.

24 hours a day, 330 days per year⁴⁵ and the company planned to double its production and exports in the next few years.⁴⁶

However, reality turned out to be below expectations. First, MH Bio-Energy's actual biofuel production was significantly lower than planned, with local media reporting the factory had produced only 10,000 tons of ethanol in its first year.⁴⁷ In addition, the factory failed to operate at full capacity as originally planned. Not only was it forced to close down for 11 days in September 2009, following its implication in a large pollution incident, but MH Bio-Energy itself decided to suspend its operations in April 2010, shortly after another pollution case (see Section III.6.2). The company declared that the plant would reopen in October 2010, before postponing it until the end of the year.⁴⁸ At the time of writing, the factory has been closed for nearly half a year, out of its two years of existence.

MH Bio-Energy blamed the closure on the high cost of dry cassava combined with the low price of ethanol on European markets. The factory's suspensions of activities affected its business, with the company acknowledging that it had lost “a lot of money” due its temporary closure in September 2009, and again that the 2010 suspension had “affected [their] revenues and [their] customers.”⁴⁹ MH Bio-Energy missed its export targets for 2009 by over a quarter.⁵⁰ Since its opening, the company exported only 29,600 tons of biofuel in total, with a first shipment of 9,600 tons in December 2008 – for a Swiss-based company named Bauche Energy⁵¹ and reportedly worth USD5.6 million⁵² – and a second of 20,000 tons in June 2009 for European markets.⁵³ In contrast, the company had claimed in February 2010 that it expected to export 40,000 tons of bio-ethanol in 2010, a goal obviously not reached.

2.2. CJ Cambodia/MH Agro-System's difficult venture into cassava farming

According to a United Nations (UN) report in 2007, at that time, there were 76,960ha granted as ELCs for cassava crops, out of which only 27,800ha were reported to be under crop cultivation.⁵⁴ The 8,000ha of land secured by MH Ethanol therefore represented an important

45 See *Clean Development Mechanism Project Design Document Form (CDM-SSC-PDD), Version 04*, MH Bio-Energy, 23 November 2009 (hereafter referred to as CDM Project Design Document), available at: <http://cdm.unfccc.int/Projects/Validation/DB/GBB8USM7UP3VZQJPQSUZE4QKEC9NMM/view.html>.

46 The Phnom Penh Post, 6 January 2009.

47 The Phnom Penh Post, 1st October 2009. A company document reports that the first 9,600 tons of biofuel exported by the company represented the factory's full production since it began full production in June 2008.

48 See *Cambodia's first biofuel plant set to reopen*, The Phnom Penh Post, 13 July 2010; *Biofuel plant delayed*, The Phnom Penh Post, 6 October 2010.

49 The Phnom Penh Post, 14 September 2009 and 13 July 2010.

50 *MH Bio-Energy fails to meet export target during first year*, The Phnom Penh Post, 3rd February 2010. The company denied that this underperformance was linked to its suspension in September 2009.

51 According to its website (www.bauche-energy.com), Bauche Energie is an international trading company in agricultural commodities and agribusiness products, including biofuel, which is headquartered in Switzerland and has a fully-owned subsidiary in Brazil.

52 한국상장사협회 2009년3월호 기업탐방 (*Association of Korean listed companies, Company review*), March 2009.

53 The Phnom Penh Post, 6 January 2009.

54 See UN Special Representative of the Secretary-General, 2007. However, this only included registered ELCs

Moving Beyond Misconceptions

MH Ethanol – Case study of a Korean agro-industrial investment in Cambodia

area for cassava plantation and a remarkable attempt by the company to ensure a degree of self-reliance. However, the company was not entirely successful in its attempt.

While MH Ethanol originally saw cassava as a crop easy to grow in Cambodia, it proved more problematic than planned and the company reported initial difficulties, such as the soil quality being worse than expected or the slow performance of local workers.⁵⁵ As a result, the conversion of the land into cassava plantation appears to have been slow and limited. By the end of 2004, five years from the granting of the first ELC, only 3,000ha out of the total 8,000ha had been planted with cassava according to a local news media.⁵⁶ By late 2009, the concessions had still not been entirely converted to cassava plantation: while cassava was growing in some areas, there were others where the land remained covered with scrub and trees, and still others that had been cleared but not yet planted.⁵⁷



Anti-clockwise from bottom left: Concession land cleared; land left unproductive; land with cassava growing; close-up of cassava, June 2010.

The company also met with difficulties in the harvesting of cassava. More than 15,000 tons were harvested in 2003, but the following year reportedly yielded half that amount with crops being

granted by the national government, not smaller ELCs granted by the provincial level.

55 바이오에탄올 사업 진출하며 제2의 도약, (주)MH에탄올 최동호 사장 (*Second business leap with entry into bio-ethanol, says MH Ethanol CEO*), MH Ethanol, 16 June 2008.

56 *CJ Cambodia, une usine de transformation du manioc, fonctionne au ralenti faute de matière première*, *Cambodge Soir*, 8 December 2004.

57 Based on interview with Lee Dong-Jun, director of MH Bio-Energy, in December 2009, and field trips to ELCs in February and June 2010.

lost due to excessive rain, forcing the company to seek suppliers in other provinces (eg. Kompong Cham, Pailin and Battambang) at supplementary transport costs.⁵⁸

According to local villagers from Trapeang Saray, CJ Cambodia closed down its operations on the concessions in 2006 before reopening as MH Agro-System in 2008, that is after MH Ethanol's full take-over.⁵⁹ The “*new company*” then started growing other crops than cassava on its land, notably rice. It is unclear if MH Agro-System applied for official authorization to cultivate these crops. Failing such permission, this could potentially breach applicable legislation as the concession agreement was solely for the production of cassava.



Rice growing on concession land, June 2010.

In addition, the starch factory built by CJ Cambodia on its concession failed to operate at full-capacity due to insufficient supply. It received only about 40 tons of cassava per day, significantly less than the 200 tons it required. A company representative acknowledged the starch factory had only operated a couple of months per year since it opened.⁶⁰ It closed down for a year from 2008 until its reopening under MH Agro-System.

58 Cambodge Soir, 8 December 2004.

59 However, villagers from Samaki reported that the company suspended its operations from 2004 to 2008. Interviews with villagers, February and June 2010.

60 Cambodge Soir, 8 December 2004.

Moving Beyond Misconceptions

MH Ethanol – Case study of a Korean agro-industrial investment in Cambodia



Closed starch factory in Kompong Speu in April 2008. (Courtesy of NGO Forum on Cambodia)

3. Limited benefits of MH Ethanol's job creation

The Cambodian authorities had extolled the creation of hundreds of jobs as a major benefit to be brought about by MH Ethanol's investment. For instance, the Prime Minister boasted during the inauguration that the biofuel factory would provide 192 direct jobs. MH Ethanol did create jobs both at its biofuel factory and on its plantations, hiring people in the area to clear land, plant or harvest cassava. However, these jobs did not necessarily contribute to poverty reduction or represent a sustainable source of livelihoods. Rather, they proved vulnerable to the company's business difficulties and the resulting suspension of its activities. Part of the biofuel factory's staff was reportedly dismissed after it stopped operating in April 2010.

Similarly, the jobs created by the company in Kompong Speu have failed to bring durable benefits for local villagers. First, the suspension of activities on the company's concessions for at least two years until 2008 meant the loss of their jobs for those villagers who worked there. Also, at least half of the people employed by the company on its concessions are actually not local villagers but migrant families. Many are landless people from Prey Veng, Svay Rieng or Kompong Cham who migrated to find jobs and recently settled in Phnom Srouch district.⁶¹

61 Interview with migrant workers living in the area and working for the company, June 2010.

In any case, many workers are hired only on a part-time basis (a couple of days per week), at a daily wage of 9,000 riels (about two US dollars). On this basis alone, they are therefore unable to make a living and usually have to find other ways to complement their revenues, for instance as labor for hire. The situation is particularly precarious for two groups, the migrant families and those who lost their land to the same concessions they work on. For both groups, having no land of their own means they are unable to grow food and entirely dependent on their incomes to provide for their families. They are therefore especially destitute and highly vulnerable as any external shock, like an illness, may push them into further poverty by creating extra costs. The story of Saveth, a landless villager from Trapeang Saray illustrates these hardships: *“Even though my daughter and I work for the company, things are still very hard for our family. We can’t save any money because we have to spend all our wages on food and medicine. I don’t have any farming land, so I can’t grow food. Even the land on which my house is built is not mine.”*⁶²

Many villagers expressed mixed feelings about MH Agro-System. While they recognize that the company has become a major source of livelihoods for people in the area, they were also critical of the land and pollution problems created by the company. In addition, many workers appear unhappy working for the company as they found the pay insufficient and the work difficult, especially for those handling fertilizer. But most importantly, the jobs have not helped them to get out of poverty, particularly for migrant and landless families.

MH Ethanol's deficient cultural awareness

Early on, MH Ethanol reported meeting with employment issues, complaining of slow performance by local workers. This perhaps indicated the company had underestimated the challenges of working in a developing country with low skill levels such as Cambodia.

MH Ethanol appeared to have a profound lack of awareness about the different cultural environment in which it was operating, which may have contributed to its negative perception by local villagers. This was most conspicuous in a company poster hanging at the factory site in Kompong Speu, which listed a series of staff responsibilities and duties. Some were innocuous, such as *“I am a valuable member of staff”*, *“I must avoid waste”* or *“I must always keep my place clean and organized”*. But the brutal phrasing of others read much more controversial in their reminiscences of Khmer Rouge slogans, such as *“Cassava is my child. Although I die, cassava is still alive”* or *“Grass and small plants are my enemy and I must clear them.”*

At the very least, they revealed a deep lack of awareness about Cambodian history. Yet, respect and cultural sensitivity are believed to be essential if investments are to contribute to a country's genuine development. To be truly responsible socially and otherwise, it is important that companies make an effort to understand better the history and culture of the environment where they invest, to allow for mutual benefits and comprehension.

62 Interview, June 2010.

4. A missed opportunity to boost Cambodia's agriculture?

4.1 MH Bio-Energy's cassava needs, an opportunity for Cambodia

Ensuring cassava supplies for its factory has been a cornerstone of MH Bio-Energy's plans to produce biofuel. In order to meet its annual production plans, the company required a reported 100,000 tons of cassava per year, out of which it vowed to buy at least 30,000 tons locally.⁶³ The factory's total needs represented 5% of the production of cassava in Cambodia, which the Ministry of Commerce estimated to be over two million tons of cassava in 2008 and expected to be the same amount in 2009.⁶⁴

By then, there were only two factories in Cambodia that processed cassava into flour, producing about one million tons of dry cassava per year.⁶⁵ But most Cambodian cassava was exported to Thailand at very low prices, as Thai buyers were only interested in wet cassava (unprocessed). In addition, trade remained vulnerable to the sometimes volatile political relations between Thailand and Cambodia.⁶⁶ Therefore, MH Bio-Energy certainly offered a new and important “*market place of cassava product for [Cambodian] farmers,*” in the words of the Prime Minister.⁶⁷

Stable supplies of cassava were central to the success of MH Ethanol's plans and the company sought to secure them in various ways, first with its own crops grown on its land concessions, through contracts with different partners, including the RCAF, and through traders buying from farmers.⁶⁸

63 The company's expectations for ethanol production varied from an initial figure of 60,000KL (according to MIME at the inauguration ceremony and the company's director) to a revised actual capacity of 40,000KL (according to the company) or 36,000 tons (according to *First ethanol exports marks start of lucrative business, officials say*, The Phnom Penh Post, 6 January 2009, on the basis of a capacity of 120 tons per day after production began) of ethanol per year.

