

# BITTERSWEET



# HARVEST

**A Human Rights Impact Assessment of the European Union's  
Everything But Arms Initiative in Cambodia**



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*Bittersweet Harvest: A Human Rights Impact Assessment of the European Union's Everything But Arms Initiative in Cambodia*

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# Summary

*They pointed their guns at us, preventing us from entering where the tractors were demolishing our land. But I tried to enter, and they shot.*

- Pet Nim, Koh Kong province, September 2012.

*They burned everything...including the rice. They didn't allow us to harvest first. They said they wanted to grow sugarcane. They destroyed our houses so they could grow sugarcane.*

- Widow, Oddar Meanchey province, October 2011

In recent years, there has been a surge in forced displacement resulting from land concessions for industrial sugar plantations in Cambodia. Motivated by the European Union's "Everything But Arms" (EBA) preferential trade scheme for least developed countries, Thai sugar companies and a well-connected Cambodian tycoon have developed industrial plantations in Cambodia to produce raw sugar for export to Europe. The EBA initiative provides duty-free access to the European market and a guaranteed minimum price for sugar that has been on average three times the world price. While the EBA scheme is intended to benefit the poor through job creation from export-led growth, the case of Cambodia's rapidly expanding sugar industry tells a different story.

In Cambodia today, the government is leasing vast quantities of land to private investors to develop large-scale agro-industrial plantations. The leased land often overlaps with the private land of small-scale food producers and the common lands and natural resources that sustain rural communities. Forcibly deprived of their productive base by local and foreign investors backed by state security forces, hundreds of thousands of Cambodians who had pulled themselves out of poverty are once again struggling to survive.

The sugar industry has been one of the worst offenders in Cambodia's land grabbing epidemic. Its development has been accompanied by violent forced evictions and other human rights violations in the provinces of Koh Kong, Kampong Speu and Oddar Meanchey. Concessionaires have disregarded the entire gamut of social and environmental safeguards in the Cambodian regulatory framework, as well as their responsibility under international law to respect human rights.

What has confounded many observers is that after breaking a host of domestic laws and committing gross violations of international norms, these companies have been able to peddle their goods in Europe where they are rewarded with lucrative EBA trade preferences. The situation betrays the original intent of the EBA initiative as well as the commitments of the European Union (EU) to uphold human rights in all of its external actions. It has led to calls by Cambodian and European civil society organizations and the European Parliament to withdraw EBA preferences from Cambodian sugar until the human rights violations that have occurred in the sector are fully remediated. These calls have so far been dismissed by the European Commission, which argues that it lacks the necessary legal conditions to initiate the withdrawal procedure.

Equitable Cambodia, Inclusive Development International and the Hands off the Land Alliance have therefore decided to conduct their own human rights impact assessment of the EBA initiative in Cambodia. The assessment follows the methodology proposed in the UN Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreements, including the steps of a) screening, b) scoping, c) evidence gathering, d) analysis and e) conclusions and recommendations. In order to utilize limited resources most effectively, the scope of the assessment was limited to those most likely to be adversely affected. The sugar sector was selected for this reason during the screening phase due to the clear causal relationship between the growth of this sector and the EBA arrangement, and the well-documented forced evictions that have occurred alongside the development of the industry.

The evidence gathered for the assessment included a desk review of primary and secondary materials, combined with in depth interviews, household surveys and focus group discussions with over 275 people, including local officials, NGO staff, community leaders and farmers from three provinces who lost their land due to industrial sugarcane development.

The assessment begins with an examination of the normative content of the international obligations of the EU and its Member States, Cambodia and the sugar companies, with a focus on the human right to food, the human right to adequate housing, the prohibition of forced evictions and the prohibition of child labor. These rights and obligations are enshrined in treaties ratified by Cambodia and EU Member States, including the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. States' obligations under these treaties are elaborated upon in soft law instruments such as the General Comments of treaty bodies, the UN Basic Principles and Guidelines on Development-Based Evictions and Displacement and the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests. The international human rights framework sets out procedural and substantive requirements before, during and after evictions in order to uphold these human rights obligations. The assessment uses this framework to assess the human rights impacts of evictions and land seizures associated with sugar plantation development in Cambodia that was driven by the EBA arrangement.

The assessment finds that, in the absence of effective human rights safeguards, Cambodia's policy of granting large-scale land concessions to private investors for agro-industrial development and the EU's policy of granting preferential tariffs to spur such investment in least developed countries both carry risks of devastating human rights impacts. These risks materialized before, during and after the evictions that were carried out to make way for industrial sugar development in Cambodia.

