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# The Legal Analysis of Economic Land Concessions in Cambodia

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## Abstract

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### I . Background and Purpose

- Cambodia has made every effort to manage land since the collapse of the Khmer Rouge regime in 1979. Although the 1992 Land Law did not stipulate land concessions, the actual economic land concessions started remarkably in the mid 1990s. The failure to stipulate the law before providing economic land concessions made the competent authority unclear about the land size.
  
- This study is divided into three chapters. Firstly, it elaborates the legal framework on economic land concessions in which legal requirements for economic land concessions, all kinds of land subject to economic land concessions, and the competent authorities who have the right to sign contracts are stated in detail. Secondly, it shows about challenges of economic land concessions which is so far granted by the government. The social, economic and environmental impact has been the main focus of it. Lastly, it proposes some areas for improvement for the success of economic land concessions.

## II. Main Contents

- The concept of economic land concessions in Cambodia were just stipulated by law in 2001 while the real practice started earlier. The clear framework of economic land concessions is just stipulated in the 2001 Land Law. Following this law, the Sub-decree on Economic Land Concessions was adopted on December 27, 2005 to provide detailed procedures of economic land concessions. The main purpose of economic land concessions is a possible way to increase national economy through investing in state private land.
  
- Since the early inception of large scale economic land concessions in 1996, Cambodia has not remarkably enjoyed full benefit from the economic land concessions. In return, considerable economic land concessions granted continue to limit rural Cambodian's access to land and natural resources and to destroy the environment more seriously. Urgent government measures are necessary to be taken into account, because economic land concessions have continued to impact negatively on local community and indigenous people whose livelihoods depend upon land and forest resources.
  
- The failure to follow the 2001 Land Law and the Sub-decree on Economic Land Concessions has been a hindrance for country development. The contracting authority plays a very crucial role

in fulfilling all legal requirements. Moreover, it is necessary that the concessionaires know legal requirements before starting to invest in economic land concessions in Cambodia. It is also importantly noted that the economic land concessions should not be a part of public land. And the restriction of economic concession land size may have a bad impact on law. The law provides a crucial role for the contracting authority to make economic land concessions successful. Lastly, it is necessary that the court form a mechanism to control the implementation of economic land concession contracts.

### **III. Conclusion**

- Economic land concessions are a way to attract large investors to invest in land of Cambodia. Labor force can be well absorbed by the well-implemented policy of economic land concessions. However, failure to follow the legal process of economic land concessions deters large and potential companies from investing in Cambodia. Furthermore, encouraging unsolicited proposals may exacerbate the human rights and livelihoods of local and indigenous people. That is why the government finds a possible way to grant economic land concessions via unsolicited proposals.

➤ **Key Words :** Cambodia, Economic Land Concession, Land Law, Investment, land development

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## Chapter 1: Introduction

Cambodia has made every effort to manage land since the collapse of the Khmer Rouge regime in 1979. The introduction of solidarity group for farming witnessed that the Cambodian economic development would not depend on the policy of solidarity group for farming. There was then a need of land reform. The reform led to important milestones of land privatization in 1989 which provided a crucial right to land for Cambodian citizens to enjoy their way of life.

The early stage of land privatization under the government instruction in 1989, hereinafter the 1989 Government Instruction, restricted private ownership. Ownership right was recognized over only residential land with no more than 2000 square meters while possession right was recognized over agricultural land with no more than 5 hectares.<sup>1)</sup> In addition to these two kinds of rights, the government encouraged capable families to harvest in land through land concessions with the size more than 5 hectares.<sup>2)</sup> The instruction required that land concessions be in contract form signed by the Ministry of Agriculture. However, there was no record available to the public.

It should be noted that Cambodia promulgated the first Land Law in 1992, hereinafter the 1992 Land Law, making more problematic in interpretation. This law was silent about land size and land concessions. It remained ambiguous whether the owners or possessors could hold land more than the amount stipulated in the 1989 Government Instruction. The

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1) Instruction on the Implementation of Land Use and Management Policy, No.03SNN, June 3, 1989.

2) Instruction on the Implementation of Land Use and Management Policy, No.03SNN, June 3, 1989.

authority interpreted that the recognition of the size of land continued from 1989. As such, cadastral officers issued a land certificate with no more than 2000 square meters for residential land and no more than 5 hectares for agricultural land. However, the slow pace of land registration remained unknown the actual size of land possessed.

Although the 1992 Land Law did not stipulate land concessions, the actual economic land concessions started remarkably in the mid 1990s. The failure to stipulate the law before providing economic land concessions made the competent authority unclear about the land size. For example, on January 9, 1996, the 11,000 hectares of land was provided as an economic land concession to Mong Reththy Investment Cambodia Oil Palm Co., Ltd while on November 25, 1998 the government provided 60,200 hectares for Green Rich Co., Ltd. The unclear of land size allowed the competent authority to provide land for the concessionaires regardless of the size.

This article is divided into three chapters. Chapter 1 elaborates the legal framework on economic land concessions in which legal requirements for economic land concessions, all kinds of land subject to economic land concessions, and the competent authorities who have the right to sign contracts are stated in detail. Chapter 2 shows about challenges of economic land concessions which is so far granted by the government. The social, economic and environmental impact has been the main focus of chapter 2. The last chapter proposes some areas for improvement for the success of economic land concessions.

## Chapter 2: Legal Framework on Economic Land Concessions

The concept of economic land concessions in Cambodia were just stipulated by law in 2001 although the real practice started earlier. Since 1996, the government provided economic land concessions for companies with the amount of land size that was requested. For example, the government gave to the Green Rich Co., Ltd. for planting oil palm trees and acacia trees with the amount of 60,200 hectares on November 25, 1998 but on June 4, 2003, the government cancelled 42,200 hectares.<sup>3)</sup>

Understanding the Cambodian territorial administration is necessary before starting to discuss the detail of the research. Cambodia is currently divided into 23 provinces and one capital. However before 2008, Cambodia was divided into 21 provinces and 3 municipalities. The word province in this research refers to province and municipality before 2008, or province and capital since 2008.<sup>4)</sup> Similarly the word district refers to district and khan before 2008 or municipality, district and khan since 2008.

This chapter points out the legal aspect of Cambodian law with regard to economic land concession. It also mentions the type of state land which is possible for providing economic land concessions. The contracting authority for signing economic land concession contracts is also stated with the development process.

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3) Ministry of Agriculture, Forestry and Fisheries, <http://www.maff.gov.kh/en/> (last visited June 27, 2012).

4) Constitution of Cambodia, amended February 15, 2008; see also the Law on Administrative Management of the Capital, Provinces, Municipalities, Districts and Khans, No.NS/RKM/0508/017, May 26, 2008.

## 2.1. Legal Point of View

Before August 30, 2001, Cambodia provided economic land concessions with a large area of land size although there was no law concerning economic land concessions. Only concessions contracts were made legal through the signatures of competent authorities and companies. The duration, size and location of economic land concessions depend on the request of companies. For example, Phea Pimex Company received 315,028 hectares covering two provinces, Kampong Chhnang and Pursat provinces. Although this amount of land size amounts to 1.74% of the total land area, there is no legal base to say that providing this large land size is illegal.

The clear framework of economic land concessions is just stipulated in the 2001 Land Law. The definition of land concessions is stated as “a legal right established by a legal document issued under the discretion of the competent authority, given to any natural person or legal entity or group of persons to occupy the land and to exercise thereon the rights set forth by this law.”<sup>5)</sup> Land size and duration of the contract are then stipulated in law. Economic land concessions can be no more than 10,000 hectares with the duration of no more than 99 years. Following this law,<sup>6)</sup> the Sub-decree on Economic Land Concessions was adopted on December 27, 2005 to provide detailed procedures of economic land concessions.

The main purpose of economic land concessions is a possible way to increase national economy through investing in state private land. Since

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5) Land Law of Cambodia, No.NS/RKM/0801/14, August 30, 2012, art. 48 (hereinafter the 2001 Land Law).

6) The 2001 Land Law, art. 60.

Cambodia is an agrarian country, developing agriculture from extensive farming to intensive farming and agro-industry is necessary. Since state land covers around 80 percent of the total Cambodian land area in which 20% belongs to state private land,<sup>7)</sup> attracting investors to invest in land is important to generate work forces in rural areas. Therefore, providing economic land concessions is a way to increase state income.

It is remarkable that only administrative decision can revoke economic land concessions in case the concessionaires do not follow the procedures set up in the contract. A concessionaire also has the right to sue to the court if the court decision is not satisfactory. But the court may cancel the concessions if the concessionaire does not follow a particular clause stipulated in the contract.<sup>8)</sup> It is then a good way to make the concessionaire turn attention to fulfilling the procedures of application in the concession contract.

It should be noted that the concessionaire has privilege to protect the concession right fully. The 2001 Land Law states the protection of the rights of concessionaire in order to give confidence to investors.

The rights of a concessionaire on conceded land during the period of the concession are the rights attributed to an owner, save for the right to alienate. The concessionaire is entitled, in particular, to the protection of his rights by the competent authorities.

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7) UNDP, "Land and Human Development in Cambodia" (Discussion Paper No. 5, UNDP, Phnom Penh, 2007), 15; UNDP, *Cambodian Human Development Report 2007* (Phnom Penh: Ministry of Planning and UNDP, 2007, 42.

8) The 2001 Land Law, art. 55.

A concessionaire may defend the land which he has been given in concession, against encroachment or infringement, irrespective of its forms.<sup>9)</sup>

However, the second paragraph may lead to misunderstanding especially with regard to the phrase of “irrespective of its forms”, which may be interpreted as a concessionaire may defend the land irrespective of its form. As such, so far some companies use the security guards or soldiers<sup>10)</sup> to fight against the citizens resulting in injury or death. These actions cause harm to international image with regard to human rights. The first paragraph is appropriate for protecting concessionaires’ rights because the concessionaires have the competent authority to help protect them.

More remarkably, economic land concessions should not be transferred. New contracts are made between the competent authority and the new concessionaire if there is a change of concessionaire. However, in case concessionaires decease, the successors are able to continue the concession rights for the remaining period of economic land concessions.<sup>11)</sup>

The understanding of the characteristics of land which can be provided as economic land concessions is very important to make sure that economic land concessions do not affect surrounding people. The investors need to learn about the five criteria as follows:<sup>12)</sup>

1. The land being registered and classified as state private land in accordance with the Sub decree on State Land Management and the

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9) The 2001 Land Law, art. 56, para. 1 & 2.

10) Sarada Sang, “Economic Land Concessions” [http://www.rfa.org/khmer/event/land\\_concession-0526201000\\_1304.html](http://www.rfa.org/khmer/event/land_concession-0526201000_1304.html), last visited May 26, 2010.

11) The 2001 Land Law, art. 57.

12) Sub-decree on Economic Land Concessions, No. 146ANK/BK, December 27, 2005, art. 4 (hereinafter Sub-decree on Economic Land Concessions 2007).

Sub decree on Procedures for Establishing Cadastral Maps and Land Register or the Sub decree on Sporadic Registration.

2. Land use plan for the land being adopted by the Provincial-Municipal State Land Management Committee and the land use is consistent with the plan.
3. Environmental and social impact assessments having been completed with respect to the land use and development plan for economic land concession projects.
4. Land that has solutions for resettlement issues, in accordance with the existing legal framework and procedures. The Contracting Authority shall ensure that there will not be involuntary resettlement by lawful land holders and that access to private land shall be respected.
5. Land for which there have been public consultations, with regard to economic land concession projects or proposals, with territorial authorities and residents of the locality.

If the investors know well the criteria and urge the competent authority to fulfill all the requirements, the economic land concessions will not affect the surrounding people. The enjoyment of economic land concessions provides satisfaction for government, investors and local people.