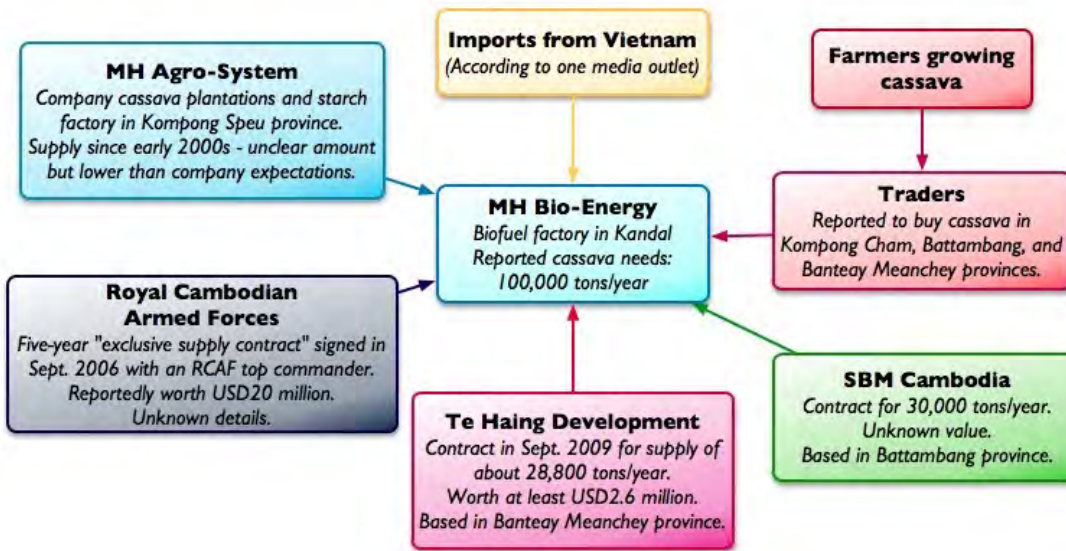
64 *China considered as export market for unsold cassava*, The Phnom Penh Post, 31st March 2009.

65 See *China considered as export market for unsold cassava*, The Phnom Penh Post, 31st March 2009; *Cambodia inaugurates 1st ethanol factory to produce bio-fuel*, Xinhua, 17 Nov 2008. The news agency referred to a turnaround of about 536,000 tons of cassava flour per year in 2005, with about 30,000ha of land planted in cassava that year.

66 For instance, in November 2008, Thailand banned the purchase of Cambodian cassava, a move that was ended only in late April 2009. See *Pailin farmers welcome the resumption of Thai trade*, The Phnom Penh Post, 27 April 2009.

67 Prime Minister's address at the inauguration ceremony, November 2008.

68 *Ethanol orders unchanged despite price fall*, The Phnom Penh Post, 2nd June 2009; one report mentioned that the company also imported cassava from Vietnam, due to insufficient supply from Cambodia. See *Cambodia to Export Bio Energy to European Markets starting October this Year*, Soy Sophea, 21st August 2009.



MH Bio-Energy's sources of cassava

4.2 A precarious and inconsistent demand for cassava

In a first time, MH Bio-Energy has created increased demand for Cambodian cassava, becoming one of the main buyers in the country, and offered higher prices than Thai buyers.⁶⁹ But this new opportunity was soon questioned by the factory's repeated closures. The first government imposed closure for 11 days in September 2009 met with strong protests from local farmers and brokers. They complained about the losses they were to suffer and demanded the plant's reopening. However, the following year, the factory closed once again, this time on the company's decision and for a prolonged period that reached nearly half a year at the time of writing.

Hence, the new opportunities that MH Bio-Energy was to offer Cambodian farmers proved to be unsustainable so far, as the factory's demand for locally-grown cassava proved to be precarious and inconsistent due to its closures. Additionally, the “exclusive supply” contract with the RCAF raises a number of concerns as previously mentioned.

5. Land disputes and impact on local livelihoods

5.1 CJ Cambodia's concessions no exception to heavy trends

Over the last decade, Cambodian civil society, as well as UN experts, have consistently decried

⁶⁹ In 2009, Thai buyers purchased wet cassava for 1,100 Thai bahts (about USD32) per ton, while brokers could sell cassava to the biofuel plant for more than USD100 per ton. See *Cassava industry demands reopening of polluting plant*, The Phnom Penh Post, 4 September 2009.

Moving Beyond Misconceptions

MH Ethanol – Case study of a Korean agro-industrial investment in Cambodia

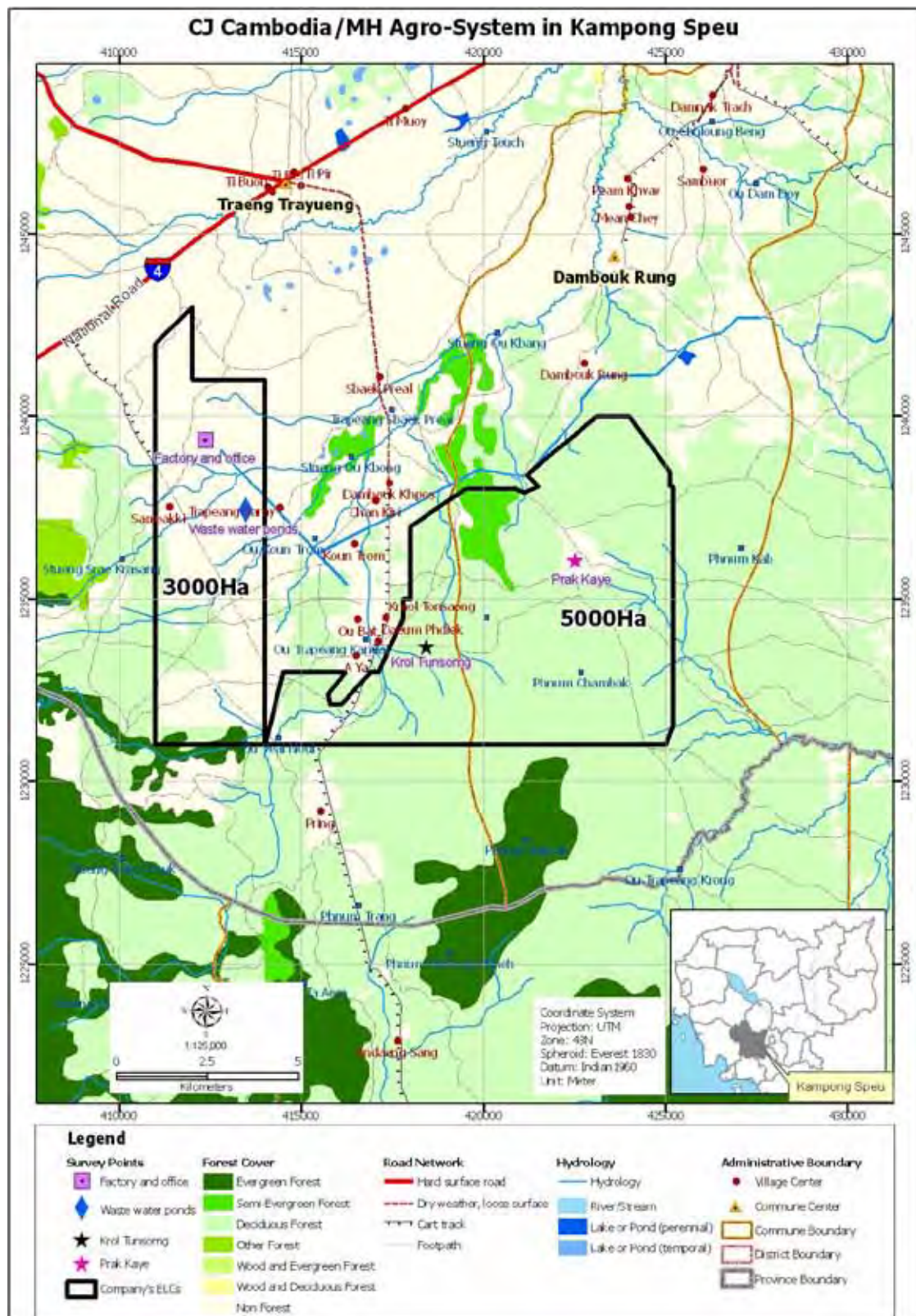
the negative impact of ELCs on local stakeholders, as concessions routinely deprived local villagers of the land and natural resources on which they are dependent for their livelihoods.⁷⁰ In addition, the granting of ELCs rarely respects the requirements set in the law, in particular the rights recognized to land “possessors”.

CJ Cambodia's ELCs are no exception to these trends. The concessions were mired in land disputes with several villages in the area, located either close to or inside the concessions. Villagers in Samaki and Trapeang Saray lost land to the first ELC, and Aya, O Bat, Daeum Phdiek, Koun Trom, Chan Kiri, Krol Tunsorng and Prak Kaye also suffered loss of land because of the second ELC (see map on next page).⁷¹ Unsurprisingly, the dispute was more serious for the few villages located inside the concessions than for those situated close to the company land – Aya, O Bat, Daeum Phdiek, Koun Trom and Chan Kiri villages.⁷² The cases of Krol Tunsorng and Prak Kaye, both villages within the concessions and where the disputes remain unresolved, are presented in more detail in Sections III.5.4 and III.5.5.

70 See for example UN Special Representative of the Secretary-General for human rights in Cambodia, 2004 and 2007.

71 This section is based on the findings of field trips to the area in February and June-July 2010. Due to resource constraints, the research team was able to visit only Samaki, Trapeang Saray, Aya, Krol Tunsorng and Prak Kaye. However, reports that the other villages were similarly affected were gathered from local authorities as well as local NGO staff who worked in the area for an extended period of time.

72 The second ELC reportedly affected 203 families in five villages, who were offered 1.20ha for resettlement. See UN Special Representative of the Secretary-General for human rights in Cambodia, 2004.



