

China's Belt and Road Initiative: Patron-Client and Capture in Cambodia

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Abstract

The launch of China's Belt and Road Initiative (BRI) has sparked scholarly interest in understanding how global Chinese capital has entered and faced the unique challenges often associated with the business and regulatory environments of developing economies. Drawing on the case of Cambodia, this paper seeks to understand: i) how the new generation of overseas Chinese investors and companies, in the era of BRI, acquire licences and secure business operation in developing economies; and ii) how these investments cope with the host country's regulatory institutions: including grassroots communities and civil society organizations. This paper argues that, while the BRI Chinese investors has played a crucial role in the Cambodian economy, this injection of capital has co-opted and exacerbated the ambiguity of Cambodia's regulatory environment. These Chinese investors have perpetuated the host country's socio-political culture of patron-client networks, partly entrenched by the Sino-Cambodian elites. These networks are necessary to tap into secure investment operations, and they duly capture (influenced) regulatory institutions at the expense of marginalized communities and civil society organizations. Drawing on Cambodia's case, the paper contributes to the understanding of patron-client relations and regulatory capture in the context of socio-legal studies and the political economy of China's global capitalism.

Keywords: patron-client, intermediary, capture, regulation, China, Belt and Road Initiative, Cambodia

Introduction

The expansion of Chinese capitalism in the age of the Belt and Road Initiative (BRI) has attracted many scholarly studies on China's resource-seeking behaviour and practices and its relations with the most under-developed host countries,¹ many of which need foreign capital to advance their economies. Others have studied the adverse impacts of Chinese investment, alleging that Chinese firms are overly resource-seeking or have even engaged in debt-trap diplomacy, which increases the host country's dependence on China.² Among these countries, Cambodia is an increasingly popular destination for BRI projects and new Chinese immigrants and investors in Southeast Asia.³

Many studies examine the impacts of Chinese investments in Cambodia,⁴ but none has investigated how Chinese investors in the era of BRI perpetuate the 'capture' of regulatory institutions by existing Sino-Cambodian patron-client networks. In the context of regulatory enforcement and compliance, capture occurs when the regulator and regulated bodies establish mutually beneficial arrangements at the expense of regulations, and influence each other to shirk compliance or enforcement. This study not only contributes to the understanding of how Chinese companies secure their long-term business operations in ambiguous regulatory environments; it also illustrates how Chinese capitalism re-entrenches the form of capture practiced by patron-client networks. This paper argues that Chinese capitalism (via BRI) induces a type of regulatory capture within the patron-client networks, similar to that which is

¹ Cáceres Sigfrido Burgos and Sophal Ear, *The Hungry Dragon: How China's Resource Quest is Reshaping the World* (R 2013).

² Brautigam Deborah, 'A critical look at Chinese 'debt-trap diplomacy': The rise of a meme' (2020) 5 ADP 1-14.

³ Jean-Marc F. Blanchard, 'China's Maritime Silk Road Initiative (MSRI) and Southeast Asia: a Chinese "pond" not "lake" in the works' (2017) 27 JCC 329-43.

⁴ Siphath Touch, 'Patterns and Impacts of Chinese Assistance in Cambodia' in Yos Santasombath (ed), *Impact of China's Rise on the Mekong Region* (PM, 2015) 195-225; Sovinda Po and Kimkong Heng, 'Assessing the impacts of Chinese investments in Cambodia: the case of Preah Sihanoukville province' (2019) 19 PFII 1-19.

already entrenched within China itself, where informal and personal networks facilitate business deals or agreements.⁵

This paper will begin by discussing the migration and investment relations between China and Cambodia, before conceptualizing, in the second section, how patronage and clientelism stimulate regulatory capture. The third section presents the business operation models adopted by Chinese companies and investors. The fourth section applies these models to the case studies of the Dara Sakor and Se San II hydroelectric projects. Finally, the paper discusses how capture underpins patron-client networks at the macro-and micro levels between the two countries, and how this notion of capture in patron-client networks implicates Chinese investments in Southeast Asia.

Mainland China-Cambodia relations: Migration and investment

The first generation of Chinese immigrants probably began settling in Cambodia as early as the late 12th century, when Zhou Daguan visited the Khmer Angkorian Empire.⁶ The arrival of the first generation of Chinese immigrants (from mainland China) was perceived as a threat to the Kingdom's sovereignty, but, as they assimilated and established good connections with the Cambodian King, Chinese migrants became an integral part of Cambodian society.⁷ The Chinese immigrants did not attempt to assume control politically, but rather evinced the intention of ensuring a mutually-beneficial business relationship within the Kingdom. Following the establishment of the official Chinese consulate in Phnom Penh in September

⁵ Wank David, 'The institutional process of market clientelism: Guanxi and private business in a South China city' (1996) 147 CQ 820-38.

⁶ Daguan Zhou, *A record of Cambodia: The land and its people* (SB, 2007).

⁷ William Willmott, 'Cambodia' in Lynn Pan (ed), *The Encyclopedia of the Chinese Overseas* (AP, 1998) 144-50.

1947,⁸ there were, in the 1960s, about 135,000 Chinese living in Phnom Penh alone – one-third of the city’s population.⁹ Since then, the relationship between more recent Chinese immigrants and Cambodian elites has been gradually established throughout the subsequent decades to the present day.¹⁰ ‘Sino’¹¹ is commonly understood as referring to Chinese, or ‘Chen’ in Khmer. People within the demographic groupings of Sino-Khmer, Sino-Cambodian and the Chinese diaspora¹² are known either as being of Chinese descent and half-blood lineage (half Chinese, or *Kat Chen* in Khmer), or as belonging to the pure, full-blood Chinese diaspora (*Chen Chao* in Khmer). The latter term refers to those who have not inter-married with Cambodians.

Politically, following the meeting between Zhou Enlai and Norodom Sihanouk at the Bandung Conference (Indonesia) in 1955, the relationship between the two nations was tightened¹³; however, this bond was interrupted due to Sihanouk’s ousting by the coup organized by General Lon Nol (1970-1975), the seizing of control by the Khmer Rouge (1975-1979), and the Vietnamese occupation (1979-1989). As Vietnam withdrew its military from Cambodia, the United Nations (UN) Transitional Authority of Cambodia took control of the country from 1991 until the general election held in 1993. This was when Sihanouk returned to Cambodia from China. Following the election, the European Union (EU) and United States (US) were the most generous donors, sending a significant amount of aid to Cambodia¹⁴ (Figure 1). Since 2010, Chinese aid has overtaken Western aid. China is perceived to have influenced Cambodia’s domestic and foreign policies, supporting, as it does, China’s ‘One-China’ policy. In 2012,

⁸ Nayan Chanda, ‘China and Cambodia: In the Mirror of History’ (2002) 9APR 1-11; William Willmott, *The Chinese in Cambodia* (UBC, 1967).

⁹ Bernard P Groslier, 1958, cited in James K. Chin, ‘Ethnicized Networks and Local Embeddedness: The New Chinese Migrant Community in Cambodia’ in Min Zhou (ed), *Contemporary Chinese Diasporas* (PM, 2017) 187-206.

¹⁰ Pál Nyíri, ‘Investors, Managers, Brokers, and Culture Workers: How the “New” Chinese are Changing the Meaning of Chineseness in Cambodia’ (2012) 4 CC 93-117; Heidi Dahles and John Ter Horst, ‘Institutionalising Chineseness: legacies of Chinese commercial hegemony in the Cambodian silk industry’ (2012) 42 JCA 210-29.

¹¹ means ‘relating to China’.

¹² The paper used these terms interchangeably throughout the article.

¹³ Chanda (n 8).