Two main possible ways allow investors to invest in economic land concessions. Solicited proposals start from competent authority while the unsolicited proposals start from the request of companies. The former shows that the competent authority has been ready for the economic land concessions before calling for investment while the latter depends on the desires of investors. Solicited proposals require contracting authority to initiate economic land concession projects which necessarily include the



environmental impact assessment, social impact assessment and the preparation of other relevant documents for economic land concession proposals.<sup>13)</sup>

Technical secretariat plays an important role in granting economic land concessions through solicited proposals. The technical secretariat receives the sealed proposals submitted by the companies and opens them publicly in front of the proposers. Also, the technical secretariat defines only responsive proposals and provides recommendations for the contracting authority. Then the proposals are evaluated and listed by the contracting authority according to the ranking level of all responsive proposals and then send them to each proposer.<sup>14)</sup> After the classification of the ranking level, the contracting authority invites the top proposal to conciliate economic land concessions. If it fails, the following order will be subsequently invited to have conciliation until the agreement has been reached.

The other way to allow investors to invest in economic land concessions which has more priority is an unsolicited proposal. Within this proposal, the proposer provides the government specific advantages which include:<sup>15)</sup>

- the introduction of new technology
- exceptional linkages between social land concessions and economic land concessions
- exceptional access to processing or export markets

Investors who wish to invest in economic land concessions submit the proposals to council for development of Cambodia, or provincial investment

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13) Sub-decree on Economic Land Concessions 2007, art. 7.

14) Sub-decree on Economic Land Concessions 2007, art. 16.

15) Sub-decree on Economic Land Concessions 2007, art. 18.

## 2.2. Land Subject to Economic Land Concessions

sub-committee, or contracting authority. With this regard, contracting authority plays a crucial role in deciding all proposals and may require the investors to fulfill requirements if necessary. After receiving unsolicited proposals, the contracting authority is required to do the following tasks:<sup>16)</sup>

- a. The Contracting Authority shall send a copy of the detailed unsolicited proposal to the Technical Secretariat or to the Provincial-Municipal State Land Management Committee for review and recommendations.
- b. The Technical Secretariat or the Provincial-Municipal State Land Management Committee shall make recommendation to the Contracting Authority on whether to accept the proposal for Concession Contract negotiation...

In addition, the contracting authority is required to ensure the implementation of economic land concessions contracts.<sup>17)</sup> The follow-up of implementation of economic land concession contracts and frequent reports of the economic land concession management to the Ministry of Economy and Finance are necessary. The contracting authority has the right to sign the concession contract and to alter it.

## 2.2. Land Subject to Economic Land Concessions

Understanding clearly what types of land which can be provided as economic land concessions is crucial. As already mentioned above, there are five important criteria of economic land concessions that the investors need to learn. It is also necessary that the responsible authority fulfill the

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16) Sub-decree on Economic Land Concessions 2007, art. 21.

17) Sub-decree on Economic Land Concessions 2007, art. 25.

requirements of law in order to provide trust for investors. Failing to follow the legal procedures causes serious impact on environmental, social and economic development.

The unrevealed information of economic land concessions makes the civil society illusive about the amount of size. Civil society always shows negative view on economic land concessions. For instance, ADHOC reports that 225 companies received 2,276,349 hectares of economic concession land as of 2011.<sup>18)</sup> The data that ADHOC published came from the available existing government sources such as the website of Ministry of Agriculture, Forestry and Fisheries and from the Sub-decrees where public can access via the Royal Gazette. In the sub-decree, it is not clear how much land is used for economic land concessions because the government still gave rights to specific competent authority to allocate the land. But ADHOC did not receive that information therefore presumed that the total amount of land belongs to economic land concessions. Also, even a member of national assembly does not know how many hectares of land provided by the government. For example, in the Radio Free Asia Forum in 2007, a member of national assembly said that the economic concession land consists of more than one million hectares and the government just cancelled about 3 million hectares of land.<sup>19)</sup> Actually, the total of economic concession land was less than 1 million hectares.

In this research, the number of economic land concessions is relied on the website of Ministry of Agriculture, Forestry and Fisheries. It is noted that from the date that the government issued an order to postpone

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18) ADHOC, *The Report of Land and Housing Rights 2011* (Phnom Penh: ADHOC, March 2012), 13.

19) *Radio Free Asia Forum* (RFA radio broadcast November 2, 2007, evening session).

providing economic land concessions on May 7, 2012, the government received a lot of critics from civil society about the continuance of signing more economic land concession contracts. In that order, the following measures have been taken into account in order to ensure equity, strengthen and improve effectiveness of the management of economic land concessions:<sup>20)</sup>

1. Postpone economic land concessions temporarily;
2. Relevant ministries, institutions, and competent authorities shall highly effectively implement the policy and all criteria of government decisions on economic land concessions and turn attention to the implementation of economic land concession contracts especially the implementation in accordance with the policy of tiger-skin formula and the avoidance of the impact on community land and livelihoods of people in the focused economic land concessions provided actual benefit for the nation and people in the sustainable way;
3. For the companies that already received the permission principles from the government but do not follow legal procedures and contracts through clearing forest for sale without developing concession land, encroach more land, keeping land vacant for speculation, exploit wrongly from the contracts, grab community or citizen's land, the Royal Government will withdraw all economic concession land. All economic concession land withdrawn shall be managed by the state directly;

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20) Order on Measures to Strengthen and Enhance Efficiency of Economic Land Concession Management, No. 01BB, May 7, 2012.

4. For the economic land concessions that were already approved principally from the Royal Government before the issuance of this order shall continue to implement according to the legal principles and procedures.

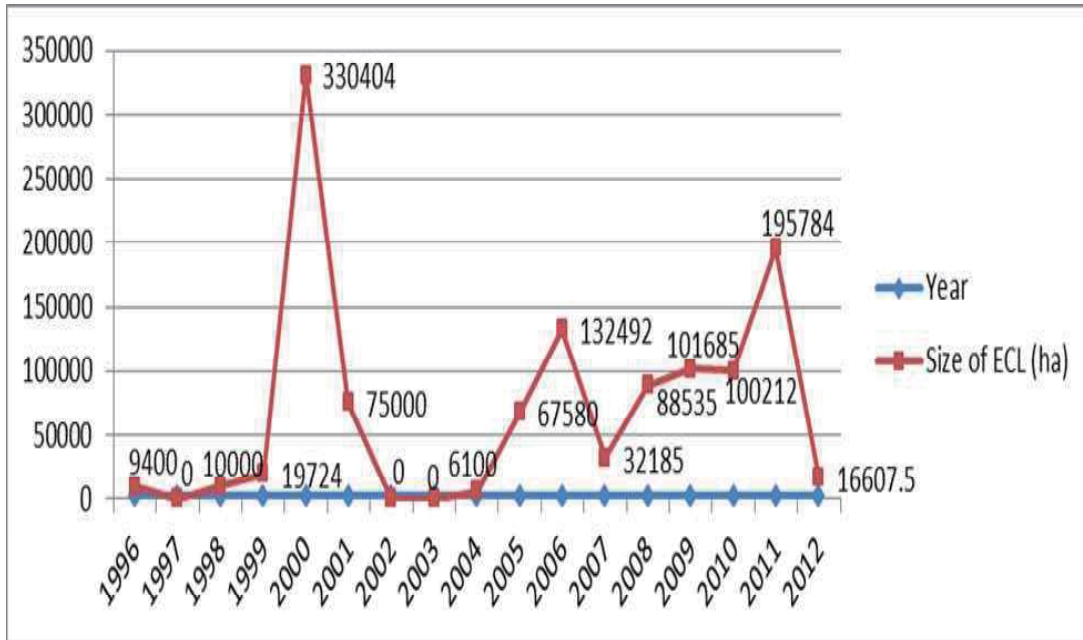
Only one month after the issuance of the above order, another company named China Great Cause, was provided economic land concessions with 5,980 hectares.<sup>21)</sup> Then there were debates about that issue among civil society activists because they asserted the government issued a useless decision to postpone economic land concessions with less than one month. Since then, it is the first time that the Ministry of Agriculture, Forestry and Fisheries uploaded the list of all economic land concessions. Although accuracy of the whole list may be impossible, it is somehow better than nothing. According to the list in the website, the total amount of economic land concessions consists of only 1,181,522 hectares, but the fact shows that the actual calculation is 35,038.5 hectares more than that provided by the website. Yet, the canceled contracts are not disclosed making doubtful among the public.

Registering land before providing economic land concessions makes clear that the land belongs to state private land or state public land. Starting from 1996 to June 2012, the government provided 1,216,560.5 hectares for 117 companies as economic land concessions(see figure 1 for more information).

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21) Ministry of Agriculture, Forestry and Fisheries, <http://www.maff.gov.kh/en/>(last visited June 27, 2012).

Figure 1: Size of economic concession land (ELC)<sup>22)</sup>



The above figure shows that economic land concessions were provided before the 2001 Land Law was promulgated. Consequently, some companies were given economic concession land more than 10,000 hectares. For instance, Phea Pimex Company was offered 315,028 hectares equivalent to 1.74 percent of the total land in the whole country. Yet, disputes between the surrounding people happened more frequently.

Remarkably, as of June 8, 2012 economic land concessions, are granted over 17 out of 24 provinces. The number of companies in remote provinces where indigenous people live contains more than that in any other provinces (see table 2 below). It may affect way of life of those indigenous people if the implementation has not been done in the right way. This is true that

22) Ministry of Agriculture, Forestry and Fisheries, <http://www.maff.gov.kh/en/> (last visited June 27, 2012).

unregistered land is affected by economic land concessions in case that the land provided for this purpose has not been registered. For the name of companies with the land size, see appendix A.

Table 1: Number of companies by provinces

No.	Provinces	Number of companies	Size of economic concession land (ha)
1	Battambang	1	5200
2	Kampong Cham	5	12070
3	Kampong Chhnang	1	176065
4	Kampong Speu	5	43181
5	Kampong Thom	9	61724.5
6	Kampot	3	22209
7	Koh Kong	4	34625
8	Kratie	28	216017
9	Mondul Kiri	15	111036
10	Odor Meanchey	3	19736

## 2.2. Land Subject to Economic Land Concessions

No.	Provinces	Number of companies	Size of economic concession land (ha)
11	Preah Vihear	10	79562
12	Pursat	1	141963
13	Ratana Kiri	14	73308
14	Siem Reap	4	26235
15	Sihanoukville	2	8800
16	Stung Treng	11	183629
17	Svay Rieng	1	1200
Total		117	1,216,560.5

(Source: Ministry of Agriculture, Forestry and Fisheries, <http://www.maff.gov.kh/en/>)

The table above shows that economic concession land exists much in remote provinces such as Mondul Kiri, Ratanak Kiri, Kratie, and Stung Treng. It is noted that there are a lot of indigenous communities in those provinces. According to the 2001 Land Law, indigenous community refers to “a group of people that resides in the territory of the Kingdom of Cambodia whose members manifest ethnic, social, cultural and economic unity and who practice a traditional lifestyle, and who cultivate the land in



their possession according to customary rules of collective use.”<sup>23)</sup> Indigenous community land is a collective ownership which requires to be registered in order to be fully protected. However, the registration is slow making the right of indigenous people ambiguous. For example, as of September 2010, the land of two indigenous communities in Mundul Kiri was under the registration process.<sup>24)</sup>

More remarkably, the land subject to economic land concessions is required to be registered. The registration of state private land before providing economic land concessions possibly avoids the disputes between the surrounding people and the concessionaire because the boundary is already clear. However, in actual practice the land provided as economic land concessions failed to be registered in advance thereby causing various social problems. Also, it becomes a serious issue due to the fact that much of land belonging to private ownership has not been registered. It should be noted that the registration power has been very often changed. In 1989, the local authority which includes district and provincial authority was entitled to issue land certificates. This power was taken to central authority that the Department of Cadastre in 1994. However, from 2000 until 2010, the provincial authorities have been gradually granted the power to issue land certificates, see Appendix B. Apparently, as of May 2012 only 2,085,753 land certificates<sup>25)</sup> out of the total estimated 12 million land parcels<sup>26)</sup> were

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23) The 2001 Land Law, art. 23.