Moving Beyond Misconceptions

MH Ethanol – Case study of a Korean agro-industrial investment in Cambodia

Before the concessions, when the military gave land to the people

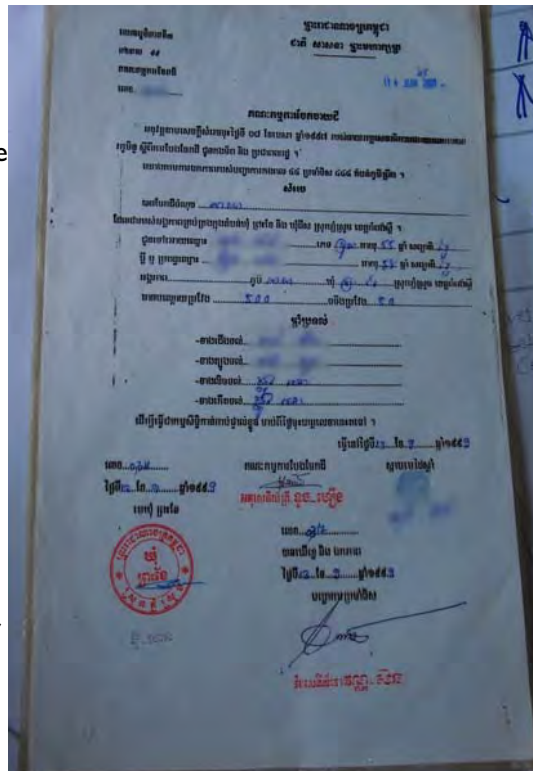
In Phnom Srouch district, Kompong Speu province, most villagers started living in the area around 1997 after the government called for the region to be resettled. The first to arrive were former Khmer Rouge soldiers and their families, who were promised land as part of the government's demobilization program – they were later followed by landless families looking for land. Back then, former Khmer Rouge authorities remained in charge in the area and they set up informal communes and villages.

Families were given 5ha and started clearing land and building roads. However, they usually had not cleared all of the 5ha they had received, as they lacked the resources for such a heavy and difficult task in an area overgrown with trees and vegetation. Hence, most villagers farmed only two to three hectares of land, where they grew rice, fruit trees and crops like corn, beans or vegetable. Nonetheless, there was still a marked sense that the rest of the land they had been allocated still belonged to them, even if it had not been cleared.

In September 1999, villagers received informal land titles issued by the then (former Khmer Rouge) Prak Kaye commune chief, Mey San, and military zone commander Van Sorn. Separate titles were issued for each family, one for the village house plot and others for their farming plots. The titles referred to an RCAF decision of April 1997 to distribute land to soldiers and civilians. Indeed, in the area known as Military Region 3, the land was considered to belong to the military. People received such titles in Krol Tunsorng, Trapeang Saray or Aya.

While these titles expressly conferred ownership to their holders from the date of signature, they were not official land titles under the Cambodian law of the time. However, under the 2001 Land Law, these documents do provide strong evidence of the villagers' history of occupying their land since the late 1990s. This highlights that they were not illegal settlers and may enjoy protection as "legal possessors", as set out in the Land Law. Tellingly, after the land dispute arose, the military sought to take back villagers' titles, in all likelihood to deprive them of documentary evidence of their occupation. While these attempts succeeded in most cases, some families have successfully managed to keep the documents in their possession.

These families' occupation and use of the land should have been properly recognized and taken



Land title delivered to a villager from Aya by the military authorities in September 1999.

into account when deciding to grant a concession that deeply affected their lives. However, this was not the case as previously argued.

5.2 Legal compliance of CJ Cambodia's ELCs

The Cambodian Subdecree on Economic Land Concessions sets in its Article 4 the following requirements for an ELC to be granted:

- the land awarded as the concession must be registered and classified as State private land;⁷³
- a land use plan for the land must be adopted by the local authorities which must be respected;
- environmental and social impact assessments (ESIAs) must be completed;
- public consultations must be conducted with local stakeholders;
- and last but not least, any resettlement issues must be resolved in accordance with the legal framework and in the respect of the rights of lawful land holders.

In addition, the 2001 Land Law also protects the rights of people who qualify as “possessors”.

The general failure to enforce these standards in Cambodia applied in the case of CJ Cambodia's concessions. Various experts agree there is a deep lack of clarity regarding the exact legal status of the land granted to the company as concessions, due to the area's complicated history and its status as a military development zone. This is compounded by the contradictory decisions made by the military authorities as they granted the land as concession while issuing titles to villagers in that same area around the same time.

However, it is apparent that Article 4 of the Sub-decree on ELCs was not properly respected: there was a lack of genuine public consultation – which should have been part of any ESIA – or attempts to solve the resettlement issues caused by the granting of the ELCs in the respect of local villagers' rights.

In some cases, local authorities organized a meeting with villagers in the early 2000s. But people were simply told that the land now belonged to the company and they had to leave. No options were presented, nor were any attempts made to ascertain the rights of the people who farmed or lived in the area. The presence of armed soldiers, including at least one as company representative, was conducive not to an atmosphere of discussion, but rather of intimidation.

In other cases, villagers received no prior information and only discovered a concession had been granted on their land when CJ Cambodia proceeded to operations there, for instance in Aya when the company started to dig canals to demarcate its land in 2001, or in Prak Kaye when

73 Article 58 of the 2001 Land Law also provides that an ELC can only be granted on State private land.

Moving Beyond Misconceptions

MH Ethanol – Case study of a Korean agro-industrial investment in Cambodia

it began clearing land in December 2009. In both villages, some families lost land due to the concession.

In some villages, people were offered plots in compensation for the land they lost, but they did not view them as appropriate compensation for their confiscated lands. However, the military's continuous involvement and threats ensured that villagers eventually accepted offers they felt were unfair or insufficient.

None of these developments satisfy the requirement for public consultations with local stakeholders and adequate resolution of resettlement issues before an ELC is granted.

5.3 The impact of CJ Cambodia's ELCs on local villagers

The crucial importance of land in rural Cambodia

In a traditionally rural country like Cambodia, land is at the centre of people's lives as their main source of livelihoods. More than 80% of Cambodians depend on agriculture and grow rice and other crops to feed their families and/or to earn an income. It is also important as a place where their animals can graze.

In addition, land represents many people's principal or only asset. Particularly in the countryside, it is the main legacy from one generation to the next, as parents will divide their plot amongst their children. This means that land loss takes a tremendous toll on rural families as they lose their principal livelihood, which may jeopardize their food security and future.

5.3.1 Loss of land and access to forest, decreased livelihoods

The flawed process in the granting of CJ Cambodia's ELCs failed to respect the rights of local villagers. As a result, the concessions caused families in the area to lose land – rice fields and/or chamkar (farming land) – as well as grazing land for their animals, while also limiting their access to the forest and its resources.

The villagers living near the concessions accepted under pressure compensation plots, although they did not make up adequately for their losses. The new plots were smaller or comprised of forested land, which many families lacked the resources to clear. For example, people in Trapeang Saray reported losing nearly 300ha but eventually received only 40ha of land in compensation. In Samaki, families were offered 2ha of forested land for each hectare of rice field they lost. Many villagers also complained that the new plots were less fertile than their previous ones. People in different villages expressed the same feeling: they were not happy with what they were offered but felt that they had no choice but to accept.

As for two villages located within the concession, namely Krol Tunsorng and Prak Kaye, the dispute was still unresolved at the time of writing and villagers had not received adequate compensation for the land they lost. For those families who had reluctantly agreed to be resettled, they suffered a serious deterioration of their living standards. These two cases are presented in more detail next.

As CJ Cambodia cleared land and cut trees to make way for its plantation in the early 2000s, villagers also lost access to the forest and the resources it offered them, such as vegetables,

bamboo or wood to sell.⁷⁴ They have since had to travel further to collect the forest resources that provide them with supplementary income, while having to pay unofficial fees of up to 50,000 riels (about USD12.50) to the military at control points in the area.

In addition, as the land around their village became CJ Cambodia's concession and their own plots diminished in size, villagers have increasingly struggled to find places for their cows to graze. As a result, the cows would stray onto company land, where they are seized by soldiers. Their owners then have to pay bribes to get their animals back. Ranging from 50,000 to 100,000 riels (about USD12.50 to USD25), the fees are extremely high for villagers and often force them to borrow money to pay for the release of their cattle. One farmer in Aya even recounted having had to pay 50,000 riels three times, forcing him to contract a debt with other villagers.

Loss of land with no or inadequate compensation, decreased access to forest resources, the extra burden of significant informal fees, all these jointly resulted in a deterioration of people's livelihoods and living standards. As a consequence, the capacity of affected villagers to grow food for their families was reduced, especially for those who were left with no or little farming land. In some cases, they had to borrow rice from other villagers or take up new jobs to make a living.⁷⁵ In Prak Kaye, families who had recently lost their chamkar land to the company also feared that they would not be able to grow enough food.

5.3.2 Absence of adequate resolution and remedies

Overall, villagers' perception of the company was very negative. *"Nothing good came out of the company, only bad things. (...) When the company arrived, people felt fear,"* summarized Thavy, a farmer from Krol Tunsorng.⁷⁶ Significantly, now that years have passed since the land dispute started, many families appear to have simply accepted their losses and no longer expect to return to their prior situation. This view is also reflected in the perception of local authorities, who consider the problem to have been solved except for Krol Tunsorng and Prak Kaye. Yet, this does not annul the fact that the concessions harmed villagers' livelihoods without any proper compensation.

Also, it is important to note the difficulty to document clearly the impacts on the worst affected families, like those who lost all of their land to the concession for example. Precisely because their livelihoods suffered so tremendously from the loss they suffered, they were no longer able to stay in the area and left, which made it impossible to interview them and ascertain their current situation. However, according to fellow villagers, some of these families moved to a nearby area and cleared a patch of forest to farm it. Such reports are cause for alarm because they mean these families are in an illegal situation as it is against the Cambodian law to clear forest land and they therefore have no right over the land they are now farming. It is important to remember that their extreme precariousness finds its root in the loss of their land to a concession granted without meeting all legal requirements.

Next are presented two detailed case studies of villages affected by land disputes with the company: Krol Tunsorng, affected in the early 2000s, where villagers who refused a inadequate compensation offer have put up a remarkable struggle for nearly ten years; and Prak Kaye, where some families lost their plots in late 2009 as the company's clearing activities reached the village

74 Interviews with Aya villagers, June 2010.

75 Interview with Aya villager, June 2010.

76 Interview, February 2010.

Moving Beyond Misconceptions

MH Ethanol – Case study of a Korean agro-industrial investment in Cambodia

area.

5.4 The case of Krol Tunsorng: Different fates for relocated and resisting villagers



Clockwise from left: Corn crops; fruit trees and main village road in Krol Tunsorng, February and June 2010.

5.4.1 History of the village and start of land dispute

Like other villages in the area, Krol Tunsorng was set up around 1997, when former Khmer Rouge families settled there under a government demobilization program. They established the village, cleared land and built roads, and in 2001, the authorities – then the former Khmer Rouge Prak Kaye commune – issued the villagers titles for the land plots they had received. Families had been allocated 5ha of land, though most people had cleared and farmed less than half of it due to lack of resources. However, they considered the uncleared land to be also part of their property. 56 families lived peacefully in Krol Tunsorng since 1997.