¹⁴ Sophal Ear, *Aid dependence in Cambodia: How foreign assistance undermines democracy* (CUP, 2013).

Cambodia, as a Chair of the Association of South East Asian Nations (ASEAN), was accused of barricading a statement targeting China for its role in the South China Sea disputes.¹⁵ Subsequently, in 2013, the Chinese government pledged more than US\$500 million in aid to Cambodia.¹⁶

Figure 1: Foreign aid to Cambodia (US\$ million)¹⁷

Following the second election of members of parliament in 1998, given the benefits offered to Cambodia by the US and EU through, respectively the ‘Generalized System of Preference’ and ‘Everything But Arms’ (EBA), many foreign investors eyed Cambodia. The inflow of foreign capital increased significantly from around US\$800 million in 2010 to more than US\$1 billion in 2012-13, and US\$3.5 billion in 2018 (Figure 2). While intra-ASEAN investments played a significant part in this rapid inflow of capital, China alone has provided approximately 20.40% of total foreign investment to Cambodia and has thus become the single most important strategic partner to Cambodia (Figure 2). Even though Cambodia has been ranked low on the ‘ease of doing business’ index, being placed 138 out of 190,¹⁸ due to weak and ambiguous regulatory enforcement,¹⁹ this has not appeared to deter Chinese investors from investing in various sectors, predominantly in real estate, infrastructure, land and natural resources. In the following section, the article will conceptualize how patronage and clientelism, and regulatory capture work in Chinese overseas investment.

¹⁵ John Ciorciari, ‘A Chinese model for patron-client relations? The Sino-Cambodian partnership’ (2015) 15 IRAP 245-78.

¹⁶ Prak Chan Thol, ‘China pledges \$548 million in aid to ally Cambodia’ (Reuters, 10 April 2013) <<https://www.reuters.com/article/us-cambodia-china/china-pledges-548-million-in-aid-to-ally-cambodia-idUSBRE93909D20130410>> accessed 02 July 2020.

¹⁷ CDC (Council for the Development of Cambodia), *Development Cooperation and Partnerships Report* (January 2018) (CDC 2018).

¹⁸ World Bank Group, *Doing Business 2019: Training for reform, economy profile Cambodia* (WBG 2019).

¹⁹ Surya P Subedi, ‘Land rights in countries in transition: A case study of human rights impact of economic land concessions in Cambodia’ (2011) 17 AYBIL1-46; Young Sokphea, ‘Movement of Indigenous Communities Targeting an Agro-Industrial Investment in North-Eastern Cambodia’ (2016a) 44 AJSS 187-213.

Figure 2: Total foreign investment to Cambodia (US\$ million)²⁰

Conceptualizing clientelism and patronage in regulatory capture

In this section, the paper argues that the patron-client network is a form of regulatory capture that can be found, not only in China, but also in Southeast Asia. The patron-client network has, at its base, the notions of clientelism and patronage networks which are common forms of societal relationships in a neo-patrimonial regime. The latter is defined as a political system that falls within the grey area between democracy and authoritarianism.²¹ Clientelism implies a dyadic (two-person) and asymmetrical/unequal relationship between the patron and the client, while patronage is understood as the relationship between a person and a larger group. The distinction between these two terms is based on the private and public resources of office-holders and non-office-holders.²² In patronage, the patron must hold a position in an office that has access to state resources²³; in clientelism, a patron may or not hold a position in such an office and so may not be able to deliver public resources, but must rely on alternative means of exchange, including private and party resources.²⁴ Despite these distinct characteristics, in this paper, ‘patronage’ and ‘clientelism’ are frequently used interchangeably with ‘patron-client relations.’

The patron-client relationship is an instrumental arrangement in which an individual patron uses his or her power (including resources) to provide protection and/or benefits for a person of lower rank (the client) who, in return, offers support and assistance to the patron.²⁵ A client

²⁰ ASEAN, ‘ASEAN Statistic’ (2019) <<https://data.aseanstats.org/fdi-by-hosts-and-sources>> accessed 2 September 2019.

²¹ Sokphea Young, ‘Social movements in Cambodia: Why they succeed or fail’ (2019) 22 JIntlRD 1-25.

²² Allen Hicken, ‘Clientelism’ (2011) 14 AREvPS 289-310.

²³ Ibid.

²⁴ Ibid.

²⁵ James Scott, ‘The erosion of patron-client bonds and social change in rural Southeast Asia’ (1972) 32 JAS 5-37.

needs support from a patron either to avoid something or to gain something which otherwise would not be obtainable. This is observed in rural and agrarian societies in Southeast Asia, where a reciprocal, although not equal, flow of services and goods from patrons to clients and vice versa is typical.²⁶ In countries such as Thailand, Indonesia, the Philippines and Malaysia, the relationships between the state bureaucracy and private business are manifested in terms of cronyism, oligarchy, predatoriness, and bureaucracy or renting. As a result, state institutions are ‘captured’ by oligarchs who control a significant portion of the national economy.²⁷

The notion of ‘capture’ in this context is considered as external interference in the state or bureaucratic decision-making,²⁸ usually by powerful elements in the patronage system. Likewise, ‘regulatory capture’ is the influence exerted by a specific group on policies and legal institutions in order to cultivate wealth and power.²⁹ Regulatory capture is the result of a close relationship between the regulator and regulated,³⁰ but this relationship does not distinguish clearly between the regulatory agencies and the industry. The ties create a mutual, but unequal relationship between the two, as in the patron-client links, inducing corruption, collusion, and lax and non-transparent regulatory enforcement.³¹ These characteristics are often seen in non-democratic regimes.

In the post-Maoist Chinese business environment, capture through patron-client networks is not unusual in relations between the state and business or within the state administrative system.³² Patron-client ties in this regime connect the private entrepreneurs to the bureaucratic structure

²⁶ Scott (n 25).

²⁷ Daniel Bach, ‘Patrimonialism and neopatrimonialism: comparative trajectories and readings’ (2011) 49 CCP 275-294.

²⁸ Andrei Yakovlev, ‘The evolution of business–state interaction in Russia: From state capture to business capture?’ (2006) 58 EAS 1033-56.

²⁹ Alice Sindzingre, ‘Neopatrimonialism and its reinterpretations by development economics’ in Daniel C. Bach and Mamoudou Gazibo, *Neopatrimonialism in Africa and Beyond* (R 2012) 90-107.

³⁰ Dorit Rubinstein Reiss, ‘The Benefits of Capture’ (2012) 47 WFLW 569-610.

³¹ Ibid.

³² David (n 5).

of the country, in which officials mediate the resource allocation through awarding contracts and licences that boost profit for private entities and the involved officials.³³ In China's energy sector, the state-owned enterprises (SOEs) have a tremendous financial interest that captures the regulatory agencies.³⁴ In a case study of the tourist sector in China's Anhui Province, the central governments were known as patrons, whereas local autonomous village officials and companies were clients.³⁵ Patron-client ties are widely practiced in China, and these types of networks are also applied by these overseas Chinese companies and SOEs in the era of BRI.

This paper proposes that the existing business and regulatory environments of developing host countries, where patronage networks are often entrenched, are windows of opportunity for Chinese foreign investments in the advancement of their BRI. Many have observed that most of the BRI host countries are corrupt, non-transparent, and have poor governance.³⁶ These institutional and governance challenges are reinforced by dominant business elites and kleptocrats.³⁷ In Malaysia, for instance, the rising influx of Chinese investments was facilitated by ethnically Malay-Chinese intermediaries.³⁸ The existence of the long-standing Chinese diaspora in Southeast Asia is a factor that stimulates not only Chinese investments in the era of BRI,³⁹ but also diplomatic relations between China and Southeast Asian nations. The influence of the capital of the Chinese diaspora had already been dominating the Southeast Asian economy prior to the arrival of the 'new generation' of Chinese immigrants. The success of Chinese business ventures in Southeast Asia has been due to the support and shared cultural

³³ David (n 5).