24) Sarin Rath, *Report on Result Implementation for the First 9 months and Future Work*, No. DNS/ARB/RB (Phnom Penh: Ministry of Land Management, Urban Planning and Construction, October 26, 2010), hereinafter called the October 2010 Report on Result Implementation.

25) Sovann Sar, Letter of Land Administration of Sub-Sector Program, No. 419 LASSP, dated June 29, 2012.

26) Franz-Volker Müller and Daniela Harris, “Case Study Cambodia: Land Registration

issued and delivered to the landowners through systematic land registration. Yet, only 53,954 hectares, amounting to 36 certificates,<sup>27)</sup> out of 1.2 million hectares of economic land concessions were registered as of May 2012. Therefore, when the actual implementation of economic land concessions started, the land disputes always burst.

Provincial State Land Management Committee plays an important role in adopting the land use plan. The composition of Provincial State Land Management Committee consists of relevant important persons in the province as shown below:<sup>28)</sup>

- Provincial Governor
- Chief of Provincial Department of Land management, Urban Planning, Construction and Cadastre
- Chief of Provincial Military Sub-division
- Commissioner of Municipal Police
- Chief of Provincial Department of Economy and Finance
- Chief of Provincial Department of Agriculture, Forestry and Fisheries
- Chief of Provincial Department of Environment
- Chief of Provincial Department of Water Resources and Meteorology
- Chief of Provincial Department of Industry, Mine, and Energy
- Chief of Provincial Department of Public Work and Transportation
- Chief of Provincial Department of Culture and Fine Arts
- Chief of Provincial Department of Tourism

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and Its Effects on the Rural Population” (3rd European Forum on Rural Development, Palencia, Spain, March 29-April 1, 2011), 20.

27) The October 2010 Report on Result Implementation

28) Sub-decree on State Land Management, No. 118ANK/BK, October 7, 2005, art. 24.

- Chief of Provincial Department of Rural Development
- Relevant Head of Cantonment of Forest Administration
- General Secretary of Provincial Hall

The above composition shows that the Provincial State Land Management Committee is a local authority who can understand the needs of local people. However, in reality several factors have witnessed difficulties that this committee cannot work well. Slow pace of state land registration is one of the main challenges. For instance, as of September 2010, only 177,821 hectares of state land was registered.<sup>29)</sup> A lack of budget for local authority prevents any important planning because the local authority cannot plan the land registration therefore it is very hard for the Provincial State Land Management Committee to adopt the land use plan.

It should be noted that economic land concessions require that the land is already assessed environmental and social impact. In order to have assessment of environmental and social impact, budget is very necessary. Yet, the government is not able to provide the budget for responsible institutions to proceed with this work. As such, the land provided for economic land concessions has not already been assessed before a company starts asking for the concessions. In contrast, if the companies find the location suitable for their investment, they will apply for and spend their own budget to have the assessment of environmental and social impact. The budget from the company may then affect the quality of the assessment because of the time limitation and intention of the company owners.

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29) The October 2010 Report on Result Implementation.

## 2.2. Land Subject to Economic Land Concessions

The land that has the solutions for resettlement issues can be provided as economic land concessions. The government has to ensure that the resettlement will follow the legal procedures and there is no forced eviction. However, experience has witnessed that the compromise between the competent authority and affected people has been far to go. This consequence comes from the poor compensation which is not satisfied by the affected people. For example, Boeung Kak Lake people were forced to leave their residence since August 2008 when an investment company named the Shukaku Inc started filling water in with the sand<sup>30)</sup> although the resolution was not made. Of course, people living in Boeung Kak Lake are illegal according to the 2001 Land Law,<sup>31)</sup> the way that the government indulged people to stay until number reached 4,252 families amounting to 21,250 people<sup>32)</sup> has been a serious issue. There are no provisions to stipulate the responsibility and accountability of the competent authority with regard to resettlement and the punishment of the relevant authority in case failing to follow the law.

Interestingly, economic land concessions require that public consultations have been made. It is a good way that the land is clear from disputes when the economic land concessions are provided for companies. However, the fact has shown that the competent authority has hardly consulted with surrounding people. The survey of 314 respondents in five provinces shows that 62.42 percent of the respondents were not consulted while the 30.57 percent did not know, see figure below.

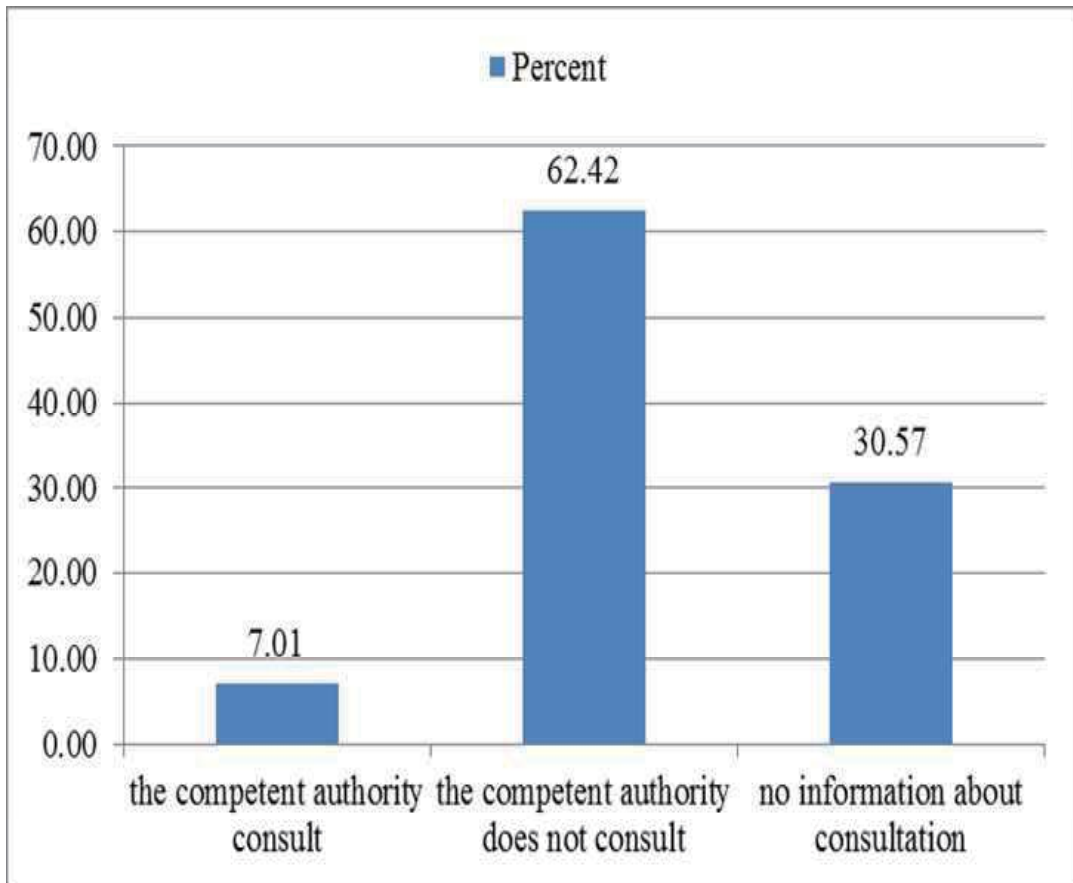
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30) <http://forum-habitat.org/site/en/forced-eviction-boeung-kak-lake-phnom-penh-cambodia> (last visited October 31, 2012).

31) The 2001 Land Law, arts. 16 & 18.

32) The Cambodian Human Rights and Development Association, *Human Rights Situation 2008* (Phnom Penh: The Cambodian Human Rights and Development Association (ADHOC), January 2009), 42.

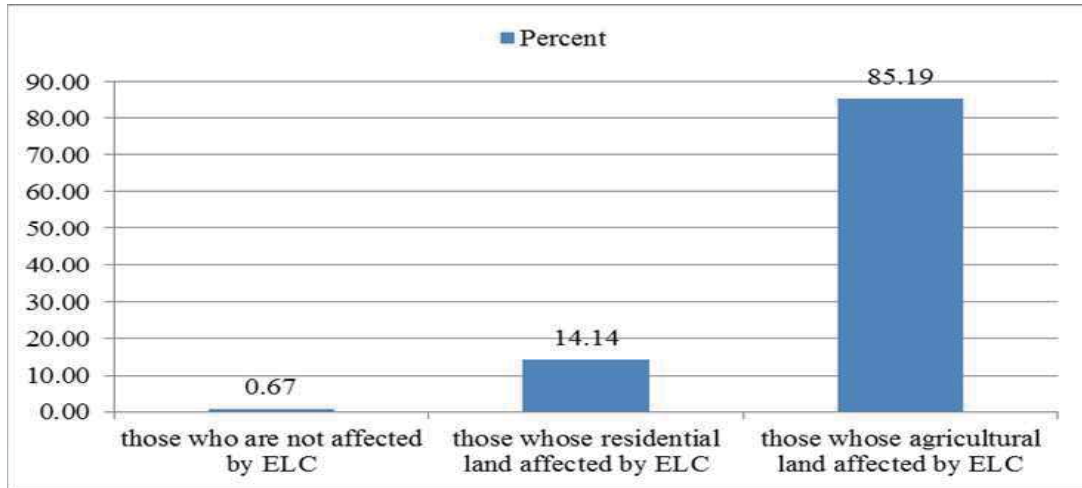
Figure 2: Consultation information between 314 respondents with competent authority in economic land concession areas



(Source: Survey in July-August 2012)

When the competent authority provides economic land concessions without consulting with surrounding people, disputes will be inevitable because the economic land concessions affect those people. According to the survey of 297 respondents, the economic land concessions have an impact on 99.33 percent of total respondents in which agricultural land is highly affected, see figure 3 below for the detail information.

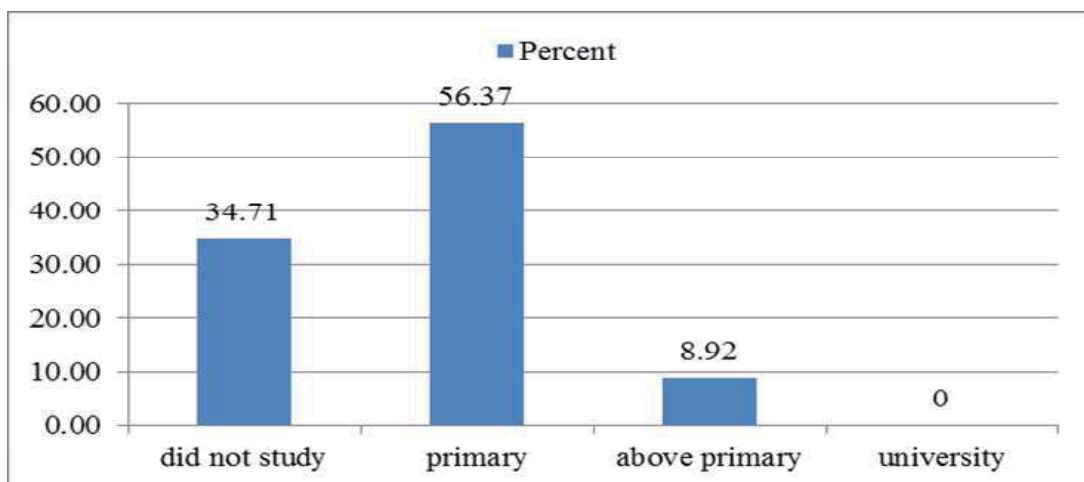
Figure 3: The impact of economic land concessions on 297 respondents



(Source: Survey in July-August 2012)

The survey shows that 84.13 percent of the total 315 respondents are farmers. So the impact on agricultural land will affect their daily life because the affected people do not have other jobs due to the fact that they are poorly educated, see figure 4 below.

Figure 4: Education of 314 respondents



(Source: Survey in July-August 2012)

Almost all of affected people did not continue their study beyond primary school making them unskilled and relying on only farming. When their agricultural land was taken, they would lose their job. Therefore, it is necessary for the government to consider protecting affected people from losing their land. A consultation with relevant people in advance before providing land for investors is a way to avoid the impact on the surrounding people.