In May 2001, villagers were summoned by the local authorities to a meeting which was also attended by company representatives – including at least one military officer – and surrounded by armed soldiers. They were told the land now belonged to a company that had received a concession from the government, and all families living inside the concession had to leave their land. They were offered resettlement in a new village, Krol Tunsorng Thmei (literally New Krol Tunsorng), situated a few kilometers from their original village, where they would receive 1.2ha of land (plots of 30x400m). Serious intimidation on the part of the military working for the company ensured that 34 out of the original 56 families agreed to the relocation out of fear. This

included threats by the soldiers to burn down villagers' houses if they did not accept to move.⁷⁷

5.4.2 Resettlement in “New Krol Tunsorng”, a non-solution

When the 34 families moved to the relocation village, they found that the land there was of a lesser quality, but most importantly, only part of their plots had been cleared, leaving them with minimal 35x50m sized plots to farm (less than 0.5ha). This was too small for families to grow rice to feed themselves. *“Life was harder in the relocation village. In the old village, we had a lot of water nearby and it was easy to grow crops. But water was far from Krol Tunsorng Thmei, so it was difficult to farm. In any case, the plots were too small to grow rice, so we had to buy rice all the time,”* recalled Srey Mam, who used to live in Krol Tunsorng before moving to the relocation village out of fear of the military.⁷⁸

This highlighted the hardships faced by relocated villagers who had not only lost their main source of livelihoods, their land, but also had to bear additional expenses precisely because of that loss. The inadequate resettlement forced people to change their lives drastically. No longer able to sustain their traditional farming activities, they had to find new ways to earn an income, commonly by gathering wood or bamboo to sell or by offering their labor for hire to other villagers. The story of Srey Mam's family epitomizes the tremendous impact a loss of land may have on the lives of rural Cambodians. *“We had to find new jobs to make a living. I worked for rich people to clear their land or I went to the forest to find wood and bamboo to sell on the market. Two of my daughters left for Phnom Penh to work in garment factories and one of my sons went to Thailand as a migrant worker. But even though my children work, we can only scrape a living. We had to spend a lot of money when I got sick,”* she recounted. Despite these efforts, the family still struggled and lived in deep poverty and vulnerability to external shocks like illnesses. Eventually, Srey Mam decided to sell her land in Krol Tunsorng Thmei in 2005 or 2006. She bought another plot in the area before having to sell it again. She is now living illegally on company land, fully aware of the precariousness of her situation.

Srey Mam's story is also representative of the struggles faced by the other resettled villagers. By 2006-2007, all villagers who had moved to Krol Tunsorng Thmei had sold their plots and moved elsewhere. Some left for their homeland or other villages, while others resettled nearby, clearing a patch of forest to start farming and thereby also falling into illegality and precariousness. In any case, none was able to make a living for themselves and their families in the relocation village.

This demonstrates plainly how the resettlement option forced onto these villagers was starkly inadequate, therefore unsustainable and not a solution to the land dispute. When it is not properly remedied, land loss causes a tremendous impact on rural Cambodians' lives, but it may also push them further into deeper poverty and even illegality.

5.4.3 Resisting villagers' remarkable struggle despite difficulties

The above described fate was strikingly different from the situation of the other 22 families who rejected the relocation option and demanded respect for their land rights.⁷⁹ According to the villagers themselves, the reason why some families agreed to compensation and others resisted

77 See UN Special Representative of the Secretary-General for human rights in Cambodia, 2004.

78 Interview, February 2010.

79 Now 29 as people got married and started their own families.

Moving Beyond Misconceptions

MH Ethanol – Case study of a Korean agro-industrial investment in Cambodia

was that the latter perceived the loss to be caused by their relocation to be much higher. “We [the 22 families] had lived here longer [than the families who agreed to relocate]. We had cleared a lot of land and planted many fruit trees, so it was harder for us to accept to move. We had too much to lose,” explained Seng, one of the villagers who refused to leave.⁸⁰ This meant that the families who yielded to pressure and moved out were the poorest and most vulnerable ones in the village.

As they lost land to CJ Cambodia's concession, villagers' livelihoods suffered and they had to find new coping strategies to provide for their families. “After the company arrived, we could no longer go and farm our land on the land claimed by the company. Before, we could grow enough food to eat for 10 or 11 months. But since the land dispute, we have enough food only for a couple of months in the year now. So, we had to find new jobs, like working for other people or cut trees to sell wood,” Seng said. Villagers also continued to face serious intimidation and harassment from the soldiers working for the company. They were threatened and told that their houses would be burned down if they refused to move, the village chief's cow was killed and its intestines spread over the fence of his house, and part of the village main road was deliberately destroyed. “The company is bad because they didn't bring anything good to the village. They came here and wanted us to leave, with plans to force us if we didn't agree.”

However, Krol Tunsorng villagers still put up a remarkably dogged and peaceful resistance. They rejected resignation in favor of continuous activism. This included the traditional advocacy steps still being used by communities involved in land disputes today. Krol Tunsorng villagers raised their case with the Cambodian media, they received support from NGOs, including advocacy and legal training, and they used all formal remedies available: the villagers filed complaints with the district chief and provincial governor in 2001, the Cadastral Commission (in charge of solving land disputes over unregistered land) in 2003, the courts⁸¹ and even the Human Rights Commission headed by Prime Minister advisor Om Yentieng. When the then UN Special Rapporteur on Cambodia, Peter Leuprecht, visited the area and met with Krol Tunsorng villagers in November 2003, they presented him with a petition which he later delivered to the Prime Minister. Leuprecht even included Krol Tunsorng as a case study in his 2004 report on the impact of ELCs in Cambodia, while LWF raised the case in its public statement to the former UN Commission on Human Rights in November 2005. But these traditional advocacy options yielded little or no result, failing to bring a resolution to the land dispute.

What was special in the case of Krol Tunsorng



Krol Tunsorng map drawn by villagers and showing ponds and wells built with LWF support, February 2010.

80 Interview, February 2010.

81 NGO Legal Aid of Cambodia (LAC) reportedly took up the case. See UN Special Representative of the Secretary-General for human rights in Cambodia, 2004.

villagers is the crucial support they received from a local development NGO, the Lutheran World Federation (LWF), present in their village since before the land dispute arose.⁸² Villagers sought to use the rural development projects sponsored by LWF, such as road upgrading or pond digging, to support their advocacy. “*With LWF’s help, we tried to improve things in Krol Tunsornng because we wanted to show this is a village, not a slum,*” Seng explained.⁸³ The existence of these projects and the continuing presence of LWF after the land conflict arose are believed to have been instrumental in strengthening the nearly decade long struggle of Krol Tunsornng. This is particularly true as the organization supported over many years the villagers’ advocacy, by providing advice and liaising with other NGOs or local authorities. This was a rare example of a development organization supporting a community embroiled in a land dispute, with longer-term involvement and assistance as well as good relations with local authorities.

Over the years, and as public attention to the case decreased, LWF strove to facilitate a dialogue between the villagers, local authorities, and the military working for the company. Various meetings took place at the Treng Trayeung commune council to try and negotiate a solution. Eventually, in October 2009, MH Agro-System presented the villagers with a new offer: a collective plot of land of about 86ha encompassing Krol Tunsornng village and to be divided amongst the villagers. Although this was still below their demand for 121ha, the villagers agreed to it, likely worn out by years of struggle. “*It was our last choice. We can’t do anything more.*” Quite significantly, the new offer meant much larger individual plots for the villagers (3.9ha per family for 22 families or 2.9ha for 29 families) than the original offer of 1.2ha made at the start of the land dispute. This highlights the potential results of a united and strong resistance, in contrast to the devastating precariousness caused by land loss.

5.4.4 Update: A derailed solution

Despite the new agreement, the dispute was still not resolved in Krol Tunsornng at the time of writing. Villagers protested the military’s retaining of a 15ha strip of land, which the soldiers had excluded from the collective plot of land when demarcating its borders.

In addition, the implementation of the agreement stalled in the absence of any concrete measures by local authorities. Things took a turn for the worse when the village chief decided on an arbitrary and unequal plan for the division of the land amongst the villagers, with individual plots ranging from one to five hectares, which he alleged reflected the varying levels of advocacy of each family.⁸⁴ His unilateral decision, taken without any consultation with either the villagers or local authorities, prompted families to file a complaint against him with the Treng Trayeung commune council. He was also accused of corruption and of selling two plots of land taken out of the collective land, keeping the money for himself. The village’s remarkable union, which had allowed for such a long resistance, fell apart, highlighting the need for continuous support from civil society or local authorities until the actual resolution of a land dispute is fully reached.

⁸² LWF supported rural development and livelihoods projects (eg. ponds, fruit trees, husbandry) in the area, including in Krol Tunsornng, since 2000, that is before the land dispute started. Remarkably, it continued to support the villagers after the land dispute occurred, providing advocacy guidance and help.

⁸³ Interview, February 2010.

⁸⁴ Based on group discussion with Krol Tunsornng villagers, including village chief, June 2010.

5.5 The case of newly affected Prak Kaye



Corn crops and fruit trees growing on villagers' farming land (left and bottom right) and village school (top right) in Prak Kaye, June 2010.

5.5.1 History of the village and start of land dispute

Located further east than the other affected villages, Prak Kaye also stands apart because it is comprised of families who used to live in the area before being forcibly moved by the Khmer Rouge and returning around 1997. Prak Kaye villagers were therefore not a target of the government's efforts to demobilize former soldiers. This may have been the reason why they did not receive any informal land titles at the time, although they were also allocated 5ha per family by the authorities. Due to its history and more remote location, Prak Kaye appeared to be left in an administrative limbo, with Treng Trayeung commune officials refusing to take responsibility for the village, especially after the land dispute started. It was only in early 2010 that the village was placed under the responsibility of Damboek Rung commune.

Since 1997, villagers have lived peacefully in Prak Kaye, farming these plots which they consider their own. But at the end of 2009, they were affected by the company's concession, as the conversion to plantations progressed eastward and eventually reached their village. Families who farmed plots west from the village lost their land when the company cleared the area to make way for its plantation. Protected by soldiers, workers drove bulldozers across the land, razing villagers' farming land in so doing. Prak Kaye villagers had not been notified prior to the clearing and discovered what was happening only when they heard the bulldozers.

5.5.2 Accusations against the military

Villagers were however aware that the company claimed ownership over the area, though they did not recognize those claims as valid. In 2001, villagers had been summoned by the local military chiefs to a meeting, where they were promised by the military and their sub-village chief that they would receive more land in the future if they accepted to thumbprint a document allegedly making such a request. They were urged to report a smaller than actual size for their plots if they wanted to get more land. Although they could not read, villagers trusted what they were told and agreed to thumbprint the documents. They were also encouraged to thumbprint for people who were not at the meeting. Villagers say they later realized they had been tricked into relinquishing their land rights, when one of them was told by a soldier that people had agreed to sell their land when they thumbprinted the documents.⁸⁵

Since then, the military repeatedly told villagers that their land belonged to the company and they would have no rights if and when the company decided to clear it. Despite being verbally forbidden by the military from doing so, they continued to farm their plots. “*We need to farm our land to grow food for our families. What else can we do to support ourselves?*”, explained Meng, a local villager, illuminating once again the fundamental importance of land for rural Cambodians.⁸⁶ Dependent as they were on their land, they felt they had no choice but to farm it as long as they were able to do so. Even now, after some families lost land to the concession, villagers still cultivate small plots close to the area cleared by the company.