³⁴ Chih-Shian Liou and Chung-Min Tsai, 'The Governing Paradox in a Transition Economy: Repeated Institutional Reforms and Increasing Regulatory Capture in China's Energy Sector' (2020) 67 PPC 156-68.

³⁵ Xiaoming Zhang, Peiyi Ding and Jigang Bao, 'Patron-Client Ties in Tourism: The Case Study of Xidi' (2009) 11CTG 390-407.

³⁶ Roza Nurgozhayeva, 'The Belt and Road Initiative: Rule-making, Rule-Taking or Rule-Rejecting. Central Asian Perspective' (2020) 8 CJCL 250-278.

³⁷ Sokphea Young, 'The political economy of contestation over land resources in Cambodia'. PhD Thesis, University of Melbourne (2016).

³⁸ Caroline Hau, 'Becoming "Chinese"—but what "Chinese"?—in Southeast Asia' (2012) 10 APJ 1-37; Hong Liu, 'Opportunities and anxieties for the Chinese diaspora in Southeast Asia' (2016) 115 CHAJCWA 312-18.

³⁹ Ibid.

values of the diasporic Chinese firmly installed in the host countries.⁴⁰ Such support facilitates the co-optation of power in the host countries, for example, the informal agreement in Malaysia between the Chinese diaspora (Sino-Malay) and Malay (Bumiputra) that the former contain their involvement in business rather than politics.⁴¹ While it is considered as a win-win policy by the parties involved, the agreement appears to ignore any deprivation experienced by marginalized communities. This is only one example of a wider trend in the region, where collective resistance is often orchestrated by the weak in Southeast Asia, the peasantry in particular.⁴²

Patron-client model of the extractive regime in Cambodia

Recently, Cambodia ranks 162nd out of 180 countries on Transparency International's corruption ranking.⁴³ Perpetuating such corruption is a lack of straightforward and consistent interpretation and enforcement of the laws.⁴⁴ This uncertainty appears to attract opportunistic and multinational corporations involved in rent extraction to invest in the country's unexplored abundant resources; these corporations are mostly (but not all) Chinese companies. The active inflow of Chinese companies, including SOEs, into Cambodia is facilitated, on the one hand, by bilateral initiatives between the two countries, and by the national initiative implemented by the Royal Government of Cambodia, such as the tax holiday,⁴⁵ on the other. Given the existing agreements and good relations between Cambodia and China,⁴⁶ the level of Chinese investments is set to rise, and Cambodia's integration into BRI can only deepen. In addition to

⁴⁰ Verver Michiel and Heidi Dahles, 'The anthropology of Chinese capitalism in Southeast Asia: From culture to institution?' (2013) 2 JBA93-114.

⁴¹ Harold Crouch, *Government and society in Malaysia* (CUP 1996).

⁴² James Scott, *Weapons of the weak: Everyday forms of peasant resistance* (YUP 2008).

⁴³ Transparency International, 'Corruption perception index 2019' (TI 2020).

⁴⁴ Young (n 37).

⁴⁵ Royal Decree, *Investment Law*, (Royal Decree, 1994 [2003]), articles 13 and 14, allows tax exemption up to 3 years through what it is called "qualified investment project".

⁴⁶ Burgos Sigfrido and Sophal Ear, 'China's strategic interests in Cambodia: Influence and resources' (2010) 50 AS 615-639.

this enabling environment at the macro-level, questions are being raised as to how these Chinese companies: i) acquire investment licences and secure their business operations, and ii) how these investments cope with the risks of being scrutinized, through case studies, by the regulatory observers. The remainder of this section will address these points.

The first point can be addressed through a careful study of Cambodia's socio-political culture in relation to entrenched patronage-client networks. Cambodia's memes have generally accepted the patron-client network, having the ruler as the central patron (Hun Sen) of the neo-patrimonial regime. Prime Minister Hun Sen has remained in power because he is culturally perceived as a man possessing merit or *bunn*, which can be translated as 'power'.⁴⁷ To maintain the loyalty of the patronage system, the patron has, since the early 1990s, awarded not only lucrative positions to clients, but has also allocated natural resources.⁴⁸ The granting of licences for resource extraction (mining, oil, agricultural land, commercial forest logging and energy) and the privatization of state properties has been facilitated for those individuals, especially the Sino-Cambodian tycoons, who support and are loyal to the ruling party⁴⁹ (see Figure 3). The office appointments are not made freely but are based on rents. 'They have to pay a certain amount of money to secure their position.'⁵⁰ If someone, in addition to his or her popularity, dares to pay more or contribute more to the party's patrons, they will be offered the position.⁵¹

Figure 3: A model of Chinese investors operating in Cambodia

Those who have established a connection with the patron of the regime have been targeted by

⁴⁷ Trude Jacobsen and Martin Stuart-Fox, *Power and Political Culture in Cambodia* (NUS-ARI 2013).

⁴⁸ Caroline Hughes, *Political economy of the Cambodian transition* (R 2003)

⁴⁹ Young (n 37).

⁵⁰ Interview with a member of parliament and standing committee of the Cambodian People's Party (18 December 2013)

⁵¹ Caroline Hughes and Tim Conway, *Understanding Pro-poor Political Change: The policy process: Cambodia* (ODI 2004).

foreign investors including, but not limited to, Chinese investors. The Council of Ministers (CoM) and the Council for the Development of Cambodia (CDC) are, among many other places, the centres where Chinese investors seek to connect or partner with Sino-Cambodian investors.⁵² As such, mainland Chinese investors and SOEs seek to acquire and secure investments in Cambodia through one of two pathways (see Figure 3): i) by being a local joint venture partner, or ii) by being a broker who may later become a local partner. Without these pathways, it is challenging for Chinese investors to get access to natural resources.⁵³ If there are no dominant Sino-Cambodian partners, the Chinese investors are likely to face high risk and fail in securing long-term investments.⁵⁴ The influential Sino-Cambodians are both regulatory intermediaries and gatekeepers of various unexplored natural resources in the country.⁵⁵ These Sino-Cambodian partners have the privilege to lobby the patron for approval of licences, permits, and contracts.

The characteristics of local Sino-Cambodia partners always differ to some extent, but they are invariably those within the loop of Sino-Cambodian tycoons, military officials, *Ouknha* and members of the Chinese Association in Cambodia. *Ouknha* is a title bestowed by the King at the request of the PM to the wealthy and/or business people who have contributed at least US\$500,000 (previously just US\$100,000) to national development. Most Sino-Cambodian elites or businesspersons hold the title of *Ouknha*.⁵⁶ The new Chinese investors seek to establish ties with Sino-Cambodians holding *Ouknha*, including those who speak Chinese, to back their investment.⁵⁷ A manager of a mainland Chinese SOE claims that:

⁵² Interview with a business broker (15 November 2019)

⁵³ Interview with a senior legal advisor (09 December 2013); interview with a company chief executive officer (18 December 2013) and ELC general manager (27 November 2013).

⁵⁴ Interview with ELC general manager (27 November 2013); interview with a senior legal advisor (27 December 2013).

⁵⁵ Young (n 37).

⁵⁶ Nyiri (n 10).