### 2.3. Competent Authorities

Economic land concessions have been granted since 1996 when the 2001 Land Law was not promulgated. The government plays an important role in establishing contracts to provide economic land concessions. Only the Sub-decree on Economic Land Concessions which was adopted in December 2005 (hereinafter the 2005 Sub-decree on Economic Land Concessions), provides legal procedures for economic land concessions.

It is noted that the signature delegation to contracting authorities has been modified only less three years after the 2005 Sub-decree on Economic Land Concessions was issued. Before December 2005, the government allows provincial governors to sign the contracts of economic land concessions with the land size of less than 1000 hectares or the capital of less than 10,000,000,000 riel.<sup>33)</sup> However, the Ministry of Agriculture, Forestry and Fisheries had the right to sign the contracts with the land size of more than 1000 hectares or the capital of more than 10,000,000,000 riel.<sup>34)</sup> Just

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33) Sub-decree on Economic Land Concessions, No.146ANK/BK, December 27, 2005, art. 29, hereinafter called the 2005 Sub-decree on Economic Land Concessions. It is noted that 10,000,000,000 riel is equal to 2,5 million US dollars.

34) The 2005 Sub-decree on Economic Land Concessions, art. 29.

approximately 3 years after this practice, the government divested the provincial governors of the authorization to provide economic land concessions.<sup>35)</sup> The reasons of divesting of the right of provincial governors have not been widely known. However, it may be hard to manage economic land concessions if contracting authorities are available for various institutions.<sup>36)</sup> The reform of contracting authority is expected to work in a better way because only the Ministry of Agriculture, Forestry and Fisheries is responsible for signing contracts of economic land concessions.

It is questionable concerning the change of signature delegation to sign the contracts from provincial governors to Minister of Agriculture, Forestry and Industry in September 2008. Actually, provincial authority stays closer to the local people making it possible to easily know the local needs. However, various challenges occur while provincial governors grant economic land concessions with the land size of less than 1,000 hectares.<sup>37)</sup> The provincial authorities are not aware of the map possible for economic land concessions. Also a lack of human resources including technical, legal knowledge is a main obstacle. Consequently, the provincial governors providing economic land concessions overlap the protected areas or the previous economic land concessions. As a result, a lot of land disputes happened.

Technical secretariat plays a pivotal role in economic land concessions. This secretariat consisting of 8 members from various ministries has duties

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35) Sub-decree on the Amendment of the Sub-decree on Economic Land Concessions, No.131ANK/BK, September 15, 2008.

36) It is noted that reports of economic land concessions prepared by the Ministry of Agriculture, Forestry and Fisheries do not include any information of economic land concessions with less than 1,000 hectares.

37) Sakun Chay, Deputy Director, Department of Planning and Statistics, Ministry of Agriculture, Forestry, and Fisheries, personal interview, September 4, 2012.



to develop economic land concession projects and documents for economic land concessions through solicited proposals. The recommendations on all economic land concession proposals and on the review of existing economic land concessions are made by the technical secretariat in order to make smooth economic land concessions. The secretariat has to monitor the performance of economic land concession contracts. However, the Sub-decree on Economic Land Concessions does not say effectiveness of recommendations made by the secretariat. For example, if the secretariat finds that concession contracts do not follow the conditions stated in the contracts, the economic land concession companies may still continue the contracts unless the recommendation to cancel the contract is followed by the contracting authority. Moreover, the secretariat does not maintain all concession contracts thereby making it difficult to monitor the concession performance.<sup>38)</sup> Clear duties of technical secretariat are needed.

More remarkably, provincial state land management committees, which are led by provincial governors, are not entitled to have a main responsibility on economic land concessions. With regard to land concessions, it is known that these committees have duties to decide and monitor commune land use plans through commenting on economic land concession projects and cooperate in monitoring the performance. Another duty of these committees is to cooperate in organizing public consultations on land concession projects. Provincial authorities should be authorized to propose for cancellation of economic land concession contracts if it is clear that the contracts are not well performed. As such, so far, a lot of social land concessions<sup>39)</sup> have

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38) Special Representative of the Secretary-General for Human Rights in Cambodia, *Economic Land Concessions in Cambodia: A Human Rights Perspective* (Phnom Penh: United Nations, Cambodia Office of the High Commissioner for Human Rights, 2007), 7.

39) Ibid, 12; RFA radio, June 22, 2007; November 11, 12 & 23, 2007; March 9, 2009;

affected local and indigenous people and provincial authorities are not able to resolve the problems. The responsibilities and duties of provincial authorities to ensure effectiveness of economic land concessions are indeed necessarily stipulated in law.

Similarly to provincial authorities, district authorities are not vitally provided with responsibilities to contribute to effective economic land concessions. As stipulated in the Sub-decree on State Land Management, concerning economic land concessions, district state land working groups led by district governors have duties to organize consultations and commenting on land concession projects as well as cooperate in monitoring the performance of land concession projects. It is unclear how these authorities cooperate in monitoring. Thus, the monitoring of the performance of economic land concessions should be given to district authorities because these authorities stay closer to the concession land and local people. The government should therefore provide district authorities with more responsibilities for economic land concession approval in their district territory.

The voice of commune councils with regard to economic land concessions has not been much heard. The Sub-decree on Economic Land Concessions includes commune councils in economic land concession mechanisms but does not provide enough power to the approval of economic land concessions. Commune councils have duties to check and comment on detailed documents of solicited or unsolicited economic land concession proposals within 28 days of working days.<sup>40)</sup> The comments of commune councils

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May 18, 2009.

40) Sub-decree on Economic Land Concessions, No.146ANK/BK, December 27, 2005, art. 34.

will be considered by the contracting authority. These comments can be possibly refused by the contracting authority. Moreover, the commune councils are not involved in initiation of economic land concessions thereby leading to a lack of information concerning the impact of economic land concessions. Therefore, it is necessary to consider amending the Sub-decree on Economic Land Concessions in order to include more involvement of commune councils in economic land concessions.

It should be noted that the contracting authority was shortly reformed. From December 2005 to September 2008, the provincial governors had the right to sign the contract in which land size did not exceed 1,000 hectares or with capital of no more than 10,000 million US dollars while the Minister of Agriculture, Forestry and Fisheries had the right to sign the contract with the above criteria. However, from September 2008, the Minister of Agriculture, Forestry, and Fisheries has been entitled to sign all kinds of economic land concession contracts, see the table below for more information.

Table 2: Power to sign economic land concession contracts

Land size or capital	Contracting Authority to sign an economic land concession contract	
	Dec. 27, 2005 to Sept. 15, 2008	After Sept. 15, 2008
< 1,000 hectares or < 10,000,000,000 riels	Provincial Governor	Minister of Agriculture, Forestry, and Fisheries
≥ 1,000 hectares or ≥ 10,000,000,000 riels	Minister of Agriculture, Forestry, and Fisheries	Minister of Agriculture, Forestry, and Fisheries

The withdrawal power of signing contracts from the provincial authority remains curious. There is no explanation why the government allows only the Ministry of Agriculture, Forestry and Fisheries to sign economic land concession contracts. However, it is understandable that a lot of problems may arise from signing power of provincial authority.

The power to sign economic land concession contracts has been shared with the Ministry of Economy and Finance since 2010. The reason of sharing power to sign a concession contract between the Ministry of Land Management, Urban Planning and Construction and the Ministry of Economy and Finance has not been publicly known. It may arise from related interests. When the economic land concession contracts are involved with many government agencies, the procedure may slow down making investors reluctant to invest in land.

## Chapter 3: Challenges of Economic Land Concessions

A dream of contribution to economic growth through economic land concessions is far to come. Since the early inception of large scale economic land concessions in 1996, Cambodia has not remarkably enjoyed full benefit from the economic land concessions.<sup>41)</sup> In return, considerable economic land concessions granted continue to limit rural Cambodians' access to land and natural resources and to destroy the environment more seriously. Urgent government measures are necessary to be taken into account, because economic land concessions have continued to impact negatively on local community and indigenous people whose livelihoods depend upon land and forest resources. Environmental impact should be studied well and accounted by relevant authorities. Negative image from national and international communities towards economic land concessions also provokes a bad impact on government administration.

### 3.1. Social and Economic Impact

The impact of economic land concessions has continued to exacerbate the daily life of community living in surrounding concession areas. Land provided for economic land concessions have not carefully conducted research on every impact arising therefrom. Although the government tried to issue regulations stating that concession land is not to affect private ownership in the areas of investment projects,<sup>42)</sup> evidence has shown that

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41) World Bank, Cambodia Halving Poverty by 2015?: Poverty Assessment 2006, *Report No. 35213-KH* (World Bank, February 7, 2006), 75.

42) Instructive Circular on Providing Economic Land Concessions for Investment Plan with regard to the Implementation of Order No.02BB dated June 13, 2005 on Strengthening the Management of State Property, No.05SRNN, July 01, 2005.

tears and fears of local communities affected from the concessions have always existed. There are no data of all affected people concerning economic land concessions available at both government and NGOs' sides. However, a very apparent example of well-known largest economic concession land granted to Phea Pimex Company has affected a number of people living in Kampong Chhnang and Pursat Provinces. Protests from villagers have happened since the performance of the contract in 2000.<sup>43)</sup> On account of the protests, the company did not continue the work from 2005.<sup>44)</sup> Also, small economic land concession scale affected the livelihoods of people living at the concession areas.<sup>45)</sup> For instance, an economic land concession provided to C.I.V Development Agro Industry in Kratie Province affected villagers in two communes. Consequently, 334 families<sup>46)</sup> filed a complaint to Kratie Provincial Governor requesting to cancel the company contract.

According to the survey in 5 provinces conducted in July-August 2012, hereinafter the 2012 survey, it shows that when the economic land concessions start, it does not have much change in people livelihoods. For example, with 313 respondents, 90.10 percent of the total respondents are

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43) Supra note 85 at 62-67.

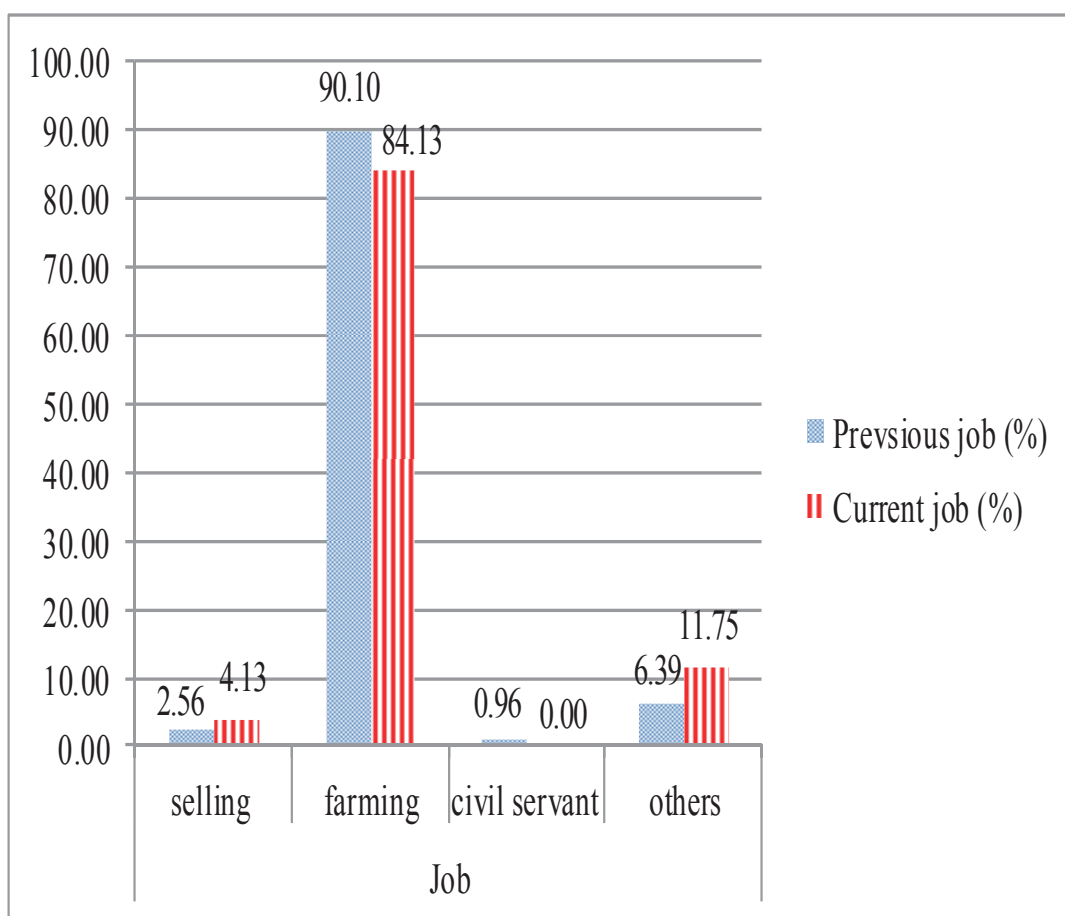
44) Ministry of Agriculture, Forestry and Fisheries, *Situation of Investment Companies with Economic Concession Land more than 1,000 hectares* (Phnom Penh, December 1, 2008).