5.5.3 Land loss and fears for the future

At the time of writing, only a minority of villagers farming land west from Prak Kaye had been affected and lost land. One of them had lost all of her farming land and worried she would be unable to grow enough food for her family.

Many people feared that the rest of the village may be similarly affected in the future, should the company decide to clear more land. Prak Kaye villagers insisted on the importance of proper demarcation between their land and the company’s, so that their rights be better protected in the future. “*We don’t want you to help us get back the land that was lost. We want you to help us protect the land we still have,*” said Tharo, a young villager.⁸⁷

The deeply insecure situation suffered in other villages that lost land is not inevitable, but results from the failure of those responsible to respect the rights of local stakeholders. Prak Kaye should be seen as a litmus test for MH Ethanol to prove it is ready to develop its operations in peaceful coexistence with villagers who have lived peacefully in the area for years.

6. MH Ethanol's alarming environmental record

Despite its environmental claims, MH Ethanol appeared to have a clearly deficient waste water management that had far-reaching harmful consequences. The biofuel factory in Kandal was repeatedly accused by local villagers of polluting the nearby water sources and causing fish kills. In addition, since the factory started operating, the company has transported waste water or

85 Interviews, June 2010.

86 Interview, June 2010.

87 Interview, June 2010.

Moving Beyond Misconceptions

MH Ethanol – Case study of a Korean agro-industrial investment in Cambodia

sludge to its cassava plantations in Kompong Speu for use as fertilizer. There, inadequate storage of waste water also caused serious pollution problems with health and environmental impacts.

6.1 MH Ethanol's environmental claims and CDM application

Boasting on its website that it is “*good for the Earth, good for the people*”, MH Ethanol has actively sought to present itself as a company that respects the environment, which is essential to its image as a manufacturer of a professed green fuel.

The company proudly announced that its biofuel factory had high-tech facilities complying with international standards. MH Bio-Energy further claimed that a company “*sustainability audit*” was completed by an “*independent inspection company*” in April 2009, which “*confirmed that the production and its supply chain have complied with all agreed criteria and social, environmental, occupational health and safety aspects set by the international standards.*”⁸⁸

MH Bio-Energy even applied for its bio-ethanol factory to become a Clean Development Mechanism (CDM) project under the UN Kyoto Protocol. A CDM project must contribute to the reduction of greenhouse gas emissions, be located in a developing country and meet other criteria to receive emission reduction credits which may be traded and sold. MH Bio-Energy claimed its plant captured the methane (a greenhouse gas) from its waste water treatment facilities so it could be used as an energy source for the factory. In so doing, the company allegedly reduced its consumption of fossil fuels and greenhouse gas emissions.⁸⁹

MH Bio-Energy's CDM application was submitted to the Cambodian Ministry of Environment (MoE) on 16 February 2009 and approved on 29 June 2009, on the consideration that the “*proposed CDM project activity [would assist Cambodia] in achieving sustainable development.*”⁹⁰ However, at the time of writing, the application was still waiting international validation by the CDM Executive Board and is not yet an official CDM project. MH Ethanol has claimed that the CDM status would provide additional revenues of at least USD2.5 million per year.⁹¹

6.2 MH Bio-Energy's trail of pollution in Kandal

In his speech at the inauguration of MH Bio-Energy's biofuel factory, Prime Minister Hun Sen stressed the importance of doing business in a manner that respects the environment. He urged the company “*to pay particular attention and firmly commit to environmental sustainability by taking all available measures to protect the environment and prevent environmental pollution.*” He believed that “*development must be in parallel with environmental protection, that is ‘Green Growth’; the opposite of ‘Growth First, Clean Up Later’ ideology which can severely affect the environment and waste our time*

88 See MH Trading website, www.mh-trading.co.kr.

89 MH Bio-Energy signed a contract on 30 March 2008 with Korean company Kolon Construction Co. for the construction of the “biogas system”, which was to be installed at the end of May 2009, and claimed the project would allow an emission reduction of about 52,831 tons of CO₂ equivalent per year. See CDM Project Design Document, MH Bio-Energy.

90 CDM Project Design Document, MH Bio-Energy.

91 MHe탄올, CDM사업 캄보디아 정부 승인 (*MH Ethanol CDM project in Cambodia approved*), MH Ethanol, 25 August 2009.

and money to restore all damages caused by pollution.”⁹²

However, before the factory was even inaugurated, it attracted pollution complaints from local fishermen in September 2008 after it entered a production test period. Villagers continued to wrestle repeatedly with pollution and fish kill problems over the following years. In total, there have been at least three major pollution instances, first affecting Samraong Lake and later the Tonle Sap River twice. Various villages in the area were impacted, with Duong village being the worst affected due to its location just outside of the factory. All the affected communities are fishing villages highly dependent on the river and its water quality for their livelihoods. These incidents are presented in further detail below.



Floating houses in Duong village, June 2010.

While MH Bio-Energy claimed to treat the 1,400m³ of effluent it generated daily before discharge,⁹³ the repeated pollution pattern caused by the biofuel factory points to profoundly deficient waste water management and contradicts the company's CDM claims that it only had “*positive environmental impacts*”.⁹⁴ Paradoxically, the company's waste management provided the grounds for its CDM application.

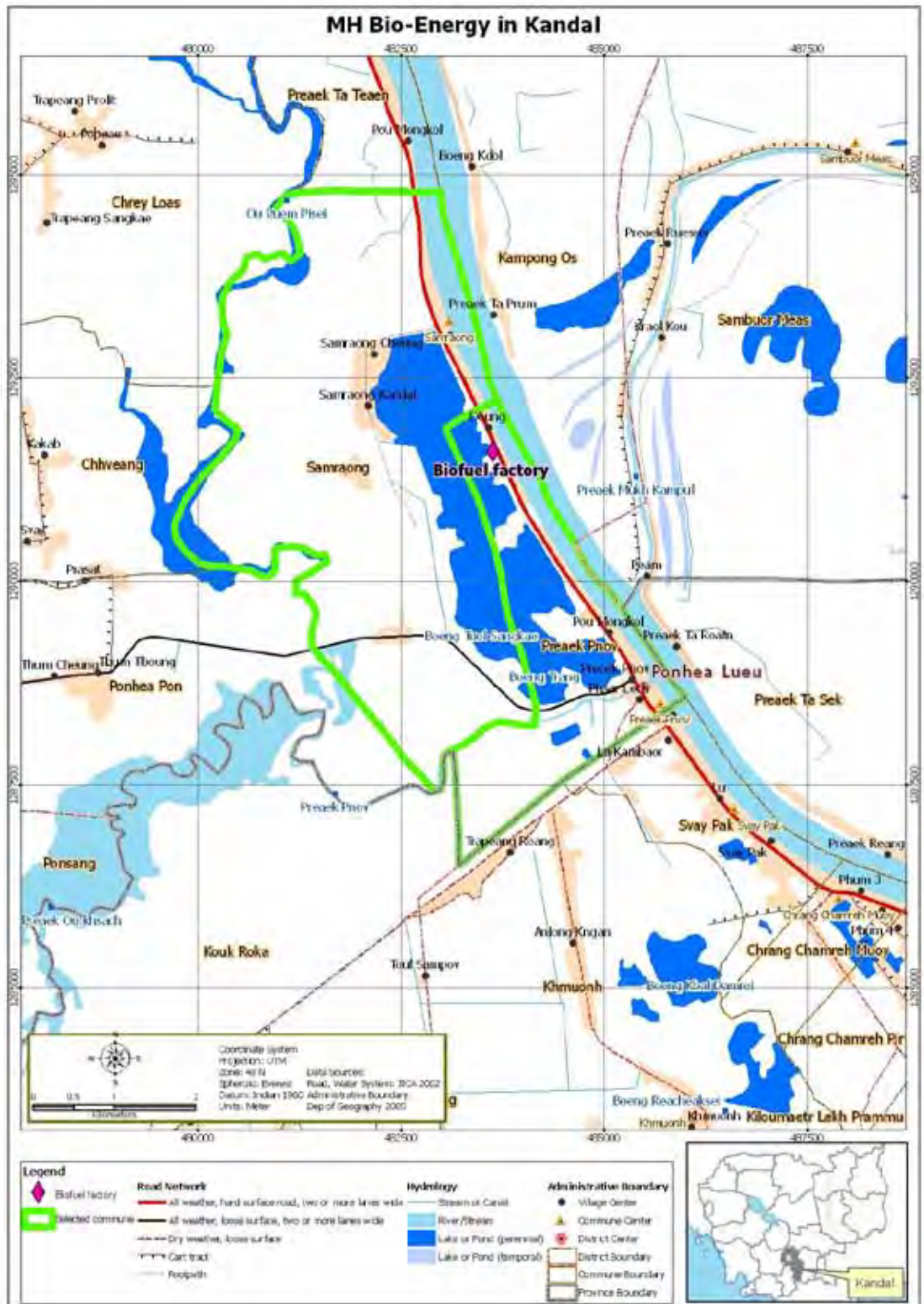
⁹² Prime Minister's address at the inauguration ceremony, November 2008.

⁹³ CDM Project Design Document, MH Bio-Energy.

⁹⁴ CDM Project Design Document, MH Bio-Energy.

Moving Beyond Misconceptions

MH Ethanol – Case study of a Korean agro-industrial investment in Cambodia



6.2.1 First pollution: Samraong Lake, September 2008

In September 2008, the biofuel factory was accused by villagers of causing pollution for the first time. It was suspected that waste water leaked from a poorly designed waste pond into adjacent Samraong Lake, which covers 325ha and is used by local villagers for fishing and drinking. A villager reported seeing waste water flowing from a factory pipe into the lake. According to media reports, the toxic leak polluted the lake, covering it with green scum and killing tons of fish, thereby harming the livelihoods of hundreds of families in Samraong and Prek Phnov communes, Ponhea Leu district.⁹⁵

Following the pollution, local authorities, including the district governor, also blamed the pollution on a waste leakage from the factory and informed the MoE. Meanwhile, MH Bio-Energy denied the allegations and claimed it had its own pond for liquid waste as well as a strict policy of protecting the environment. The company complained that media reports about this incident were inaccurate: “*What was reported in local newspapers is not real information. (...) I can’t believe reporters would make up a story like this. (...) My business is a legal business and represents the future of Cambodia,*” MH Bio-Energy’s executive director told a local newspaper.⁹⁶



Samraong Lake covered with green scum, with MH Bio-Energy’s factory in the background, in September 2008. (Photo: The Phnom Penh Post)

Company officials also suggested that residents raising ducks might be to blame for releasing animal waste into the lake.⁹⁷ MH Bio-Energy further claimed that it voluntarily completed an environmental impact assessment (EIA) which was sent to the MoE and focused on whether waste water from the plant caused the pollution of Lake Samraong, concluding there had been “*no significant impacts.*”⁹⁸ However, there were no more details on the EIA, when it was carried out and whether an independent agency was involved.