⁵⁷ The size of investment of this model is between medium (from more than US\$1 million) to large scale, and there might be an exception that ordinary emigrant may opt for different pathways or other brokers.

the first thing Chinese companies do when they get here is to find a backer, like an *Ouknha*, who will help them get through various difficulties, liaise with government officials, and so on. Whether or not, you will later have to share profits—that vary (sic.). But first, you have to pay.⁵⁸

Why is connecting with the existing Sino-Cambodian tycoons essential? The answer to this question goes beyond the ownership and the stake a Sino-Cambodian possesses, since the recent amendment in Investment Law (1994/2003)⁵⁹ has allowed foreign investors and companies to wholly (100%) own and register a company in Cambodia, while they are just prohibited from owning land in the country.⁶⁰ Involving Sino-Cambodians in the investment is essential because, on the one hand, the regulatory enforcement is blurred and ambiguous, which can adversely impact the business operation in the longer-run; on the other hand, it is pertinent in terms of a protective mechanism to shield them from the predatory nature of patronage networks within which the weaker might be influenced by the stronger, and also from the scrutiny of the public, including the civil society (Figure 3). One Chinese manager states that Chinese investors have to find a backer like a Sino-Cambodian *Ouknha*, and have to pay for the support. Many Chinese investors have sought a backup from affluent Sino-Cambodians, including: Senator *Ouknha* Lao Meng Khin and his wife, Yeay Phu; Sy Kong Triv (co-owner of Pheapimex); Senator Kok An (Director of ANCO Brothers Company Ltd) and, Kit Meng (KM) of Royal Group.⁶¹ These Sino-Cambodian *Ouknha* are preferred as partners by Chinese investors or companies, not only because they are powerful and connected closely to the top leader at the apex of the pyramid, but they also have long-term experience of doing successful business in the country. The latter creates trust and a mutually supportive partnership to fulfil the partners' respective aspirations.⁶²

⁵⁸ Touch (n 4), 212.

⁵⁹ Royal Decree (n 45).

⁶⁰ Royal Decree, *Land Law* (Royal Decree 2001), Article 8.

⁶¹ Nyiri (no 10); Touch 2015; interview with a Chinese lawyer (18 November 2019).

⁶² See cases in the following paragraphs and section as evidence.

Since the Chinese investors, companies and entrepreneurs are well-known in natural resource extraction or as resource seekers,⁶³ the Cambodian Economic Land Concession (ELCs) scheme⁶⁴ has been eyed by Chinese investors, while non-Chinese investors, especially well-known multinational corporations, have hesitated to follow, given their strict due diligence on compliance with environmental and social impacts, and their resistance to informal transaction fee.⁶⁵ ELCs have, since 2006, been an essential tool of Chinese investors and became very political in early 2012 and in 2013, when numerous grassroots movements resisted the adverse impacts of the non-transparent concessions.⁶⁶ For example, a Chinese SOE, Fuchan and China Cooperative State Farm Group, partnered with Cambodian Pheapimex to develop agricultural plantations in the north-eastern province of Mondulkingi, and Kampong Chhnang and Pursat provinces.⁶⁷ While this partnership caused adverse impacts on the socio-economic conditions of the local communities, such as income generation activities, access to land for cultivation, and access to forest resources (non-timber forest products), the investment was able to operate smoothly given the backing of prominent Sino-Cambodians.⁶⁸ Due to close connections with the central patron of the regime, the Sino-Cambodians played several dyadic roles: as regulatory intermediaries; as shareholders of the investment project; and, somehow, as clients of the Chinese companies.

More generally, as a regulatory intermediary, the Sino-Cambodian navigates to acquire a

⁶³ Ear (n 14); Heng Pheakdey, 'China's Role in the Cambodian Energy Sector: Catalyst or Antagonist for Development?' (2015) 23 SEAR 405-22.

⁶⁴ ELC is sub-decree issued by the Prime Minister in 2012 aiming to generate employment and reducing poverty in the country. The sub-decree allows local and foreign investors to lease land up to 99 years for various development project. This scheme also allows hydroelectric power, resort, and establishing special economic zone projects. Without these, the investors may co-opt with the local Sino-Cambodians who have rights to purchase a large-scale of land.

⁶⁵ Interview with a senior legal advisor (09 December 2013); corruption is often interpreted as informal transaction fee.

⁶⁶ Young (n 37); Sokphea Young, 'Protests, Regulations, and Environmental Accountability in Cambodia' (2019) 38 JCSAA 33-54.

⁶⁷ Kheang Un, 'China's foreign investment and assistance: Implications for Cambodia's development and democratization' (2009) 166 PCS 68-81.

⁶⁸ Ibid.

licence and to shirk regulatory enforcement that accelerates the speed at which the investment can be implemented. There have been few projects that have completed their social and environmental impact assessments, and mitigated all adverse impacts on the communities prior to commencing construction, plantation and operation.⁶⁹ The relationship means that they can speed up the awarding of the contract, permits, licences, and concessional leases they are seeking from the involved ministries and government agencies.⁷⁰ A Chinese lawyer once said:

for large-scale investments, an investor needs to approach the key and influential intermediary investors. As the investor gets a green light, we, as lawyers, will only assist in preparing relevant documents afterwards.⁷¹

A Sino-Cambodian lawyer confirms that it is not about *how* you fulfil the requirements, or about submitting all compulsory documents to the CDC, but that it concerns *who* mediates the process and how powerful they are to get the process done on time.⁷² The government often claims that the approvals from the CoM (led by the Prime Minister, who is also chair of CDC) are conditional and that the awardees will need to deal with the communities while operating their investment.⁷³ To fulfil their economic and financial expectations of the investment, the Sino-Cambodian partners, as a shareholder and client, have to collaborate with authority to coercively respond to the overwhelming demands and resistance of the communities.⁷⁴ They must side against the communities and civil society through various means, including revoking or suspending the licences of NGOs activating for land and human rights or through suing community activists, of which activists working for Equitable Cambodia and Mother Nature are examples.⁷⁵ Other regional and international NGOs and news media outlets have supported

⁶⁹ Young (n 66).

⁷⁰ Interview with a senior legal advisor (09 December 2013); interview with ELC general manager (27 November 2013).

⁷¹ Interview with a Chinese Lawyer (18 November 2019)

⁷² Interview with a Sino-Cambodian lawyer who partners with a Chinese lawyer firm (14 November 2019).

⁷³ Interview with a former minister, and now a member of parliament (18 December 2013).

⁷⁴ Sokphea Young, 'Popular Resistance in Cambodia: The Rationale Behind Government Response' (2016) 8 APP 593-613.

⁷⁵ Patrick Schröder and Sokphea Young, *The Implications of Closing Civic Space for Sustainable Development in Cambodia* (IDS, 2019).

the demand of the communities for transparency of foreign investment projects, but their activities have recently faced a backlash by the government's recent crackdown on NGOs, alleging that they have liaised with opposition parties to topple the legitimate government.⁷⁶ A US-based NGO like the National Democratic Institute was forced to shut down in Cambodia, and Global Witness was banned from operating in Cambodia.

Another pathway is through a broker (or licence trader), who later becomes a local joint venture partner. Chinese investors need to find a local broker who is powerful and has secure connections with senior government officials or military units to facilitate the process of requesting a license.⁷⁷ Upon receiving a licence, the ELC for example, investors may have to allocate some number of shares to the broker free of charge,⁷⁸ and then the broker becomes a local partner to protect the business operation. Otherwise, other corrupt or influential officials might intrude into the business during its operations.⁷⁹ A senior government official confirmed '... They, the foreign investors, do not know the entry point for investment in Cambodia, where to go and how to process the legal documents.'⁸⁰ Such a process is confirmed by a legal advisor who facilitates access to granting ELC licences. She pointed out that newcomers (investors) need to find someone who has good networks and relationships with powerful officials in order to get licences approved.⁸¹

In a joint venture investment with a local Sino-Cambodian tycoon, it took a (Taiwanese) Chinese investor only three months to obtain a licence from the CoM,⁸² much quicker than for

⁷⁶ Ibid.