45) *Information: Company Bought Land and Then Obtained a Possessory certificate While People Did not Know* (RFA radio broadcast May 18, 2009) (morning session, in Khmer Language); see also *Information: Land Disputes between Villagers and Khaou Chuly Development Company* (RFA radio broadcast June 19, 2009) (morning session, in Khmer language).

46) On August 28, 2008, 204 families of Srechar Commune in Snuol District of Kratie Province filed a complaint to Kratie Provincial Governor requesting to cancel the company contract. On September 9, 2008, 130 families of Pithnu Commune in the same district filed another complaint requesting to cancel the company contract. Their reasons of the complaint are they lose agricultural land, community forest land, grazing land, rotational cultivated land of indigenous people.

farmers. Moreover, 84.13 percent of the total 315 respondents are farmers, see figure 5 below. Therefore, the economic land concessions do not contribute greatly to livelihoods of local people.

Figure 5: The jobs of local people before and after the start of economic land concessions



(Source: survey in July-August 2012)

Economic land concessions have also had a serious impact on indigenous people<sup>47)</sup> although their rights to collective ownership of land are protected

47) LICADHO, *Land Grabbing and Poverty in Cambodia: The Myth of Development*, A LICADHO Report (Phnom Penh: LICADHO, May 2009), 19.

by the 2001 Land Law. The non-existence of public consultation before the approval of economic land concessions has resulted in various problems.<sup>48)</sup> The livelihoods of indigenous people depend profoundly on shifting agriculture and non-timber products, therefore land and forest are the central resources of their livelihoods. A lack of responsibilities of relevant authorities is the main cause of conflicts between indigenous people and concession companies. Usually, before signing a contract, a mission group is established in order to evaluate and collect data of land which belongs to local and indigenous people. However, the negative impact on those people still exists making more intricate complaints. For example, Khaou Chuly Development Company made a contract with the government on October 8, 2008 after various legal mechanisms had been made. Yet, conflicts resulted from the performance of this contract still happened.<sup>49)</sup>

The survey shows that the economic land concessions do not contribute much to work opportunity for local people. Among 302 respondents, only 8.28 percent say that they receive jobs from the concessions while 90.07 percent receives nothing, see figure 6 below for more information. Therefore, it is necessary for the government to consider about job opportunity when providing economic land concessions because it is one of the purposes of the 2005 Sub-decree on economic land concessions. If there is no work opportunity created by the economic land concessions, the ideas of providing economic land concessions are necessarily taken out.

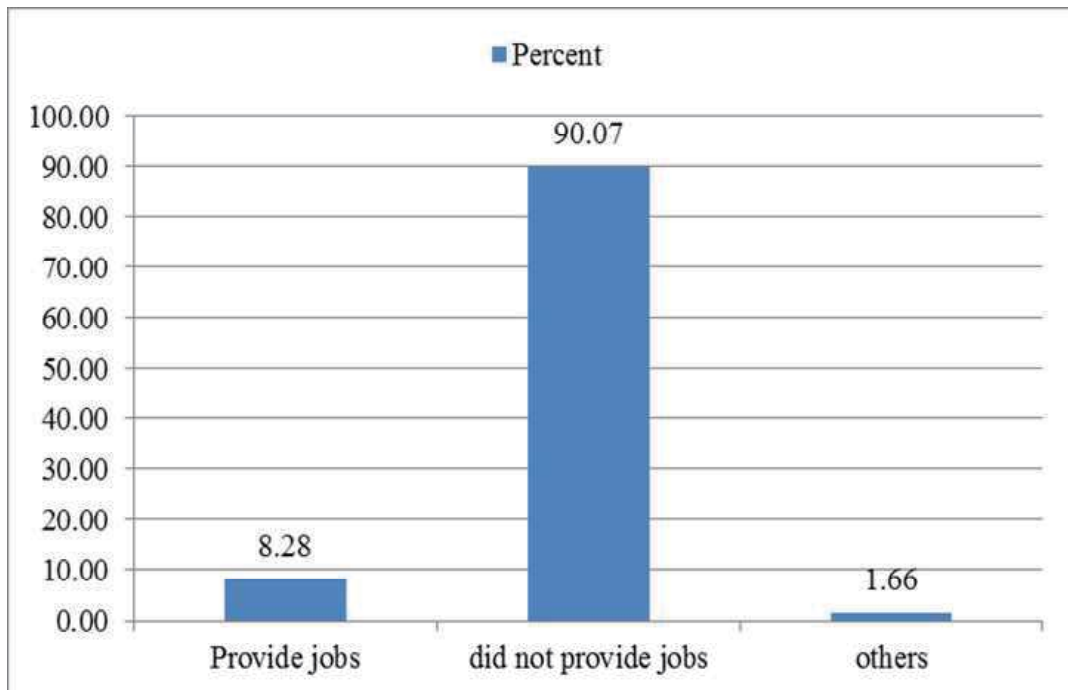
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48) UNDP Cambodia, *Land and Human Development in Cambodia*, Discussion Paper No. 5 (Phnom Penh: UNDP Cambodia, 2007), 14.

49) *Information: Land Disputes between Villagers and Khaou Chuly Development Company* (RFA radio broadcast June 19, 2009) (morning session, in Khmer language).



Figure 6: Job opportunity by economic land concessions



(Source: survey in July-August 2012)

Economic land concessions have also affected the government administration's image. As already mentioned, although legal procedures are stipulated, the actual practice has skipped some parts of the procedures. For example, the Sub-decree on Economic Land Concessions requires that detailed documents of unsolicited economic land concession proposals be included preliminary studies of environmental and social impacts, in actual practice however this requirement is not fulfilled.<sup>50)</sup> Remarkably, the 2001 Land Law requires that concessions be exploited within 12 months after the

50) Supra note 85 at 8. During the Government-Donor Coordination Committee Meeting on February 12, 2007, H.E. Sarun Chan, Minister of Agriculture, Forestry and Fisheries said that concession companies do not want to undertake environmental and social impact assessments prior to applying for economic land concessions because of the reason of time-consuming and expensive assessments.

date of concession approval otherwise the concessions will be void. However, many valid land concessions have remained inactive after 12 months.<sup>51)</sup> More noticeably, although the 2001 Land Law states that economic concession land shall not exceed 10,000 hectares, still after August 30, 2001 one concession company was provided 100,852 hectares of economic concession land.<sup>52)</sup> Uncommitted contracts lead to incomplete work of the companies because affected people's protests always happen. This situation consequently deters potential foreign investors from investing in Cambodia since they do not trust the government administration.

A typical example has shown the imperfect performance of economic land concession contracts. Khaou Chuly Development Company, which is a corporation, applied for 10,000 hectares of economic concession land in Pichreada District of Mondul Kiri Province on February 14, 2006 to the Ministry of Agriculture, Forestry and Fisheries. The company probably did not conduct research on the place proposed for economic land concessions because the Ministry of Environment reduced the size of area causing environmental impacts to 2,705 hectares. After the request of the Ministry of Environment, the Ministry of Agriculture, Forestry and Fisheries as the contracting authority worked much on the company's proposal. Mondul Kiri's Provincial Governor issued a mission order to assign a working group in order to study, investigate, assess, and get statistic of land area of

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51) Special Representative of the Secretary-General for Human Rights in Cambodia, *Economic Land Concessions in Cambodia: A Human Rights Perspective* (Phnom Penh: United Nations, Cambodia Office of the High Commissioner for Human Rights, 2007), 9.

52) Ministry of Agriculture, Forestry and Fisheries, *Situation of Investment Companies with Economic Concession Land more than 1,000 hectares* (Phnom Penh, December 1, 2008) (reporting that GREEN SEA INDUSTRY Co., Ltd. received 100,852 hectares from the Ministry of Agriculture, Forestry and Fisheries dated October 23, 2001).

cultivated field, rotational cultivated field, and graveyard which may be affected. This working group found that 319 hectares was affected among proposed 2,705 hectares. Finally, the Ministry of Agriculture, Forestry and Fisheries signed a contract with Khaou Chuly Development Company providing only 2,386 hectares of economic concession land on October 8, 2008. The contract stated that the company has to pay deposit US\$ 10 per hectare equaling US\$ 23,860 not later than 2 months after the contract approval. Yet, until December 31, 2008 the company did not pay deposit yet. Moreover, in June 2009 the company had a conflict with indigenous communities living in the commune where economic concession land was granted.<sup>53)</sup> This consequence necessarily reflects that all work done by the relevant authorities has not been clear and the government should therefore strengthen the administration well.

It is known that the government recognizes the social impact arising from economic land concessions. The government issued a remarkable order declaring to postpone providing economic land concessions from May 2012.<sup>54)</sup> To implement the order, the Prime Minister publicly announced for volunteer students to go to the provinces to help register the land which is affected by economic land concessions or other government projects. As a result, the government received 1,644 volunteer students until September 14, 2012 and also uses 1,668 cadastral staff to go along with the youth in order to fulfill technical work.<sup>55)</sup> Although it is not clear that how much the data

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53) Ibid; RFA, June 19, 2009.

54) Order on Measures to Strengthen and Enhance Efficiency of Economic Land Concession Management, No. 01BB, May 7, 2012.

55) Ministry to Land Management, Urban Planning and Construction, *Report on the Situation and the Output of the Implementation of Order No. 01 throughout the Country*, No.1127DNS/ASDP, September 14, 2012.

achieved by the youth is from affected economic concession land, the table below shows a great deal of thought.