6.2.2 Second pollution: Tonle Sap, August-September 2009

The largest case of pollution and fish kill

Nearly a year later, at the end of August 2009, MH Bio-Energy was again dogged with pollution complaints. This time, it was accused of discharging toxic waste water into the Tonle Sap river on

⁹⁵ *Dead fish raises suspicions*, The Phnom Penh Post, 2nd September 2008.

⁹⁶ The Phnom Penh Post, 2nd September 2008.

⁹⁷ *Biofuel plant closed over pollution scare*, The Phnom Penh Post, 1st September 2009.

⁹⁸ CDM Project Design Document, MH Bio-Energy.

Moving Beyond Misconceptions

MH Ethanol – Case study of a Korean agro-industrial investment in Cambodia

29 August 2009, polluting the environment and causing an even larger fish kill.⁹⁹ An initial estimate of 32 tons of dead fish ultimately increased to more than 63 tons, representing over USD100,000 worth of fish for local villagers, according to Tonle Bassac Fisheries Administration (FiA) officials.¹⁰⁰

This harmed the main livelihoods of fishermen in two villages, Duong and Krous, respectively in Prek Pnov and Samraong communes.¹⁰¹ They suffered serious losses ranging from part to all of their fish stocks. For instance, a fisherman from Duong reportedly lost half his stock of fish (500kg), losing about USD2,000 in earnings.¹⁰² Where possible, villagers attempted to limit damages by moving their fish cages away from the waste water. They also sought to sell the dead fish, but received less than half the regular price. In addition to the loss of income, villagers also suffered the burden of having to buy new fish to replace the dead ones, which forced most to go into debt. The impact of the pollution was felt for some time, with villagers reportedly being unable to resume fishing for nearly two months.



Clockwise from left: fish drying out; a villager's fish cage; and a woman preparing fish in Duong village, June 2010.

99 Local sources stated that the company dumped waste water into the river for three days, from 28 to 30 August 2009. Based on interview with a local villager and *Minutes of Ponhea Leu district hall meeting to discuss fish kills of 28-30 August 2009*, 17 September 2009.

100 *Toxic plant runoff takes toll on villagers' wallets*, The Phnom Penh Post, 15 September 2009.

101 There were also fears over a potential health impact of the polluted water. Villagers reported suffering from itchy skin and rashes after washing in the river and local authorities cautioned people against using water from the river over a month after the pollution happened.

102 The Phnom Penh Post, 1st September 2009.

Measures taken by the authorities: investigations and closure order

Possibly due to the seriousness of this pollution instance and the heavy media coverage it drew, local authorities took a few significant measures. First, FiA officials collected water samples to test for contaminants. Shortly after the pollution, the FiA provincial head declared that “[their] initial conclusion [was] that the fish died from toxic pollutants in the lake that likely derive[d] from the plant.”¹⁰³ A district chief said that water samples indicated that the fish had been killed by waste water dumped by the company.¹⁰⁴ Preliminary water test results found increased levels of ammonia and lower levels of oxygen. However, there were issues of transparency over the test results. By mid-October 2009, the full test results had still not been made public despite repeated demands from villagers and local authorities.

Most importantly, a couple of days after the pollution, the biofuel factory was closed on 31 August 2009, upon an order from the Ministry of Industry, Mines and Energy (MIME). MIME instructed the temporary closure due to the plant's production of “bad-smelling liquid and gas waste that has caused harm to the health of local residents and has affected the natural environment”, pending further investigation into possible threats posed by the plant's activities. The Ministry also threatened permanent closure if the factory was to be found to have contaminated its surroundings.¹⁰⁵



On 11 September 2009, a joint MIME-MoE committee made an inspection at the factory. Following the visit, the plant was allowed by both ministries to reopen on that day, a mere 11 days after it was closed

down, on the grounds it met the necessary safety requirements to resume its activities. Security guards at the entrance of the bio-ethanol factory on the day of its closure on 31 August 2009. (Photo: The Phnom Penh Post, September 2009)

MH Bio-Energy had declared they had fitted new waste storage facilities as requested by the ministries and was reportedly operating as normal after its reopening.¹⁰⁶ However, details on these measures or the committee's inspection report were not made public.

A flawed compensation process

For the first and only time, a MH Bio-Energy representative publicly acknowledged a malfunction in the plant's waste water treatment system and blamed it for the unusual discharge of untreated liquid waste into the river. However, he denied that the waste water might have had any harmful effect on the fish. In a local meeting, the company apologized to affected villagers and agreed to pay them compensation.¹⁰⁷ While this move was commendable, the compensation process had

103 *Biofuel plant closed over pollution scare*, The Phnom Penh Post, 1st September 2009.

104 *Minutes of Ponhea Leu district hall meeting to discuss fish kills of 28-30 August 2009*, 17 September 2009.

105 The Phnom Penh Post, 1st September 2009.

106 *Polluting ethanol plant reopens after refitting*, The Phnom Penh Post, 14 September 2009.

107 *Minutes of Ponhea Leu district hall meeting to discuss fish kills of 28-30 August 2009*, 17 September 2009.

Moving Beyond Misconceptions

MH Ethanol – Case study of a Korean agro-industrial investment in Cambodia

significant flaws relating to the number of affected fishermen, the amount of fish lost and the compensation level.

Although FiA officials and local authorities carried out a survey of affected fishermen and their losses, there was uncertainty over the exact number of villagers who lost their fish stock and who received compensation. News reports claimed there were at least 57 families in Duong and Krous villages that were affected by the pollution.¹⁰⁸ But there was no definite official figure and various local officials – village and commune chiefs – interviewed were unable or reluctant to give any number.¹⁰⁹ Also, authorities decided that only fishermen with licenses from the FiA would be entitled to compensation.¹¹⁰ This meant that fishermen who could not afford to pay for licenses but still raised and lost fish were not included in the compensation process and left without recourse.



Local fishermen netting “the few live fish remaining in the Tonle Sap river at Prek Pnoev” in September 2009. (Photo: The Phnom Penh Post)

In addition, villagers acknowledged that they under-reported their losses during the FiA survey, because they feared they would not receive compensation if they declared their real losses. It is also possible they felt intimidated due to the presence of police with the officials doing the survey.¹¹¹

This flawed information served as the basis of negotiations facilitated by local authorities and FiA officials. Although villagers asked to be compensated at market price, as well as compensation for the cost of moving their fish cages away from the waste water, MH Bio-Energy offered only about 4,000 riels per kilo (less than a dollar and about half the market price) and USD 100 per family for moving the cages.¹¹² On the basis of the figures reported in the local press, ie. 57 affected families and 63 tons of fish lost, this would mean MH Bio-Energy paid a total of less than USD 70,000 in compensation. This was only a tenth of the impressive USD 700,000 compensation which the company claimed it paid in the media.¹¹³

Compensation was paid on 25 September 2009, at the factory, where villagers had to thumbprint

108 The media later reported that a different figure for the number of compensated fishermen, with only 53 families who received money. See *Silence on toxin test results*, The Phnom Penh Post, 15 October 2009.

109 The minutes of local authority meetings in response to the pollution and fish kills seen by the researcher did not include any information on the number of affected fishermen.

110 *Minutes of meeting of FiA Ponhea Leu Sangkat*, 4 September 2009.

111 Interviews in various villages in Kandal, February and June 2010.

112 *Minutes of Ponhea Leu district hall meeting to discuss fish kills of 28-30 August 2009*, 17 September 2009.

113 *Silence on toxin test results*, The Phnom Penh Post, 15 October 2009.

a document before receiving the money, although they could not read it.¹¹⁴

6.2.3 Third pollution: Tonle Sap, March 2010

Despite the measures allegedly taken by MH Bio-Energy to avoid causing a new pollution case, a fish kill similar to those previous cases happened yet again on 10 March 2010. Duong village was once again affected, while two other villages south of the factory, Pou Mongkol and Prek Pnov, were impacted for the first time.

About 54 tons of fish were reportedly killed, with at least 26 families affected. The pollution prompted the launch of an investigation by the FiA, including the collection of water samples for tests. After the tests revealed the absence of toxic waste in the water, the authorities used the results to exonerate the company, blaming instead “*climate change*” for the fish death. An MoE spokesman considered that the most likely cause of the fish kill was the river water heating up because of climate change.¹¹⁵ As a result, there was no compensation process.



A man retrieves dead fish from a farm on the Tonle Sap river” in Duong village. (Photo: The Phnom Penh Post, April 2010)

Villagers strongly disagreed with the authorities, stressing their fish had died unnaturally in circumstances that were very similar to the previous cases of pollution caused by the factory.

March 2010 was the last recorded time that a river pollution and fish kill occurred. Since then, there has been no new incident. This coincides with the suspension by MH Bio-Energy of its activities at the factory. Tellingly, the company pond had become very clear during that time. While villagers have been enjoying the respite, they fear that problems may happen again when the company resumes its operations. March 2010 was the last recorded time that a river pollution and fish kill occurred. Since then, there has been no new incident. This coincides with the suspension by MH Bio-Energy of its activities at the factory. Tellingly, the company pond had become very clear during that time. While villagers have been enjoying the respite, they fear that problems may happen again when the company resumes its operations.

¹¹⁴ The overwhelming majority of fishermen in the villages along the river and affected by the pollution were actually Vietnamese people living in Cambodia. Although they had lived in the country for a long time (many were born there), they had a deficient grasp of the Khmer language and felt ignored by the Cambodian authorities, which meant they were a particularly disenfranchised and vulnerable group left with very little recourse.

¹¹⁵ *Bio-ethanol factory cleared of all blame in Kandal fish kill*, The Phnom Penh Post, 19 March 2010.

Moving Beyond Misconceptions

MH Ethanol – Case study of a Korean agro-industrial investment in Cambodia



Company pond next to MH Bio-Energy's factory: covered with scum in December 2009, when the factory was in operation (left); clear in June 2010, when activities were suspended (right).

What caused the fish kills?

Every time a fish kill happened, villagers consistently painted the same picture. They described a green scum covering the surface of the water and a bad smell emanating from the water. Their fish became very agitated before dying, trying to jump out of the water before eventually floating dead on the surface.¹¹⁶

Villagers strongly believed the pollution was caused by waste water coming from the factory – a pipe built by the company connects its waste water system to the nearby river, close to Duong village. MH Bio-Energy itself recognized on one occasion that there had been a leakage of untreated water into the river.