⁷⁷ Interview with a Sino-Cambodian lawyer who partners with a Chinese lawyer firm (14 November 2019).

⁷⁸ Interview with a deputy provincial governor (15 December 2013) who acknowledged that foreign investors allocate some shares to their Cambodian brokers and they later become local partners.

⁷⁹ Interviews with an executive chief officer (December 18 2013); interview with ELC general manager (27 November 2013).

⁸⁰ Interview with a deputy provincial governor (15 December 2013).

⁸¹ Interview with a senior legal advisor (09 December 2013).

⁸² the CoM approves the license in the form of notification (*sor chor nor* in Khmer), which is usually claimed by companies and local and provincial authorities as a 'law' or *chbab*.

most companies. Acting on this advantage, some of the joint companies did not conduct proper public consultation or social and environmental impact assessments (EIA), as required by the sub-decrees of ELC (2005) and EIA (1999), Law on Expropriation (2010), and Land Law (2001), before approval by the CoM. Some companies are thus accused of violating these regulations.⁸³ As stated in the Land Law (article 59), no concession greater than 10,000 hectares is granted to a private company, suggesting how a local Sino-Cambodian could influence the regulatory process of doing and securing business in Cambodia. These practices have provoked many conflicts over property, land and resources since early 2006 until the present day.⁸⁴ As such, the antagonistic public domain has played a significant role in observing and scrutinizing the regulatory enforcement and compliance between the private sector and the government, because the relationship between the two matters not only to the communities but also to the public.⁸⁵

Se San II Hydroelectric Power

Inaugurated by Prime Minister (PM) Hun Sen in December 2018,⁸⁶ the 400-megawatt lower Se San II hydroelectric dam—a joint venture between Chinese investors (51%), a Sino-Cambodian tycoon (39%) and Vietnamese companies (10%)—is by far the largest dam ever built on Cambodia's Mekong tributaries. Other than its adverse environmental impacts, about 5000 residents, mostly *Bunong* indigenous people, in five communes in Se San district (Steung Treng province) were displaced to a new resettlement site, namely Kbal Romeas.⁸⁷ While about 70%

⁸³ Young (n 37).

⁸⁴ Young (n 66).

⁸⁵ Young (n 66; n 74)

⁸⁶ Bangkok Post, 'Cambodia's biggest hydropower dam now producing electricity' (2018), <<https://www.bangkokpost.com/world/1595762/cambodias-biggest-hydropower-dam-now-producing-electricity>> accessed 08 February 2020.

⁸⁷ Chea Vannak, 'Dam fuels desperation on banks of Se San river' (2015) <<https://www.khmertimeskh.com/32957/dam-fuels-desperation-on-banks-of-se-san-river/>> accessed 08 February 2020

(849 households) of the villagers had no choice but to opt for cash compensation and a wooden house at the new resettlement site,⁸⁸ the rest of the villagers in Sre Kor and Kbal Romeas refused to do so and protested for ‘just and fair compensation.’⁸⁹ Many have claimed that this was a violation of the fundamental rights of indigenous communities.⁹⁰

The inability to achieve ‘just and fair compensation’ was due to blatant bias in policy and regulatory enforcement.⁹¹ Like the infamous case of the Cambodia railway resettlement (funded by Asian Development Bank) that impoverished and displaced thousands of affected people,⁹² NGOs and affected communities alleged that the government (provincial authorities and resettlement committees) colluded with Se San II Hydroelectric project and failed to enforce regulations, such as a resettlement action plan. Rated low in transparency but high in corruption,⁹³ it is an almost typical practice by which officials embezzled the project budget, funded either by the government or donors, for their income.⁹⁴ Failure to address the socio-economic issues and rights of the indigenous communities in the five communes of Se San II hydropower project was the result of regulatory capture (influence) of both the Chinese investor and its partner.

The Se San II Hydroelectric project employed the first route of entering and securing business operations in Cambodia. The Chinese company partnered with the most powerful Sino-Cambodian tycoon, Kith Meng (KM) (the chairman of Royal Group), who controls most of the

⁸⁸ — — Hydro Power Lower Sesan 2 Co Ltd ‘Resettlement work’ (no date), <http://www.hydroresan2.com/special_show.php?lm=49&flm=&id=354> accessed 08 February 2020.

⁸⁹ Khmer Times, ‘Villagers remain defiant as Sesan dam waters rise’ (2017), <<https://www.khmertimeskh.com/75681/villagers-remain-defiant-sesan-dam-waters-rise/>> accessed February 08 2020)

⁹⁰ Interview with an NGO worker (December 15, 2018).

⁹¹ Earth Right International, *Submission to UN Special Rapporteur on the situation of human rights in Cambodia Hydropower Dam Development in Cambodia: Lower Sesan 2 and Stung Cheay Areng Hydropower Projects* (ER, 2015).

⁹² Rober Chamichael, ‘ADB Slams Cambodia Railway’s resettlement plan’ (2014) <<https://www.voanews.com/east-asia/adb-slams-cambodia-railways-resettlement-plan>> accessed 08 February 2020.

⁹³ Transparency International, *Corruption perception index 2019* (TI 2020)

⁹⁴ Ear (n 14).

country's economic and business activities, from telecommunication to transportation, and infrastructure, thus representing a standard economic model of the country's neo-patrimonial system.⁹⁵ Sino-Cambodian-Australian KM was born in 1968 to a Chinese Cambodian businessman. After the collapse of the Khmer Rouge, he escaped to Australia where he was educated. He was recently elected president of the Cambodian Chamber of Commerce (CCC), a lucrative business position, for which many *Ouknha* compete.⁹⁶ CCC is the focal point where foreign investors, including the Chinese, connect with local Sino-Cambodian *Ouknha* for licences, business deals and opportunities. KM also serves as an advisor to the PM, and he often joins overseas trips and missions with the PM for bilateral trade deals and opportunities, lately with China and East Asian countries. Apart from this close knot, KM is also a board member of the Cambodian Red Cross (CRC), which is headed by the Prime Minister's wife.⁹⁷ The Royal Group of KM regularly donates at least US\$ 0.5 million to the CRC annually and to the humanitarian ceremony organized by CRC.⁹⁸ The ceremony is an infamous event whereby many Sino-Cambodian *Ouknha* queue to donate and to compete for symbiotic ties with the most influential patron. The large sum an *Ouknha* or company gives to the CRC not only demonstrates a strong appreciation and loyalty to the patron, but it also incarnates power by doing so. This power is used for business deals and everyday interactions with others.

Given the *Ouknha*'s symbolic ties with the PM, the PM praised the dam developer for providing proper compensation and resettlement, in terms of a house, and a plot of residential land and farmland, for each affected family.⁹⁹ Not surprisingly, the PM spoke in favor of the Sino-

⁹⁵ Wikileaks, 'Cambodia's top ten tycoons' (2007) https://wikileaks.org/plusd/cables/07PHNOMPENH1034_a.html accessed 05 June 2020

⁹⁶ Interview with a Sino-Cambodian *Ouknha* (21 December 2019).

⁹⁷ Touch (n 4).

⁹⁸ Khmer Time, 'Royal Group Cambodia Chairman generously donates \$500,000 to Cambodian Red Cross' (2020) <https://www.khmertimeskh.com/714776/royal-group-cambodia-chairman-generously-donates-500000-to-cambodian-red-cross/> accessed 04 June 2020.