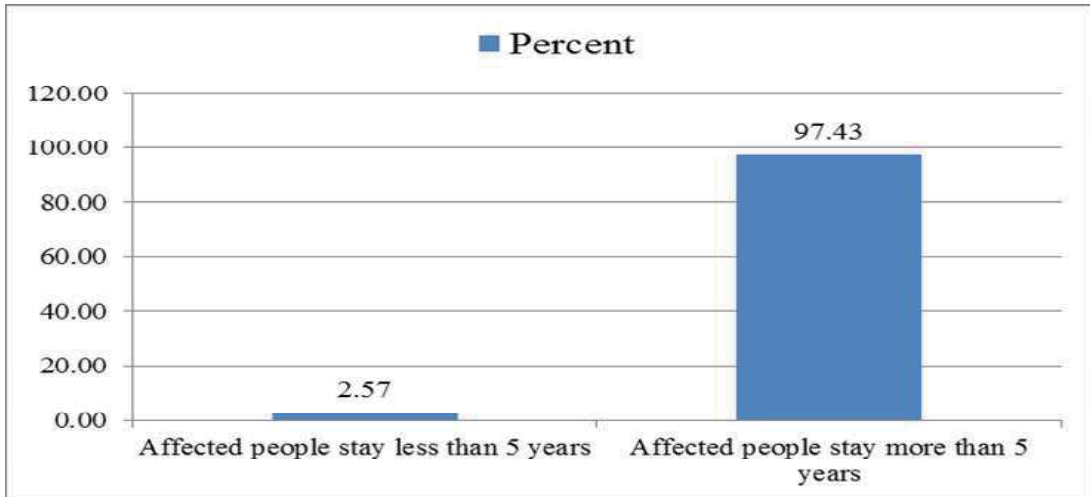
Table 3: Achievements by youth from July to December 1, 2012

	Land areas to be provided for affected people(ha)	Number of families applied for land certificates(families)	Number of land certificates issued and distributed to affected people (land certificates)
July-December 1, 2012	368,374	335,739	29,297

(Source: Ministry of Land Management, Urban Planning and Construction, December 1, 2012)

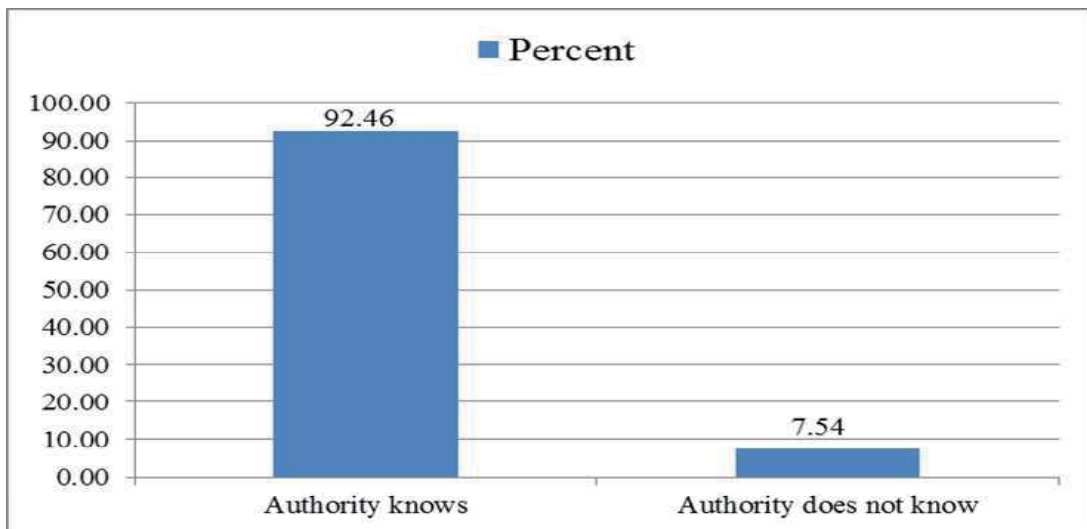
Although the data above do not show how much land size comes from economic land concessions, it is necessary that the government be careful of providing economic land concessions. According to the 2012 survey, 97.43 percent of the total 311 respondents said that they have stayed more than 5 years, see Figure 7 below for more information. Moreover, concerning the information that whether authority knows when they started locating, 92.46 percent said the authority knew during the inception of their allocation, see Figure 8.

Figure 7: Number of years which affected people possessed their land (311 respondents)



(Source: Survey in July-August 2012)

Figure 8: Awareness of authority when the affected people started living (305 respondents)

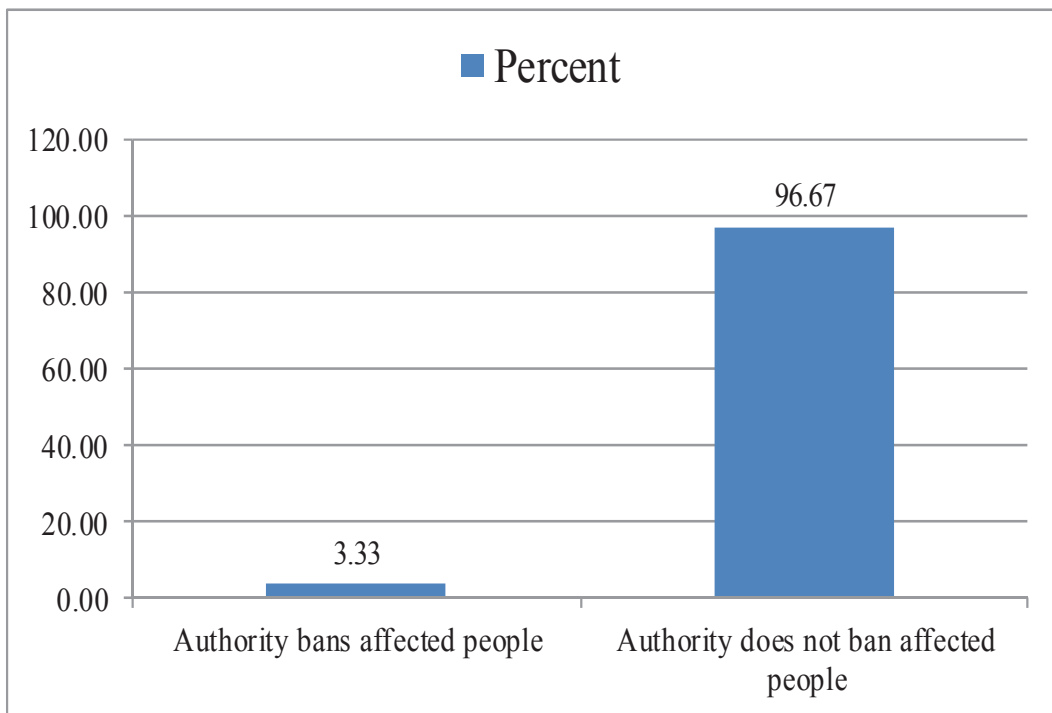


(Source: Survey in July-August 2012)

The figure above shows that the authority knows almost all of the affected people when they started living but does not take any measure to

ban them. As illiterate people, the affected people may think they have the right to stay in a vacant piece of land. The 2012 survey more interestingly shows that 96.67 percent of the total 300 respondents were not banned by the authority thereby they could stay more than 5 years, see figure below.

Figure 9: The measure taken by authority (300 respondents)



(Source: Survey in July-August 2012)

### 3.2. Environmental Impact

Remarkably, economic land concessions have caused a strong environmental impact. Various studies have witnessed that forest land is also affected by the concessions. Procedurally, it is required that the environmental impact with regard to economic concession land be evaluated.<sup>56)</sup> In so doing, it is

<sup>56)</sup> Sub-decree on Economic Land Concessions, No.146ANK/BK, December 27, 2005, art. 4.

expected that economic land concessions bring a sound investment and a sustainable development. Yet, experience has so far shown that economic land concessions have been frustrating. The concessions always cause deforestation, polluted rivers and underground water,<sup>57)</sup> toxic environmental waste.<sup>58)</sup> The use of pesticides and fertilizers in an inappropriate way is also a serious concern of environmental affect. Planting eucalyptus trees on a large scale economic concession land has caused severe ecological damages such as “the drying up of streams, lowering of underground water tables, soil acidification, reduction in local biological diversity and degradation of soil fertility.”<sup>59)</sup> Although the law says that economic concession land belongs to state private land which does not cover forest land and protected areas, economic concession land sometimes overlaps the prohibited land.<sup>60)</sup> It is, therefore, necessary that the government consider avoiding violation of law when providing economic land concessions.

More noticeably, the conversion of forest concessions to economic land concessions has benefitted companies. Some companies have been looking for forestry, and then when they already cut trees they would convert the land to economic land concessions. This is the possible way to allow companies to invest in land. However, in the actual practice the companies that are looking for only forest may not intent to follow the contracts due to two reasons-

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57) Special Representative of the Secretary-General for Human Rights in Cambodia, *Economic Land Concessions in Cambodia: A Human Rights Perspective* (Phnom Penh: United Nations, Cambodia Office of the High Commissioner for Human Rights, 2007), 14.

58) Special Representative of the Secretary-General for Human Rights in Cambodia, *Economic Land Concessions in Cambodia: A Human Rights Perspective* (Phnom Penh: United Nations, Cambodia Office of the High Commissioner for Human Rights, 2004), 32.

59) TERRA, “Eucalyptus Plantations Threaten Ecology of Cambodia’s Great Lake,” *Watershed*, vol. 8, July-October 2002, 6. See also *Ibid*, 32.

60) World Bank, *Cambodia Halving Poverty by 2015?: Poverty Assessment 2006, Report No. 35213-KH*, 75.

failing to fulfill the master plan or lacking the budget.<sup>61)</sup> Although, it is well-known that economic land concessions cover only state private land, still forest land which belongs to state public land is allowed for economic land concessions. For example, the data of state tax income from clearing forest in economic land concession areas provided by forest administration have contributed to a great deal of thought, see also the table below.

Table 4: State tax income from clearing forest in economic land concession areas

Year	State tax income from clearing forest (USD)
2010	3,552,634.39
2011	4,541,171.38

(Source: Ministry of Agriculture, Forestry and Fisheries, Questions and Answers with regard to Economic Land Concessions, [2012])

As stipulated in the 2001 Land Law, forest land is considered as state public land.<sup>62)</sup> In order to provide economic land concessions, it is necessary that the contracting authority make sure the land belongs to only state private land. However, if the land belongs to state public land, but it does not serve public interests anymore, the government can convert that land to state private land.<sup>63)</sup> Then the government can provide as economic land concessions. Yet, there are a lot of discussions concerning the public interests. It has been so far doubtful that the land still serves public interests, but the government just provides it for economic land concessions. The table above

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61) Sakun Chay, Deputy Director, Department of Planning and Statistics, Ministry of Agriculture, Forestry, and Fisheries, personal interview, September 4, 2012.

62) The 2001 Land Law, art. 15.

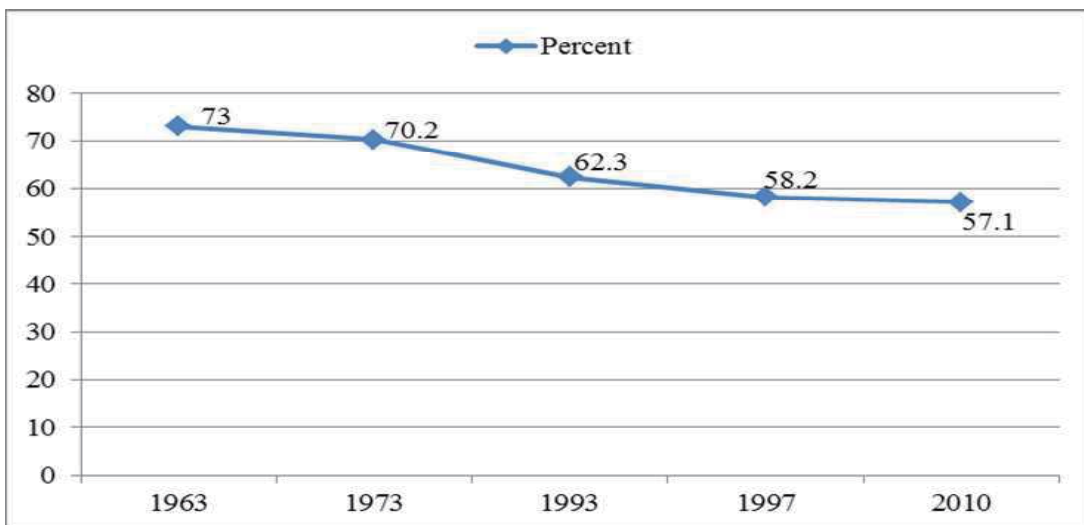
63) UNDP, *Cambodian Human Development Report 2007*, 15.



shows that the government provides forest land for economic land concessions that is why the companies cut trees before starting the agricultural projects. It therefore seems that economic land concessions just firstly intend to get tree cut.

Economic land concessions cause more serious environmental impact if no effective measures are taken into account. The pollution of environment and the destruction of forest will cause way of life. As a result of deforestation, the figure below shows the estimated data of forest from 1963 to 2010. Although the data are not accurate, it is known that forest is destroyed by various means in which an economic land concession is one.