While authorities focused their attention on the search for traces of toxics that would indicate a chemical spill, this may have been a red herring. One observer stressed the real issue was actually whether the factory's operations – in particular, the release of effluents into the river – caused a depletion in oxygen in the water.¹¹⁷ In other words, even if it does not discharge

116 This also matches the description of pollution caused by the company in Kompong Speu (see Section III.6.3).

117 *Ask the right questions about MH-Biofuel plant*, The Phnom Penh Post, 9 April 2010.

toxins, a factory may still cause a fish kill if it releases waste water that is too rich in organisms that consume oxygen, because that will result in the depletion of oxygen in the water. In turn, this may cause fish and other organisms in the river to die as they lack oxygen.

Typically, organic waste coming from an agro-industrial facility such as the biofuel factory is rich in fertilizers (like nitrate), which stimulate the growth of algae that consume a lot of oxygen. In such cases, formations of algae commonly cover the surface of the water with a green scum¹¹⁸ and emit a pungent smell as they die. Those two characteristics match the villagers' description of the fish kills.

Key indicators are levels of ammonium and Biochemical Oxygen Demand (BOD), which are both known to increase after a pollution caused by discharges of industrial waste water.¹¹⁹ Significantly, preliminary water test results after the largest pollution case in 2009 found higher levels of ammonium and lower levels of oxygen. Therefore, while the authorities exonerated MH Bio-Energy of any responsibility on the grounds that no toxins were found in the water, there remains very strong suspicions that waste water released by the factory was not adequately treated and may have caused depletion of oxygen and, in turn, the fish kills.

6.3 A second trail of pollution in Kompong Speu

6.3.1 Worrying waste water management in the concessions

Since the operationalization of the biofuel factory, it has been MH Ethanol's practice to transport waste water or sludge to its cassava plantations in Kompong Speu for use as fertilizer there.¹²⁰ While nutrient-rich waste water or sludge may be used as fertilizer, it needs to be treated and applied with certain care in order to avoid risks of toxic leaks or run-offs that could contaminate the soil or groundwater and create environmental or health hazards.¹²¹ But the harmful impact suffered by villagers in the company's concessional area suggests that MH Ethanol did not follow best practices in this respect.

MH Ethanol's practice unfolded in two stages. In an initial period, it applied the waste water directly to the soil in its concessions. According to local villagers, many company tanker trucks came regularly to the concessions to dump waste water on the land. Later, in 2008, the company dug out large ponds to store the waste water and manufacture fertilizer by mixing it with pig manure and other organic materials.¹²² The ponds were dug out directly into the ground and

118 Such scum was noticeably visible on the surface of a company pond situated next to the factory in December 2009. In contrast, in June 2010, after MH Bio-Energy had suspended its operations for a couple of months, the water had become clear. See pictures in Section III.6.2.3.

119 See for example *Water quality and pollution by oxygen consuming substances*, European Environment Agency, <http://www.eea.europa.eu/themes/water/status-and-monitoring/state-of-surface-waters/water-quality-and-pollution-by-oxygen>.

120 Shortly after the first pollution case in September 2008, a local village chief mentioned the company had started shipping excess waste water from the factory's pond to Kompong Speu. The Phnom Penh Post, 2nd September 2008. This practice is also recognized in MH Bio-Energy's CDM Project Design Document.

121 For example, a European Commission directive allows for the use of sludge as fertilizer but only if it is applied properly and does not impair the quality of the soil as well as surface and groundwater. See <http://ec.europa.eu/environment/waste/sludge/index.htm>

122 Interviews with local villagers, including company workers, February and June 2010. As of July 2010, the company had built at least six of those reservoirs on its concession.

Moving Beyond Misconceptions

MH Ethanol – Case study of a Korean agro-industrial investment in Cambodia

only surrounded with sandbags. There was no visible effort to isolate the waste water from the soil and to seal the ponds, raising concerns over possible soil and groundwater contamination.

MH Ethanol also dug canals around its concession land. In addition to demarcating their land, these were used to store waste water when the ponds were full. Once again, the canals were dug out directly into the ground, with no structure built to contain and isolate the waste water which putrefied in the sun.



Company tank truck dumping black waste water into one of the ponds in Kompong Speu, February 2010. The man on the right is a uniformed Cambodian soldier.

Moving Beyond Misconceptions

MH Ethanol – Case study of a Korean agro-industrial investment in Cambodia



One of the company ponds where the waste water is used to manufacture mounds of fertilizer (left) and detail of the waste water and fertilizer (right), June 2010.



Canals filled with waste water at varying levels of putrefaction on the concessions, February 2010.

Moving Beyond Misconceptions

MH Ethanol – Case study of a Korean agro-industrial investment in Cambodia

6.3.2 Environmental hazards and harmful health impact on villagers and animals

Inevitably, the profound inadequacy of the way MH Ethanol stored its waste water in Kompong Speu eventually resulted in serious problems for nearby villagers, some of whom had already suffered land loss to the concession. Initially, the spraying of waste water onto the company's land resulted in a pungent smell and the fumes apparently caused widespread ailments for local villagers, such as headaches and dizziness.

After the company built the ponds, the presence of unprotected waste water caused two major issues, the onset of an invasion of flies and the contamination of water bodies. Both created severe health hazards, which reached critical levels during the rainy season in 2009, as heavy rains prompted run-offs to the land and nearby lakes and streams used by villagers.

The invasion of flies

The invasion of flies started in summer 2008 and dramatically deteriorated people's quality of life. Villagers consistently described a black layer of flies covering everything in their house and assailing people. "There were flies everywhere and it made our life impossible. Our whole house was black because of the flies. We had to keep our children under a mosquito net, not to protect them from mosquitoes but from flies. Even cooking was difficult because flies would stick to the food," recalled Phary, a villager from Trapeang Saray. Her village was the worst affected by this problem due to its proximity with the company ponds. When they could afford it, people wore masks on their faces to protect themselves.



Children protected by a mosquito net during the day and flies near a child during a group discussion in Trapeang Saray, February 2010.

The people interviewed reported that coinciding with the onset of flies, the village was struck by

an outbreak of diarrhea and vomiting, which particularly affected children and elderly people.¹²³ There is therefore a strong suspicion that flies may have carried disease agents from the company ponds, where the waste water was mixed with pig manure and left in the open air.

Water contamination

In 2009, during the rainy season, as heavy rains caused the unsealed waste water to run off the land, local villagers started experiencing health problems for both themselves and their animals, especially their cows. They believed the nearby lakes and streams which they used to wash, drink and feed their animals had been contaminated. Villagers stopped drinking water from those sources as they blamed it for the outbreak of diarrhea and vomiting. They also reported getting rashes and itchy skin after bathing in the river or lake. “After washing in the stream near the village, my skin would get really itchy. The water smelled bad and the stench would stick to me and attract flies as soon as I got out,” recalled Phea, who lives in Trapeang Saray.¹²⁴



Sick cow and its calf (left) and detail of flies on the cow (right) in Trapeang Saray, February 2010. The cow fell sick a couple of days before the picture was taken, after it drank water from a nearby stream. It was no longer able to stand on its feet and was covered with flies. Its owner believed it would die shortly and had already lost two cows in a similar way over the previous six months.

Meanwhile, cows were struck by an epidemic of still births and sickness. Nearly all families in Trapeang Saray reportedly had that problem and at least 18 cows died in the village over the second half of 2009. Their owners believed the animals became sick after drinking contaminated

¹²³ Flies are commonly regarded as carriers of diseases as they may transmit bacteria and viruses from garbage or animal feces to human food, thereby causing diarrhea, dysentery, food poisoning and in some cases, cholera. See for example, *Flies Management Guidelines*, University of California, Integrated Pest Management Program, <http://www.ipm.ucdavis.edu/PMG/PESTNOTES/pn7457.html>

¹²⁴ Interview, February 2010.

Moving Beyond Misconceptions

MH Ethanol – Case study of a Korean agro-industrial investment in Cambodia

water from the nearby stream or lake. Their losses represented a significant blow to these rural poor families, as they could only sell the dead cows for 200,000-300,000 riels (about USD50-75), a tenth of the usual price of healthy cows (2-3 million riels, ie. about USD500-750).¹²⁵

6.3.3 Solution or respite?

According to the Treng Trayeung Commune Council, five villages suffered from problems due to water pollution (Koun Trom, Trapeang Saray, Chan Kiri, Dambouk Khpos, Sbaek Preal) – affecting a total population of over 2,500 people. The pungent smell from the concessions also affected three more villages, Kong Meas, Samaki and Teak Cheng. The problems were most prominent in Trapeang Saray and Samaki, due to their closeness to the company reservoirs.

Villagers sought help from their local authorities, and in response, the Treng Trayeung Commune Council facilitated a meeting on 23 April 2010 to discuss the issues caused by MH Agro-System's activities. It was attended by a company representative who recognized that the company used waste water from its Kandal factory as fertilizer on its concession land and this had created problems for local villagers. He also declared the company had ended this practice and the waste water was now mixed with milling, which was said to solve smell or health problems.¹²⁶

Field investigations in June 2010 confirmed that the company appeared to have stopped its practice of transporting waste water to Kompong Speu. Canals that were previously filled with waste water had nearly emptied, though waste water was still found in some canals and the ponds. It is likely the water was used to produce the mounds of fertilizer sitting next to the reservoirs. However, it is unclear whether this change actually resulted from a deliberate decision by MH Ethanol to end to a practice due to its harmful impact on local communities and the environment. Indeed, this coincided with the suspension of activities at the biofuel factory since March 2010, which meant it was no longer producing waste water. This raises the question of whether this is simply a temporary interruption due to production difficulties and if the company's waste water practice will resume once the factory starts operating again.

125 Interview with a Trapeang Saray villager, February 2010.

126 Minutes of Treng Trayeung Commune Council meeting on 23rd April 2010.



Traces of waste water in emptied canal (left) and canal still filled with waste water mixed with rain (right) on company land, June 2010.

Another factory pollution and fish kill... in Kompong Speu

Prior to the pollution issues described above, due to the improper storage of the biofuel factory's waste water on company land, villagers in Kompong Speu had already suffered harmful impacts from the activities of MH Ethanol's other factory, the starch factory it had set up in 2003.

As previously mentioned, the starch factory used to process raw cassava into flour. Although it reportedly had waste water treatment facilities, the plant seems to have caused a pollution problem in a similar fashion to its sister factory in Kandal. Whether it was a malfunction or a systemic inadequacy, waste water that was possibly untreated or insufficiently treated is suspected to have leaked from the starch factory in 2007 and contaminated the nearby stream and lake, causing a large fish kill. Villagers described how the water became covered with green scum and emitted a bad smell when the incident happened. Despite the loss suffered by local villagers, there was no compensation process.¹²⁷

The problem did not happen again, as soon afterwards, the starch factory closed its processing operations¹²⁸ and proceeded to drying and chopping cassava instead of turning it into flour.¹²⁹

¹²⁷ Interviews with local villagers, February 2010.

¹²⁸ MH Bio-Energy's CDM Project Design Document refers to its decision in January 2008 to stop operating the starch factory, though it does not provide any reason.

¹²⁹ Interviews with local villagers, February 2010.