⁹⁹ Xinhua, 'Spotlight: Chinese-built largest hydropower plant inaugurated in far NE Cambodia' (2018) http://www.xinhuanet.com/english/2018-12/17/c_137680214.htm accessed 08 February 2020.

Cambodian tycoon, yet criticized NGOs who had spoken out against the dam, saying that they ‘always opposed government projects.’ The ties that KM has established with the PM captured the local and provincial regulatory institutions.¹⁰⁰ Even the Member of Parliament of the ruling party and former provincial governor of Steung Treng where the dam is located confirmed that the ‘local level officials in the area dare not to interfere with the activities of powerful business moguls...’¹⁰¹ In 2017, the national police posted on its website that a subsidiary of KM’s Royal Group, Ang & Associates Lawyers (AAL), was involved in illegal timber logging under the name of Se San II dam construction. AAL was contracted by KM’s Se San II hydroelectric company to clear the reservoir. AAL ‘collude(ed) with and recruit(ed)’ residents to cut trees outside the reservoir and bring them into the reservoir to legalize the log, and enable them to be smuggled to Vietnam. The local and provincial authorities ignored it and failed to prevent it.¹⁰² AAL denied the allegation, claiming that all timber collected from the bottom of the reservoir was inspected and verified by the provincial forestry administration, before being sold at the local market.¹⁰³ After posting the report on its website for less than a week, the national police department retracted and said it was published by technical mistake and apologized for the unintentional error.¹⁰⁴ Others claimed that the national police department had negotiated with AAL and KM to ‘get a larger share of the profits behind the scenes, suggesting that AAL and KM bribed the national police [department] to fix the issue’.¹⁰⁵ The apologies indicated how the national police department, as one of the highest levels of regulatory enforcement institutions, was influenced by the tycoon. Likewise, the lower level institution such as the provincial office, as a client, had no choice but to protect the Sino-Cambodian patron’s interests.

¹⁰⁰ Young (n 37).

¹⁰¹ Blomberg Matt and Ana Phann, ‘Sesan II Reservoir a Laundry for Illegal Timber’ (2014)

<<https://english.cambodiadaily.com/news/sesan-ii-reservoir-a-laundry-for-illegal-timber-60575/>> accessed 03 June 2020.

¹⁰² Radio Free Asia, ‘Cambodia’s Lower Sesan 2 Dam Reservoir Used to Launder Illegal Timber: Police’ (2017)

<<https://www.rfa.org/english/news/cambodia/timber-05172017174724.html>> accessed June 04 2020.

¹⁰³ Ibid.

¹⁰⁴ Southeast Asia Globe, ‘Cambodia’s National Police retract report linking Royal Group tycoon to illegal logging’ (2017)

<<https://southeastasiaglobe.com/cambodia-national-police-retract-kith-meng-report/>> accessed 04 June 2020.

¹⁰⁵ Southeast Asia Globe (n 104).

The process of protection echoes the Cambodian way of perceiving power. In Cambodian culture and Buddhist belief, a wealthy person is born with ‘merit’, which in Khmer is ‘*bunn*’, for their good deeds in the past life. This *bunn* must be respected by their followers, that is, the clients, because *bunn* represents power,¹⁰⁶ implicating every practice of *korob*, *kaud*, *klach* – ‘respect, admiration, fear’, in Cambodian political culture.¹⁰⁷ The client is thus submissive to the patron, in this case, the powerful Sino-Cambodian tycoon. Submitting to the merit of the tycoon is not done for nothing, but in exchange for his blessing, similar to when one worships Buddha. Many communities, activists and NGOs speculated that the provincial authority could earn significantly from the embezzlement of the resettlement and compensation budget offered by the Se San II hydropower company.¹⁰⁸ A conversation with an activist revealed that the company claimed they had offered the government enough budget for the resettlement programme, and any issues about this should be directed to the government as its responsibility.¹⁰⁹ This demonstrates not only how the company was able to distance itself from its responsibilities, but it also reveals how much authority the company has over the provincial authorities.

Koh Kong’s Dara Sakor Resort

Situated in South-West Cambodia’s coastal area, Dara Sakor is an ELC-designed-special economic zone (covering more than 30,000 hectares of land) being invested in by Union Development Group Company Ltd (UDG). Sponsored by the BRI, UDG became known more

¹⁰⁶ Jacobsen and Stuart-Fox (n 47).

¹⁰⁷ Öjendal Joakim and Kim Sedara, ‘Korob, Kaud, Klach: In search of agency in rural Cambodia’ (2006) 37 JSEAS 507-526.

¹⁰⁸ Interview with an NGO worker (02 June 2020).

¹⁰⁹ Interview with an NGO worker (28 May 2020).

publicly when suspicions were raised that it was constructing a Chinese military base in Cambodia.¹¹⁰ This wholly Chinese-owned company has, since 2008, operated under a 99-year concessional lease granted by the Royal Government of Cambodia, which is represented by the Ministry of Environment (MoE).¹¹¹ This US\$4 billion project plans to build a casino, a retirement residence, a hotel, a golf court, a seaport, a road and an airport in this zone.

Like other projects, this investment, however, has created conflict with community residents who have been settled in this region for generations since the 1960s.¹¹² About 1163 families in three communes of Kiri Sakor district and two communes of Botum Sakor district were affected but not adequately consulted about the project.¹¹³ Although 1000 families accepted the offer of compensation and were relocated to within Botum Sakor National Park, the rest have been resisting the relocation scheme, citing inadequate infrastructure and livelihood support.¹¹⁴ As of late 2019, while many families have given up, up to 77 families are still committed to fighting for their land.¹¹⁵ To date, they have not achieved what they are demanding: adequate compensation, on-site development, and a sustainable resettlement programme. The inability to obtain their demands is induced by the 'capture' effected by the UDG from the lowest to the highest level of government administration.

This investment does not appear to have established a direct patronage network (joint investment between foreigners and Sino-Cambodian investors). However, the former minister

¹¹⁰ Jeremy Page; Gordon Lubold and Rob Taylor, 'Deal for Naval Outpost in Cambodia Furthers China's Quest for Military Network' (2019) <<https://www.wsj.com/articles/secret-deal-for-chinese-naval-outpost-in-cambodia-raises-u-s-fears-of-beijings-ambitions-11563732482>> accessed 02 March 2020.

¹¹¹ Andrew Marshall and Prak Chan Thul, 'China gambles on Cambodia's Shrinking forests' (2012) <<https://www.reuters.com/article/us-cambodia-forests/insight-china-gambles-on-cambodias-shrinking-forests-idUSTRE82607N20120307>> accessed 03 March 2020.

¹¹² Despite they were forced to relocated to other areas during 1975-79, but they returned in the 1980s.

¹¹³ Marshall and Prak (n 111)

¹¹⁴ Siphath Touch and Andreas Neef, *Resistance to land grabbing and displacement in rural Cambodia* (CMU, 2015).