Figure 10: Percentage of existing forest from 1963 to 2010<sup>64)</sup>



It is necessary that the government ensure all economic land concessions do not cause serious problems. Economic land concessions according to

64) Bruce McKenney and Tola Prom, *Natural Resources and Rural Livelihoods in Cambodia: A Baseline Assessment*, Working Paper No. 23 (Phnom Penh: Cambodia Development Resource Institute, December 2002), 76; Kingdom of Cambodia, *The National Report for Rio + 20: The Cambodian Government's Achievements and Future Directions in Sustainable Development* (2012), 80.

UNDP “have caused deforestation, obstructed local communities’ access to natural resources, polluted rivers and water tables, and uprooted the natural habitats of local and indigenous communities, they have not been efficient in generating incomes and employment.”<sup>65)</sup> The generation of state income and employment is the main purpose that the concessions must fulfill otherwise it is not the right time to provide economic land concessions.

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65) UNDP, “Land and Human Development in Cambodia” (Discussion Paper No. 5, UNDP, Phnom Penh, 2007), 14.

## Chapter 4: Areas for Improvement

### 4.1. Law Enforcement

The failure to follow the 2001 Land Law and the Sub-decree on Economic Land Concessions has been a hindrance for country development. The contracting authority plays a very crucial role in fulfilling all legal requirements. Moreover, it is necessary that the concessionaires know legal requirements before starting to invest in economic land concessions in Cambodia. Concerning the implementation of economic land concessions, the law clearly states:<sup>66)</sup>

Any land concession created for the purpose of industrial cultivation must be exploited within twelve months after issuance of the concession. If this is not complied with, the concession will be considered as cancelled.

Any failure to exploit lasting longer than 12 months, without proper justification, shall be grounds for cancellation of the concession.

All land concessions granted before this law has come into force that are not exploited within 12 months after this law comes into force shall be cancelled.

Any failure by a concessionaire to fulfill the conditions attached to the concession charges book shall be grounds to withdraw the concession.

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66) The 2001 Land Law, art. 62.

In the case of withdrawal of a concession, for whatever reason, the concessionaire is not entitled to claim any compensation for any damage.

However, in actual practice the concessionaires do not usually well implement in accordance with legal requirements and the contracts. It is not clear that all economic concession land or just a part of it is required to be exploited within 12 months. In the report of the Ministry of Agriculture, Forestry and Fisheries in 2008, most of companies did not act as stipulated in the contracts. The Ministry only issued the warning letters to companies in order to force them to implement the contract. Yet, indulging this situation makes the public doubtful why the government still permits the companies to continue their contracts. It may be possible to get known that the companies have enough reasons to postpone the implementation or to work slowly, but the problem why the government always allows almost all of companies to be in such a situation. Therefore, it is necessary that the government carefully check the possibility of the companies clearly before deciding to provide economic land concessions.

It is also importantly noted that the economic land concessions should not be a part of public land. The forbidden part of public land is clearly stated in the law such as “roadways or transportation ways or sidewalks or their borders and the ground necessary for their maintenance, nor to waterways, pools, ponds, lakes and water reserves to be used by the people in their daily lives.”<sup>67)</sup> However the economic land concessions sometimes violate the state public land. The poor accountability of contracting authority should be carefully controlled.

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67) The 2001 Land Law, art. 58, para. 2.

The restriction of economic concession land size may have a bad impact on law. As already mentioned, the importance of providing the economic land concessions is to gain economic growth through attracting investments and generating work opportunity. The issue to be considered is how economic land concessions work not how much each investor can get. However, the law stipulates that “[t]he issuance of land concession certificates on several places relating to surface areas that are greater than those authorized by the first paragraph [10,000 hectares] in favor of one specific person or several legal entities controlled by the same natural persons is prohibited.” But in reality, the government provided 105,852 hectares just a few months after the 2001 Land Law bans.<sup>68)</sup>

The law provides a crucial role for the contracting authority to make economic land concessions successful. The contracting authority can issue an administrative decision to cancel the economic land concessions if the companies violate the law. With this regard, the 2001 Land Law stipulates clearly that:

A land concession is revocable through administrative decision when its legal requirements are not complied with. In this case, the concessionaire is entitled to file a claim in court in compliance with the procedures provided by law

A court may cancel the concession if the concessionaire does not comply with specific clauses specified in the contract.<sup>69)</sup>

The court also plays a crucial role in economic land concessions. However, the fact shows that the court stays instill with the failure to implement the

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68) The 2001 Land Law, art. 59.

69) The 2001 Land Law, art. 55.

concession contracts. Therefore, it is necessary that the court form a mechanism to control the implementation of economic land concession contracts. The continuance of companies that do not respect the law gives a very bad impact on the very potential companies that are willing to invest in Cambodia. Because they may think that without following the rule of law, their investment will be unsustainable.

## 4.2. Investment Incentives

Economic land concessions provide a good opportunity for investors to invest in state private land in Cambodia. With this regard, incentives are important to encourage investors to look for green growth investment. Interestingly, Cambodia also offers incentives for investors as below:<sup>70)</sup>

Incentives and privileges shall consist of the followings:

1. A corporate tax rate of 9 percent except tax rate on the exploration and exploitation of natural resources, timber, oil, mines, gold, and precious stones which shall be set in separate laws.
2. A corporate tax exemption of up to 8 years depending on the characteristics of the investment and the priority which shall be mentioned in a sub-decree. Corporate tax exemption shall take effect beginning from the year the project derives its first profit. A 5-year loss-carried forward shall be allowed. In the case that profits are reinvested in the country, such profits shall be exempted from all corporate tax.

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70) Law on Investment of Cambodia, No. 03/NS/94, August 5, 1994, art. 14 (hereinafter called the 1994 Investment Law).

3. Non-taxation on the distribution of dividends or profits or proceeds of investments, whether transferred abroad or distributed in the country.
4. 100 percent import duties exemption on construction materials, means of production, equipment, intermediate goods, raw materials and spare parts shall fit one of the following conditions:
  - a. An export-oriented project with a minimum of 80 percent of the production set apart for export,
  - b. Located in a designated Special Promotion Zone (SPZ) listed in a development priority list issued by the Council for the Development of Cambodia;
  - c. Tourism industry;
  - d. Labor-intensive industry, processing industry, agro-industry; and
  - e. Physical infrastructure and energy industry.

These 100 percent exemption of duties and taxes mentioned above shall be in effect according to the terms of the agreement or specification document of the investment projects which will produce goods for export in minimum of 80 percent of overall productivities as stipulated in the above point (4)a and for investment projects located in Special Promotion Zone (SPZ) as in (4)b.

Besides the kinds of investment projects in the above points (4)a and (4)b the 100 percent exemption of duties and taxes shall only be authorized for the period of constructing enterprises, factories, buildings and the production operation of the first year.

5. 100 percent exemption of tax of export products;
6. the permission to bring into the Kingdom of Cambodia foreign nationals who are:

- Management personnel and experts
- Technical personnel
- Skilled workers
- Spouses and dependents of the above persons as authorized by the Council for the Development of Cambodia and in compliance with the immigration and labor laws.

The above incentives are good strategies for the government to attract investors to invest in Cambodia. However, it should be noted that the incentives cannot be transferred to other third parties.<sup>71)</sup> Yet, besides the incentives mentioned above, local investors who wish to invest in land of the same commune are necessary to provide extra incentives. The extra incentives should include the priority of investment permission and extension of tax exemption. By so doing, it will prevent migration from rural areas to urban areas or other countries since work opportunities are available in their homeland.

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71) The 1994 Investment Law, art. 15.



## Chapter 5: Conclusion

Economic land concessions are a way to attract large investors to invest in land of Cambodia. The small amount of rental fee, five dollars per hectares, can be a focus for investors to start their business in agro-industry and intensified agriculture in Cambodia. More attractively, the extension of five years before charging five dollars a year per hectare allow the companies to start up their business well before contributing to the state. Also, a large amount of land size until 10,000 hectare is suitable for big companies to introduce a modern technology such as food processing factories or other types of factories. Moreover, the period of economic land concessions with the maximum of 99 years makes the investors as comfortable as the owners.

Labor force can be well absorbed by the well-implemented policy of economic land concessions. As already mentioned, the total amount of 1,216,560.5 hectares has been granted as economic land concessions may have a great deal of offering a lot of jobs. With this regard, a foreign experience has shown that the Malaysian palm oil with around 3,88 million hectares provides more than a half million workers<sup>72)</sup> meaning Cambodia can provide around 200,000 jobs for rural people through economic land concessions. However, there are no data of worker statistics available so far.

Failure to follow the legal process of economic land concessions deters large and potential companies from investing in Cambodia. It is apparent that granting more than 10,000 hectares of land after the 2001 Land Law came into effect is illegal although the government approved because if the

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72) <http://www.mpoc.org.pk/page/oil-palm-tree>, last visited November 18, 2012.

court is active, the contract will be possibly cancelled. Then the companies will lose their interests which the government cannot protect. Therefore, the good companies will not try to put their investment in such a very hazardous situation. This is true that recently the government decided to withdraw the land already provided as economic land concessions for those who have already occupied.<sup>73)</sup> It shows that the land provided as economic land concessions is not registered yet that is why the granting of the land violates local people's land.

Encouraging unsolicited proposals may exacerbate the human rights and livelihoods of local and indigenous people. It is understandable that the government faces difficulties in proceeding with solicited proposals since there is a lack of budget. That is why the government finds a possible way to grant economic land concessions via unsolicited proposals. The latter permits a company to look for a possibility of investing in land and then applies through the Council Development for Cambodia or the Ministry of Agriculture, Forestry and Fisheries. Then the budget of environmental assessment and other relevant requirements can be obtained from the investors making the assessment be done in hurry. Experience has witnessed that when doing things in a short period of time, the result cannot be satisfactory. For example, in Pursat Province where the social land concessions took place, building houses for social land concessionaires has very poor quality because of the work done in a short period of time.<sup>74)</sup> Also, a seemingly proper assessment of the economic land concession provided for

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73) After the government issued the order on Measures to Strengthen and Enhance Efficiency of Economic Land Concession Management on May 7, 2012, the youth are voluntary to help cadastral officers to issue land certificates to those are mainly affected by economic land concessions.

74) RFA radio, July 1, 2012.

Khaou Chuly Development Company in Mundul Kiri province still violate 319 hectares of surrounding people. This shows that under unsolicited proposals, the improper assessment available thereby affecting the way of life of local community.