6.4 Environmental obligations under the Cambodian law

6.4.1 Relevant legal framework

MH Ethanol's activities, especially its waste water management practices, clearly raise a number of concerns over their impact on the environment and local stakeholders. Cambodian legislation, although relatively weak in terms of environmental protection, includes provisions to protect the environment. The 1996 Law on Environmental Protection and Natural Resource Management (hereafter the Environment Law) aims to ensure “*the environment quality and public health by means of prevention, reduction and control of pollution*”, the “*rational and sustainable preservation, development, management and use of the natural resources of the Kingdom of Cambodia*”, and the suppression of “*those acts which may affect [the] environment.*”¹³⁰ The Environment Law provides for the MoE to collaborate with concerned ministries to ensure that owners or those responsible for factories or pollution sources install and use monitoring equipment and prepare and keep records of their activities for examination.¹³¹

The Environment Law requires the completion of an EIA for any project, either private or public, which should be reviewed by the MoE before an investment may be approved by the government.¹³² However, the law assumes that the project is in compliance if the MoE fails to respond within the prescribed time (only 30 days), a provision widely viewed with concern given the Ministry's limited resources. A Prakas (Proclamation) on “*General Guideline for Writing a Preliminary and Final Report on Environmental Impact Assessment*” was issued at the end of 2010. The Prakas provides that a project implementer must present a preliminary and a final report on EIA, which must include an Environmental Management Plan. The report must also include a description of the investment project, including waste management plans, existing resources, an assessment of the project's impact and mitigation measures “*to ensure a sustainable environment and to enhance livelihoods of affected communities*”.

In addition, the law states that public participation should be a part of the EIA process, and that local stakeholders' input and suggestions should be taken into account in the project approval process.¹³³ The Prakas provides that the EIA report should describe the outcomes of public participation, defined as “*the process of consultation in which stakeholders of the project participate.*” This includes relevant government authorities, company owners and representatives of affected communities and NGOs involved in the area.

After a project becomes active, the MoE is in charge of follow-up monitoring to ensure respect of the Environmental Management Plan agreed to by the project implementer.¹³⁴

Regarding the issue of water pollution, a 1999 Subdecree on Water Pollution Control further states that the owner or person responsible for the pollution source (for example, a factory) has

130 Article 1 of Environment Law.

131 Article 14 of Environment Law.

132 Articles 6 and 7 of Environment Law. Any investment project application must include with its feasibility report a preliminary EIA, to be reviewed within 30 days by the MoE who will make recommendations to relevant bodies. If the MoE considers that the project will have serious impact on natural resources, health or public welfare, a full EIA must then be submitted for review, which the MoE has 30 days to complete (Article 7).

133 Article 16 of Environment Law; Subdecree on EIA process.

134 Article 3 of Subdecree.

the responsibility to ensure its effluent treatment and discharge practices are in compliance with effluent and pollution load standards set in the Subdecree. They are also required to have adequate facilities and means to prevent the pollution of public water areas – such as rivers or lakes – when it may cause danger, and to install equipment to measure the flow, concentration and amount of pollutants contained in its effluent. The results of this monitoring should be recorded.¹³⁵ In case of non-compliance with those standards, the MoE may issue a written order requiring those responsible for the pollution source to take immediate corrective measures or to suspend its activities temporarily, if the activities have caused an adverse impact on human health and water quality.¹³⁶ This was the likely grounds for the inspection visit carried out by representatives of the MoE and MIME following the most severe pollution case caused by the biofuel factory in September 2009.

The MoE is conferred additional responsibilities by the Subdecree. In particular, the Ministry is in charge of monitoring the discharge or transportation of effluent from any pollution source, and regularly controlling and monitoring the situation of water pollution in public water areas.¹³⁷ In case of danger or harm to human life, health or biodiversity due to water pollution in public water areas, the MoE may notify the public about the danger and take measures to prevent the water pollution and restore the water quality.¹³⁸ In addition, the Ministry may conduct environmental inspections into such suspected violations or following up on complaints and inform concerned ministries and local authorities.¹³⁹ In case of a clear offense causing water pollution, an MoE inspector may take statements, collect evidence and decide on an administrative fine or forward the case to the competent agency, if there has been a serious impact on water, human or animal health, plants or public properties.¹⁴⁰ The MoE may take legal action against any breach of the Subdecree,¹⁴¹ while the Environment Law punishes an offense causing “*harm to physical health or human life, private or public property, environment or natural resources of the State*” with a fine of 10 to 50 million riels (about USD2,500 to USD12,500) and/or one to five years of prison, as well as potential reparation or compensation.¹⁴²

6.4.2 Compliance of MH Ethanol's activities with the legal environmental framework

As provided for in the legislation described above, MoE officials carried out investigations into

135 Article 23 of Subdecree on Water Pollution Control.

136 Article 24 of Subdecree on Water Pollution Control. Note the Environment Law also provides for the MoE to issue a written order to require the suspension or correction of offending activities and the immediate cleaning of the pollution (Article 20).

137 Articles 18 and 26 of Subdecree on Water Pollution Control. Other responsibilities include monitoring data relating to water test results and assessing the status of public water areas quality (Article 27) or publicly disseminating information on water quality and pollution of public water areas (Article 28). More generally, the Environment Law provides that the MoE will collaborate with other ministries to establish an inventory list of the sources, types and quantities of pollutants, waste and toxic or hazardous substances produced, used or disposed of in Cambodia (Article 12).

138 Article 29 of Subdecree on Water Pollution Control.

139 Articles 30, 31 and 32 of Subdecree on Water Pollution Control. Inspectors may interrogate those responsible for the pollution source, enter a pollution source site and take samples at discharge points, which may be analyzed in MoE laboratory (Articles 19 and 20).

140 Article 33 of Subdecree on Water Pollution Control.

141 Article 35 of Subdecree on Water Pollution Control.

142 Article 22 of Environment Law.

Moving Beyond Misconceptions

MH Ethanol – Case study of a Korean agro-industrial investment in Cambodia

pollution issues around MH Bio-Energy's biofuel factory in Kandal, in collaboration with other relevant administration officials, notably the FiA and local authorities. However, there appeared to be a notable lack of public information for both affected villagers and local authorities, who were not aware of the actions or decisions taken by the MoE. For instance, while Ministry officials carried out a factory inspection in September 2009 and drafted a report, the document was not made public and local stakeholders did not know what the findings or recommendations of the visit were, or what steps the company had decided or planned to take to correct the situation.

In addition, it is unclear if MoE officials also investigated the pollution issues that arose in Kompong Speu or if they were even aware of the company's waste disposal practices there. Under the Subdecree on Water Pollution, the discharge or transportation of waste water from a pollution source to other places must have received prior permission from the MoE.¹⁴³ The application for such permit must meet required technical guidelines determined by the MoE, failing which the permit may be revoked temporarily or definitely.¹⁴⁴ It is unknown whether MH Ethanol applied and received such permit for transporting waste water from its biofuel factory to its ELCs.

In any case, MH Ethanol's continuous history of pollution and its serious environmental and health impact point to a failure to control company acts affecting the environment, one of the main objectives of the Environment Law. It also raises questions about the company's environmental – and social – responsibility and whether MH Ethanol took appropriate measures to correct or avoid any harmful effect, such as a proper assessment of the impact of its activities and adoption of adequate mitigation measures. These are all requirements under the Cambodian law.

MH Ethanol stated that it completed an “*environmental impact assessment*” and submitted it to the MoE, which centered on whether the biofuel factory caused the pollution of Lake Samraong or not. It is however unclear what this assessment involved and whether it complied with EIA requirements under Cambodian law. The company also reported holding two public consultations in November 2006 and November 2008 as well as a “*sustainability audit*.” MH Ethanol acknowledged that the main comments received during the consultations focused on the Samraong Lake issue, but it concluded that its factory was not responsible for it.¹⁴⁵ There were no more details made public about these public consultations or the audit, which makes it impossible to ascertain the validity of the process itself. For instance, it is not clear who attended and how many local villagers joined, or if the consultations include a proper explanation of the company's plans and activities or information about the company's obligations and people's rights under the law. It is also unclear if any mitigation measures were planned by the company, and whether they were adequate.

Overall, while there are protective measures in the relevant environmental legal framework in Cambodia, it appears that it was not fully adhered to, which points to the need for improving the capacity of the MoE to fulfill the tasks it is conferred under the law. This is a common observation, noted by many observers, including experts, civil society and the Ministry itself, in informal discussions.

143 Article 10 of Subdecree on Water Pollution Control. However, its Article 12 allows for a potentially concerning exemption for new projects which EIA report has been approved.

144 Articles 14 and 17 of Subdecree on Water Pollution Control.

145 CDM Project Design Document, MH Bio-Energy.

IV. Conclusion: A struggling investment with a controversial record

MH Ethanol's investment was full of promise for the development of Cambodia and stood as a potential example of the green investment fiercely encouraged by the Korean administration. However, far from “*making new history*”, the Korean company failed to deliver on its promises: it struggled to perform as hoped while its activities were mired in controversial practices.

At the time of writing, less than two years after its inauguration, MH Ethanol's biofuel factory has been closed for half a year, largely missing its production and export targets. Meanwhile, its concessions have still not been fully converted to plantations, nearly ten years after they were granted. This hardly qualifies MH Ethanol's struggling investment as a business success, which brings into question how well the company was aware of and prepared to the challenges of doing business in Cambodia.

In addition, MH Ethanol failed to be a positive contribution to Cambodia's development, as the benefits it was expected to bring, such as job creation and increased demand for cassava, proved to be precarious and ultimately did not last as the company suspended its activities for most of 2010.

Also, MH Ethanol's activities have caused a range of social and environmental issues, with no or little remedy for the affected communities. The company's ELCs were fraught with land disputes which caused villagers to lose land, hence harming their livelihoods. As for its biofuel factory, its highly questionable waste management practice resulted in repeated pollution which created serious environmental and health hazards in both of its investment sites. The pollution also repeatedly hurt the livelihoods of fishermen living near the factory. MH Ethanol does not appear as a model of responsible company in light of its failure to address properly the issues it caused and its controversial association with the RCAF, who were responsible for intimidation and threats against local villagers in its concession area.

Overall, MH Ethanol appears as another example of poorly planned investment that failed to make a strong contribution to Cambodia's sustainable development. This case study has highlighted some of the major issues that arise with investment in the developing country, especially for agro-industrial ventures which are bound to have an impact on land and natural resources, and those depending on them. Such investment are likely to keep coming to Cambodia in the absence of responsible governance and proper implementation of legal protections for local stakeholders.

For investment to contribute genuinely to Cambodia's development, it is critically important that these governance issues are addressed properly in order to attract sound and responsible companies. The Korean government should play its part in this, especially as it has proclaimed its ambition to help the development of its Asian neighbors. To do so, it must ensure that Korean companies operate in a responsible way overseas, as laid out in the OECD Guidelines for Multinational Enterprises for instance. Otherwise, Korea's reputation stands to eventually suffer from failing investment like MH Ethanol.