¹¹⁵ May Titthara, 'Cambodian struggle to be compensated for Dara Sakor megaproject' (2019) <<https://www.chinadialogue.net/article/show/single/en/11735-Cambodians-struggle-to-get-compensation-for-Dara-Sakor-megaproject>> accessed 02 March 2020.

of MoE appeared to be the project broker who, together with the ministers from the Ministry of Economy and Finance, and Ministry of Commerce, signed the contract agreement with Li Zhixua, the director of UDG and an investor of Tianjin Wanlong Group Co. Ltd.¹¹⁶ This broker played a dyadic role, blurring the lines between the public and private entities, as is the cultural norm in a neo-patrimonial regime. In 2008, Zhang Gaoli, one of China's top leaders, presided over the signing of the projected deal, claiming that the project was 'the largest seashore investment project, not only in Southeast Asia, but in the world.'¹¹⁷ After a period of development lasting until 2015, the UDG project, including its seaport, was rebranded to 'The Cambodia-China Comprehensive Investment and Development Pilot Zone' (柬中综合投资开发试验区) by PM Hun Sen, according to Tianjin UDG group.¹¹⁸ The PM and the Chinese President, Xi Jinping, recognized the project (Pilot Zone) as an essential strategic manufacturing project of BRI, establishing a country-to-country level of cooperation. As the former minister of MoE retired and joined the National Assembly in 2013, the brokerage appears to have been gradually transferred to the Royal Cambodian Armed Forces (part of the Ministry of Defense), and other ministers. The role of the military has, since then, started to have more prominence,¹¹⁹ especially when the project is alleged to be violating human rights, laws, and when there are rumours circulating of the development of a Chinese military base.

The armed forces take sides with UDG to destroy the properties and rightful resistance of those affected communities to protect the interests of the company. One victim said 'China is so big; it can do what it wants to do,'¹²⁰ meaning that UDG is influential and able to deploy the military to intimidate the communities. In 2014, UDG's security guards razed and dismantled up to

¹¹⁶ Devin Thorne and Ben Spevack, *Harbored Ambitions: How China's Port Investments Are Strategically Reshaping the Indo-Pacific* (C4ADS, 2017).

¹¹⁷ Beech Hannah, 'A jungle airstrip stirs suspicions about China's plans for Cambodia', (2019) <<https://www.nytimes.com/2019/12/22/world/asia/cambodia-china-military-bases.html>> accessed 04 June 2020.

¹¹⁸ Thorne and Spevack (n 116).

¹¹⁹ Touch and Neef (n 114).

¹²⁰ Hannah (n 117).

fourteen homes of residents resisting the relocation order,¹²¹ and they restricted travel in and out of the areas, especially the Peam Kay and Prek Smach villages, where dwellers resisted and refused to accept relocation and any compensation schemes.¹²² The former broker of the project once confirmed that ‘we need to deploy our weapons to destroy those who obstruct national development projects.’¹²³ On 09 December 2019, General Kun Kim of the RCAF and his family were targeted by the United State Treasury sanction (known as the Global Magnitsky Act) for having been

instrumental in a development in Koh Kong province and had reaped significant financial benefit from his relationships with the People’s Republic of China (PRC) state-owned entity.... used soldiers to intimidate, demolish and clear out land.¹²⁴

As the law mentioned, in Koh Kong province, where the UDG project is located, many human rights activists and NGOs perceive that the SOE is UDG.¹²⁵ This sanction appears to acknowledge that the general involved is protecting UDG at the expense of the deprived communities. At UDG’s headquarters in Phnom Penh, Haanah Beech observed how close the company is to General Tea Banh, the minister of the Ministry of Defense; the UDG office is decorated with his picture striding across Dara Sakor’s golf course.¹²⁶ Having a patron’s picture in the office is a signal in Cambodia’s political culture when someone wishes to show how closely he or she has established mutually beneficial ties with the (middle) patron, and how influential, in a broader context, he or she is. In 2015, the Cambodian Human Rights Task Force (HRTF) found that UDG paid off officials sum of up to US\$100,000 for assisting, relocating

¹²¹ Taing Vida, ‘Evictee prepping complaint’ (2014) <https://phnompenhpost.com/national/evictees-prepping-complaint>> accessed 02 March 2020; Hul Reaksmey, ‘UDG guards again accused of violent evictions’ (2014), <<https://english.cambodiadaily.com/news/udg-guards-again-accused-of-violent-evictions-71628/>> accessed 02 March 2020

¹²² Marshall and Prak (n 111); Touch and Neef (n 114).

¹²³ Interview with former minister of MoE and member of Parliament of the Cambodian People’s Party (18 December 2013).

¹²⁴ U.S. Department of the Treasury, ‘Treasury Sanctions Corruption and Material Support Networks’ (2019) <<https://home.treasury.gov/news/press-releases/sm849>> accessed 04 June 2020.

¹²⁵ Hannah (n 117).

¹²⁶ Hannah (n 117).

and circumventing the resistance of the affected communities.¹²⁷ Due to this capture, the company said that the forced eviction was ‘a problem between the Cambodian government and its people’¹²⁸ alleging that the government was mainly responsible, rather than acknowledging its own corporate accountability. HRTF’s director said: ‘We have found that the working group [land dispute resolution], from the local to the national level, is systematically corrupt and working in cahoots with the company.’¹²⁹ As a close tie with the powerful patron is essential, UDG has mimicked the process evinced by the Sino-Cambodian tycoons in terms of doing business in the country. To instill a patron-client relation, UDG has joined the annual humanitarian fundraising of the CRC that is often presided over by the PM and his wife. UDG donated US\$0.5 million in 2016, and then the amount was increased to US\$1 million in 2019.¹³⁰ This donation is more than the amount of an annual lease fee, US\$1 million per year,¹³¹ as stated in article 7 of the 2008 contract.¹³² Such a large donation to the CRC, in addition to the out-of-pocket payments to different levels of influence, as alleged by human rights NGOs, exemplifies the normal way of doing business in a patron-client culture. The more you give, the more you stand out in the eyes of the patron. While the money given is a ‘quid pro quo’, the recipient appears to transfer their power to the giver – in this context, UDG. Even aid does not come with conditions, but it does come with intention. A Cambodian secretary of state once confirmed that because China is getting bigger, Cambodia chooses China as its aid does not come with conditions neither.¹³³

¹²⁷ Titthara May, ‘In cahoots’ with UDG’ (2015) <<https://bit.ly/2TU3IOw>> accessed 04 June 2020.

¹²⁸ Marshall and Prak (n 111)

¹²⁹ May (n 128).

¹³⁰ Nhim Sokhorm, ‘At Controversial Red Cross Fundraiser, Hun Sen Urges Magnanimity’ (2019) <<https://vodenglish.news/at-controversial-red-cross-fundraiser-hun-sen-urges-magnanimity/>> accessed 04 June 2020

¹³¹ Pech Sotheary, ‘CRC rakes in \$13 million from donors on Red Cross Day’ (2016) <<https://www.phnompenhpost.com/national/crc-rakes-13-million-donors-red-cross-day>> accessed 04 June 2020.

¹³² Contractual Agreement between Union Development Group and the Royal Government of Cambodia (2009)

¹³³ James Kyngé; Leila Haddou and Michael Peel, ‘FT Investigation: How China bought its way into Cambodia’ (2016) <<https://www.ft.com/content/23968248-43a0-11e6-b22f-79eb4891c97d>> accessed 04 June 2020

Conclusion

Against the backdrop of long historical migration, business, and diplomatic relations between Cambodia and China, the latter's foreign investments, such as BRI, as well as its aid to Cambodia, are the by-products of geopolitical expansion, whereby both countries can mutually fulfil their respective political and economic aspirations.¹³⁴ While Cambodia has enjoyed receiving aid and trade with no strings attached from China, these exchanges have established a form of patron-client diplomacy between the two countries,¹³⁵ by which the giver intends to influence the receiver. This relationship has also facilitated and increased the inflow of the new generation of Chinese immigrants, the investors, and the capital of Chinese SOEs into Cambodia, regardless of the latter's weak and ambiguous business and regulatory environment. In terms of China's success in seeking to extend its reach in Southeast Asia, a number of studies limit their discussions to the ties established by the older generation of ethnic groups or Sino-diasporas¹³⁶; however, this study goes much further in arguing that the continuation of China's injection of capital into Cambodia—an investment environment that can hardly be considered favourable—has been secured by the investors' prowess in perpetuating socio-political and cultural practices of patron-client networks entrenched by the older generations of Sino-Cambodians, especially the elites, tycoons or *Oukhna*. As such, the powerful Sino-Cambodian tycoons, such as the *Oukhna*, depend on these networks to partially comply with regulatory requirements in order to get things done much more quickly than the formal regulatory procedures allow. Given their experience of doing this in their home country, mainland Chinese investors follow this pattern of accessing business licenses, concessions, and contracts, thereby securing and ensuring their business operations in the era of BRI.