In violation of international law, the evictions were not authorized by law or undertaken for the purpose of promoting the general welfare. Alternatives to eviction were not explored in consultation with potentially affected people and no impact assessments whatsoever are known to have been conducted. As a result, strategies were not developed to avoid or minimize displacement. Effective dissemination of information and meaningful consultation about compensation and resettlement options were not conducted and appropriate notice of eviction was not provided to affected people. On the contrary, some affected communities did not learn that their land had been granted to sugar companies until bulldozers turned up with the police and military. Others faced a campaign of intimidation and pressure to give up their land and accept the minimal compensation on offer.

The procedural requirements for ensuring respect for human rights while the evictions were being carried out were also flagrantly violated. The assessment found that forced evictions were carried out to clear land for sugarcane plantations in all research areas. Police and state security forces carried out arbitrary arrest and detention and used physical violence at the behest of sugar companies against local communities attempting to defend their land. One community activist was found axe murdered in Koh Kong after documenting and actively protesting the evictions. His murder was never investigated. At least two villages were totally destroyed and more than 11,500 hectares of rice fields and orchards belonging to over 2000 families was seized. Thousands more hectares of community forest and environmentally protected areas were also destroyed to make way for the sugar plantations. Many families suffered the destruction of their crops, livestock and personal possessions.

Despite significant loss of housing, land, property and livelihood resources, compensation was generally not provided. When compensation was given, losses were undercounted and undervalued, and the process was characterized by a lack of participation, threats and corruption. None of the families who were illegally evicted from their land were granted their right to return and no efforts were made to rehabilitate the displaced.

As a result, after the evictions, affected people suffered a severe retrogression in their enjoyment of nearly all economic and social rights, including the human rights to adequate housing, food, work, education and health. Over 1000 men, women and children were left homeless and landless, while others were provided with small plots of non-arable land. In each study area, the majority of households reported increased food insecurity, deterioration of livelihoods and loss of income-earning opportunities as a result of their de-capitalization and loss of natural resources that previously provided a safety net. In some cases, the forced evictions led to extreme hunger and possibly starvation. Many of the families in the study areas, especially Oddar Meanchey, resorted to illegal migration to Thailand after



they lost their land to the sugar concessions. Those who remained had no choice but to work as day laborers on the sugar plantations, where work is irregular, conditions are poor and pay is generally insufficient to enable most households to make ends meet. Interviewees unanimously stated that they preferred to farm their own land and reap the benefits of their labor for their families as they did prior to the arrival of the sugar industry.

The human rights of women and children were disproportionately violated as a result of the evictions. Women found it more difficult to look after their children since losing their land, because they have either been forced to migrate to Thailand or work on the plantations for nine hours a day. Women whose husbands migrated to Thailand to find work reported being abandoned, while others reported increased domestic violence following the evictions. In all areas, adverse impacts to children's living conditions, access to education and mental and physical health were reported. Child labor on the sugar plantations was widely reported in all areas and was observed and photographed by the assessment team in Koh Kong and Kampong Speu. The assessment team confirmed 85 children, some as young as 8 years old, working on the Koh Kong sugar plantation.

While there is ample evidence of state and corporate complicity in the serious and systematic human rights violations that have surrounded the development of industrial sugarcane plantations in Cambodia, nobody has been held accountable and those affected have been denied access to an effective remedy at the local and national levels. Unable to obtain redress through Cambodian institutions, affected communities have turned to Europe in search of accountability. However, they have found that there is no effective, independent accountability mechanism at the European Commission or anywhere within the EU structure that is available to people affected by EU policies or the activities of European companies outside of Europe's borders. In the absence of such a mechanism, the EU's legal and policy commitments to human rights abroad ring hollow to the people they are meant to serve.

While the European Commission has recently committed to embed impact assessments and evaluations in trade policy-making and address all significant impacts, it has apparently not extended this commitment to the EBA initiative. This report underscores the urgent need for assessment and reform of the EBA scheme. If human rights safeguards are not integrated into the trade scheme, its poverty reduction goals will continue to be undermined and the EU will remain in violation of its international human rights obligations.