## Appendix A

### Economic Land Concessions as of June 8, 2012

No	Name of Company	Province	Date of Contract Signed	Hectares
1	AGRO-STAR	Kampong Cham	January 9, 1996	2400
2	Mong Reththy Investment Cambodia Oil Palm Co., Ltd.	Sihanoukville	January 9, 1996	7000
3	The Green Rich Co., Ltd.	Koh Kong	November 25, 1998	10000
4	Ratana Visal Development Co., Ltd.	Pursat	October 15, 1999	3000
5	Cassava Starch Production Co., Ltd.	Stung Treng	November 13, 1999	7400
6	C J Cambodia Corporation Co., Ltd.	Kampong Speu	November 15, 1999	3000
7	Men Sarun Friendship & Rama Khmer	Ratanak Kiri	December 21, 1999	6324
8	Phea Pimex Co., Ltd.	Pursat & Kampong Chhnang	January 8, 2000	315028
9	Mong Reththy Investment Cassava Cambodia	Sihanoukville	March 18, 2000	1800
10	T T Y	Kampong Cham	May 2, 2000	1070
11	Uk Khun Industrial Plant Development	Kampong Speu	May 25, 2000	12506
6	C J Cambodia Corporation Co., Ltd.	Kampong Speu	April 20, 2001	5000

## Appendix A

No	Name of Company	Province	Date of Contract Signed	Hectares
12	Green Sea Industry Co., Ltd changed name to Green Sea Agricultral Co. Ltd	Stung Treng	October 23, 2001	100852
13	Golden Land Development Co., Ltd	Kampong Speu	March 5, 2004	4900
14	VANNMA IMPORT EXPORT Co., LTD	Kampong Cham	September 29, 2004	1200
15	FIRST BIO-TECH AGRICULTURAL (CAMBODIA) Co., Ltd	Kampot	April 21, 2005	10000
16	WORLD TRISTAR ENTERTANMENT (CAMBODIA) Co. Ltd	Kampot	April 21, 2005	9800
17	An Mardi Group changed name to Kol Veasna Investment Co., Ltd.	Kampong Thom	May 9, 2005	9863
18	G.G WORLD GROUP (CAMBODIA) DEVELOPMENT, Ltd	Stung Treng	May 18, 2005	5000
19	SOPHEAK NIKA INVESTMENT AGRO-INDUSTRIAL PLANTS Co., Ltd	Stung Treng	August 8, 2005	10000
20	SAL SOPHEA PEANICH Co., Ltd	Stung Treng	August 8, 2005	9917
21	Mieng Ly Heng Investment	Kampong Cham	November 8, 2005	3000
22	WUZHISHAN L.S GROUP Co., Ltd	Mondul Kiri	December 30, 2005	10000

No	Name of Company	Province	Date of Contract Signed	Hectares
23	GRAND LAND AGRICULTURE DEVELOPMENT (CAMBODIA) CO., Ltd	Stung Treng	January 23, 2006	9854
24	Siv Guek Investment	Stung Treng	January 24, 2006	10000
25	Phou Mady Investment Group	Stung Treng	January 24, 2006	9854
26	Sok Heng Company Limited	Stung Treng	January 27, 2006	6552
27	Men Sarun Import Export	Kampong Cham	February 10, 2006	4400
28	ASIA WORLD AGRICULTURAL DEVELOPMENT (CAMBODIA) Co., Ltd	Kratie	March 15, 2006	10000
29	GREEN ISLAND AGRICULTURAL DEVELOPMENT (CAMBODIA) Co., Ltd	Kratie	March 15, 2006	9583
30	Mean Rithy Co., Ltd. changed name to Pheuk Va Kampong Thom Rubber Development	Kampong Thom	March 16, 2006	9784
31	H.M.H Co., Ltd	Kampong Thom	March 17, 2006	5914
32	Samrong Rubber Industries Pte. Ltd.	Siem Reap	May 12, 2006	9658
33	Koh Kong Plantation Company Limited	Koh Kong	August 2, 2006	9700
34	Koh Kong Sugar Industry Company Ltd.	Koh Kong	August 2, 2006	9400

## Appendix A

No	Name of Company	Province	Date of Contract Signed	Hectares
35	GREAT ASSET AGRICULTURAL DEVELOPMENT (Cambodia) LIMITED	Kratie	August 11, 2006	8985
36	GREAT WONDER AGRICULTURAL DEVELOPMENT (Cambodia) LIMITED	Kratie	August 11, 2006	9231
37	Kain Limited	Siem Reap	September 29, 2006	4535
38	Sophorn Theary Peanich Co., Ltd.	Siem Reap	September 29, 2006	5042
39	CAMAGRA INVESTMENT Co., Ltd	Koh Kong	January 17, 2007	5525
40	Tan Bien Kampong Thom Rubber Development	Kampong Thom	July 18, 2007	8100
41	Do Toc Sai Gon -Binh Phuoc (SBK)	Kratie	July 18, 2007	6436
42	Chea Chanrith Development	Ratanak Kiri	November 12, 2007	5124
43	Gold Foison (Cambodia) A/C Import Export & Construction, fully contracted March 1, 2011	Kampong Thom	November 13, 2007	7000
44	Kovyphama Co., Ltd.	Mondul Kiri	February 17, 2008	5345
45	Angkor Sugar	Odor Meanchey	February 24, 2008	6523
46	River Sugar Cane	Odor Meanchey	February 24, 2008	6618

No	Name of Company	Province	Date of Contract Signed	Hectares
47	(Cambodia) Cane and Sugar Valley	Odor Meanchey	February 24, 2008	6595
48	Phu Rieng Kratie Rubber Development	Kratie	July 4, 2008	6434
49	Dong Nai Kratie Development	Kratie	July 4, 2008	2502
50	Dong Phu Kratie Development	Kratie	July 4, 2008	2349
51	Dalak Mondul Kiri Rubber Development	Mondul Kiri	July 4, 2008	4162
52	Growest Building Trading	Kratie	July 17, 2008	9996
53	Khaou Chuly Development (KCD) changed to Varanasy (April 3, 2009)	Mondul Kiri	October 8, 2008	2346
54	(Cambodia) Tong Min Group Engineering	Kratie	December 8, 2008	7465
55	Seang Long Green Land Investment (Cambodia) Co., Ltd.	Mondul Kiri	December 8, 2008	7000
56	Land and Developing (Cambodia)	Mondul Kiri	December 8, 2008	7000
57	Agri-Industry Crops Development (Cambodia)	Kratie	December 8, 2008	7000
58	Crops & Land Development (Cambodia)	Kratie	December 8, 2008	7200
59	D.T.C (Group)	Mondul Kiri	March 18, 2009	4000
60	Unigreen Resource Co., Ltd.	Mondul Kiri	April 3, 2009	8000
61	Rath Sambath	Battambang	April 3, 2009	5200
62	Mega Star Investment and Forestry Development	Kratie	July 31, 2009	8000



Appendix A

No	Name of Company	Province	Date of Contract Signed	Hectares
63	Mega Star Produce & Import Export	Kratie	July 31, 2009	8000
64	Heng Brother	Ratanak Kiri	July 31, 2009	2361
65	Kiri Development	Ratanak Kiri	July 31, 2009	807
66	Thy Nga Development	Preah Vihea	September 25, 2009	6060
67	Hong An Mang Yang K	Ratanak Kiri	September 25, 2009	6891
68	BNA (Cam) Corp	Kampong Thom	September 25, 2009	7500
69	Un-Inter Trading and Development Group (Cambodia)	Stung Treng	October 12, 2009	7000
70	(Cambodia) Research Mining and Development	Stung Treng	October 12, 2009	7200
71	Fortuna Plantation (Cambodia) Limited	Kampong Speu	October 12, 2009	7955
72	PDA (Cambodia) Co., Ltd.	Kratie	October 22, 2009	5256
73	Carmadeno Venture (Cambodia) Limited	Kratie	November 13, 2009	7635
74	Grandis Timber Ltd.	Kampong Speu	December 31, 2009	9820
75	N K Venture (Cambodia) Limited	Svay Rieng	January 27, 2010	1200
49	Dong Nai Kratie Development	Kratie	January 29, 2010	4588
50	Dong Phu Kratie Development	Kratie	January 29, 2010	4563

No	Name of Company	Province	Date of Contract Signed	Hectares
76	Chhun Hong Rubber Better	Kratie	January 29, 2010	8202
77	C X P B Development	Kratie	January 29, 2010	8202
78	C & V Group	Kratie	January 29, 2010	7000
79	China Investment	Kratie	January 29, 2010	6600
80	Mo Hy Pa Sasu OrnKampuchea Co., Ltd.	Mondul Kiri	January 29, 2010	7800
81	Dai Dong Yoeurn Commercial Yorn Stock Co., Ltd.	Ratanak Kiri	January 29, 2010	4889
82	Krong Pok Ratanak Kiri Rubber Development	Ratanak Kiri	April 9, 2010	6695
83	P N T Co., Ltd.	Preah Vihea	May 5, 2010	7900
84	C R C K Rubber Development	Kampong Thom	May 5, 2010	6155
85	Cam Try Cooperaton	Kampot	May 5, 2010	2409
86	Huor Ling (Cambodia) International Insurance	Mondul Kiri	May 5, 2010	8400
87	C C V	Kampong Thom	May 5, 2010	5730
88	I P D Einstein Pro Trading	Kratie	May 5, 2010	987
89	N K Agri (Cambodia) Limited	Kratie	November 11, 2010	8892
90	Gov Tieng -Kratie Rubber Development Company Limited (Dakrarokho)	Kratie	March 1, 2011	6592
91	Gov Tieng (Cambodia) Rubber Development Company Limited (Kakhemrokho)	Kratie	March 1, 2011	7972

Appendix A

No	Name of Company	Province	Date of Contract Signed	Hectares
92	Chan Sophea Development	Kratie	March 1, 2011	5088
93	Seila Damex Co., Ltd.	Preah Vihea	March 1, 2011	9000
94	Boy Pheouk Kratie Rubber 2 Company Limited	Kratie	March 1, 2011	10000
50	Dong Phu Kratie Development	Kratie	March 7, 2011	2282
95	C R D	Ratanak Kiri	March 25, 2011	7591
96	Veasna Investment	Ratanak Kiri	March 25, 2011	5080
97	New Line CAM Pty Ltd.	Kratie	March 29, 2011	8977
98	Cheng Ly (Investment) Co., Ltd.	Ratanak Kiri	March 29, 2011	1900
99	Banya Group	Siem Reap	April 25, 2011	7000
100	Holy Inco-Industrial (Cambodia)	Ratanak Kiri	August 17, 2011	7497
101	Pacific Lotus Joint-Stock Company Limited	Mondul Kiri	September 9, 2011	9014
102	Pacific Paul Joint-Stock Company Limited	Mondul Kiri	September 9, 2011	9614
103	Pacific Grand Joint-Stock Company Limited	Mondul Kiri	September 9, 2011	9656
104	Pacific Bright Joint-Stock Company Limited	Mondul Kiri	September 9, 2011	9773
105	Horng An Oyada Co., Ltd.	Ratanak Kiri	September 22, 2011	9000
106	Rubber Elev B M Joint-Stock	Ratanak Kiri	October 5, 2011	8400

No	Name of Company	Province	Date of Contract Signed	Hectares
107	Boy Pheouk Kratie Rubber 21 Company Limited	Mondul Kiri	October 24, 2011	8926
108	Intern Rubber (Cambodia)	Kratie	October 24, 2011	10000
109	Heng Nong (Cambodia) International Company Limited	Preah Vihea	November 8, 2011	6488
110	Heng You (Cambodia) International Company Limited	Preah Vihea	November 8, 2011	8959
111	Heng Roy (Cambodia) International Company Limited	Preah Vihea	November 8, 2011	9119
112	Lan Pheng (Cambodia) International Company Limited	Preah Vihea	November 8, 2011	9015
113	Roy Pheng (Cambodia) International Company Limited	Preah Vihea	November 8, 2011	8841
114	Rithimony Samnang Leap Co., Ltd.	Kampong Thom	January 16, 2012	1678.5
115	D M Group	Ratanak Kiri	January 26, 2012	749
116	F P Malaysia (Cambodia) Plantation Co., Ltd.	Preah Vihear	April 30, 2012	8200
117	China Great Cause	Preah Vihear	June 6, 2012	5980
Total				1216560 .5

Source: Ministry of Agriculture, Forestry and Fisheries, <http://www.elc.maff.gov.kh/en/>, visited June 27, 2012

## Appendix B

### Date of Signature Delegation from the Ministry of Land Management, Urban Planning, and Construction to Provincial Offices to Issues Land Certificates

No	Provinces/Capital	Date of Receiving Signature Delegation
1	Kandal	July 18, 2000
2	Phnom Penh	July 18, 2000
3	Sihanoukville	August 12, 2002
4	Kampot	August 12, 2002
5	Kampong Thom	August 12, 2002
6	Takeo	August 12, 2002
7	Prey Veng	December 23, 2003
8	Kampong Cham	December 23, 2003
9	Battambang	April 25, 2005
10	Siem Reap	October 13, 2005
11	Kampong Speu	October 13, 2005
12	Svay Rieng	August 13, 2007
13	Kep	August 13, 2007
14	Kratie	September 5, 2007
15	Oddar Meanchey	September 5, 2007
16	Banteay Meanchey	September 5, 2007
17	Pursat	September 5, 2007
18	Kampong Chhnang	September 5, 2007

Appendix B

No	Provinces/Capital	Date of Receiving Signature Delegation
19	Koh Kong	October 1, 2009
20	Preah Vihear	October 1, 2009
21	Stung Treng	October 1, 2009
22	Ratanak Kiri	October 1, 2009
23	Mundul Kiri	July 1, 2010
24	Pailin	July 1, 2010

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