¹³⁴ Ibid.

¹³⁵ Ciorciari (n 15).

¹³⁶ Hong 2016 and Hong Liu and Guanie Lim, 'The political economy of a rising China in Southeast Asia: Malaysia's response to the Belt and Road Initiative' (2019) 28 JCC 216-31.

Based on the model presented here of investing in Cambodia, and supported by the two pertinent case studies, this paper argues that the penetration of patron-client networks exacerbates regulatory ‘capture’. This is an invisible form of business regulatory practice in Cambodia, where the present ruler, Hun Sen, also known as the patron at the apex of the pyramid, has employed to extract rent and to cling on power for decades.¹³⁷ This model of investment has been a win-win strategy between the two countries for achieving their political objectives, and the financial objectives of Chinese investors and Sino-Cambodians; however, this has been at the expense of weaker groups, such as communities and civil society organizations who have played a significant role, as a third actor, in scrutinizing foreign investments in Cambodia. In a country led by a strongman who has clung onto power by means of rent extraction, the space for third actors in the regulatory framework is often delimited by the power relations between corporations and the ruling government.

This article argues that capture plays a dyadic role. Not only does it navigate business or investment through the ambiguity of the existing regulatory process, but it also exacerbates the lax regulatory enforcement. The capture of patron-client practices is one of the vital factors of the success of China’s BRI, the aims of which are to extract rent and natural resources from the host country’s hostile regulatory environment. This proposition is, however, based on Cambodia’s peculiar business and regulatory environment, which might not be implicit in and generalizable to other BRI operations and non-Chinese investments. Future studies should examine whether these models work with non-Chinese investments, such as French, Japanese, European and US companies operating in Cambodia or more widely in Southeast Asia. These

¹³⁷ Sokphea Young and Kheang Un, ‘Strategic survival of electoral authoritarian regimes: the case of Cambodia 1993–2016’ in Stephen McCarthy (ed), *Contemporary Research Challenges in South East Asia* (GU 2018) 14-20.

countries have been playing a significant role in aid and trade for the development of Southeast Asia.

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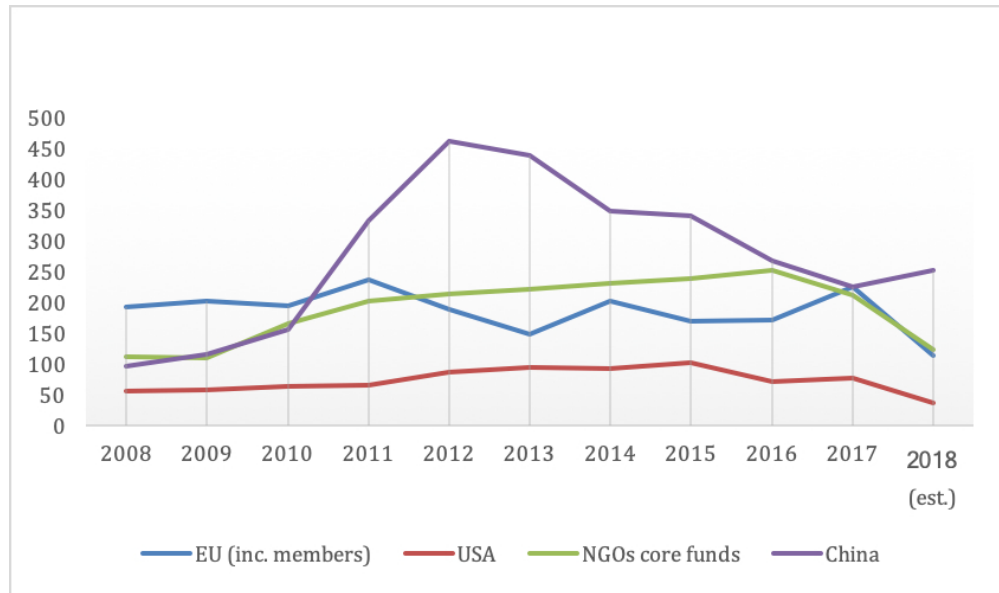


Figure 1- Foreign aid to Cambodia (US\$ million)

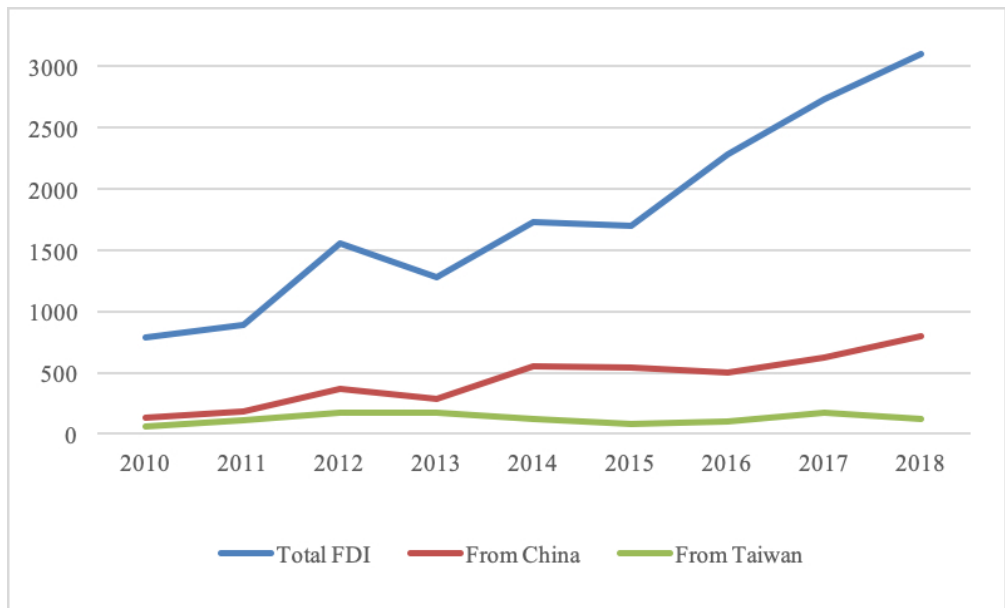


Figure 2- Total foreign investment to Cambodia (US\$ million)

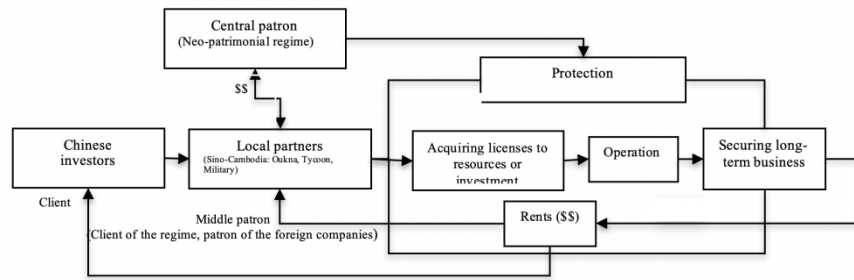


Figure 3 - A model of Chinese investors operating in Cambodia