# Recommendations

## To the European Union and its Member States

- Immediately initiate an investigation into human rights violations related to economic land concessions linked to the production and export of agricultural goods to the European Union. Temporarily suspend EBA trade preferences for agricultural products from Cambodia in cases where serious human rights violations are identified, until such time as those violations are remediated.
- Undertake comprehensive ex post human rights impact assessments of the EBA initiative in all beneficiary countries and adopt corrective measures where an incompatibility is found. These assessments should adhere to the Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreements.
- Where heightened impacts on land and natural resource tenure are identified, the Voluntary Guidelines on the Responsible Governance of Tenure should be used to inform the assessments and mitigation measures.
- Ensure continuous, transparent assessment of the impact of the EBA initiative on human rights through existing EU monitoring mechanisms.
- Rectify the Generalized System of Preferences (GSP) Regulation to institute a system of human rights due diligence for all products imported to the European Union under the EBA arrangement. Trade preferences should only be granted to beneficiaries that respect human rights. The European Commission should verify, on a regular basis, that producers/exporters are not responsible for, or complicit in, human rights violations prior to granting preferential treatment, just as it currently ensures compliance with the rules concerning the origin of products.
- Establish a grievance mechanism that is legitimate; accessible; predictable; equitable; transparent; rights-compatible; and a source of continuous learning, which is linked to the EBA human rights due diligence process.
- Strengthen the role of EU Member States and the European Parliament in providing oversight and accountability for the GSP.
- Ban the import of agricultural goods produced on illegally acquired land.
- Adopt and enforce laws that require business enterprises to respect human rights, including through their supply chain relationships abroad.

## To the Government of Cambodia

- Enforce the Prime Minister's declared moratorium on the granting of new economic land concessions.
- Undertake comprehensive, transparent and verifiable social, environmental and human rights impact assessments of all existing economic land concessions granted throughout the country, including those assessed in this report. The assessments should be conducted in line with international standards and include meaningful consultation with affected communities.
- Cancel concessions that are in persistent violation of Cambodian law or which have involved

human rights violations.

- Enable and support dispossessed families and communities to return to their land in safety, build adequate housing and reestablish their livelihoods so that they may live in security and dignity.
- Return all Indigenous People's ancestral land that has been illegally granted as concessions without their free, prior and informed consent.
- Ensure that concessionaires respect the water and forest rights of local communities.
- Stop permitting and promoting the employment of State armed forces by private companies to secure their interests through the threat or use of violence against local communities.
- Investigate and prosecute perpetrators of violence and human rights abuses in connection with economic land concessions, including the abuses referred to in this report.

## **To KSL Group, Ve Wong Corporation, Mitr Phol Sugar Corporation, Ly Yong Phat and LYP Group**

- Stop forced evictions and encroachment on community and private land.
- Stop destroying forests.
- Stop confiscating and holding people's livestock for ransom.
- Stop preventing people from accessing common natural resources.
- Stop using violence against people who defend their land rights.
- Stop using the courts and other State institutions to harass and persecute villagers and human rights defenders.
- Provide fair and just reparations for all harms and losses suffered, including returning illegally appropriated land.
- Begin meaningful dialogue with affected communities over the nature and means of reparations.
- Stop using child labor.
- Implement best practices for sugarcane production to minimize harmful environmental, health and human rights impacts.
- Adopt a policy commitment to meet the responsibility to respect human rights, including by treating the risk of causing or contributing to human rights violations as a legal compliance issue.
- Report to the public on a regular basis and in an accessible format on how human rights risks and impacts are being addressed.
- Establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted by your operations.

## To American Sugar Refining / Tate & Lyle Sugars

- Investigate abuses committed by Cambodian suppliers and consult with affected people who have been harmed by these companies.
- Cooperate with suppliers in a legitimate process of remediation for all harms and losses suffered.
- Require suppliers to respect the law and human rights and provide fair and just reparations for people who have been harmed, including by returning illegally appropriated land. Cancel contracts and stop importing sugar from Cambodian suppliers if they do not cooperate.
- Adopt a policy commitment to meet the responsibility to respect human rights, including by treating the risk of causing or contributing to human rights violations as a legal compliance issue.
- Report to the public on a regular basis and in an accessible format on how human rights risks and impacts are being addressed.
- Conduct credible, independent and transparent human rights due diligence before sourcing sugar from suppliers worldwide, and on an ongoing basis thereafter.
- Establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted by your operations.

# Photo Feature



In Cambodia today, hundreds of thousands of people are being displaced from their homes, farmlands, forests and fisheries in the name of 'development'. The sugarcane industry has been one of the worst offenders driving this land-grabbing crisis. At least 100,000 hectares in land concessions have been granted to private companies for industrial sugarcane production in recent years. These concessions have led to the destruction of protected forests, the pollution of water sources, and the forced displacement and dispossession of thousands of people in Koh Kong, Kampong Speu, Oddar Meanchey and Svay Rieng provinces.

Crops have been razed. Animals have been shot. Homes have been burned to the ground. Thousands of people have been left destitute. Some have been thrown in jail for daring to protest.



K. K. (13) hugs his little sister after a day working in the sugar cane plantations.  
- Chhouk village, Sre Ambel district, Koh Kong, Cambodia. 15 Jan. 2013.

© Thomas Cristofolletti / Ruom



B. S. (11) carries a bunch of sugar cane. To help his family, who were evicted from their land in 2006 to make way for the sugar plantation, he normally works 2 days a week to try not to lose too many days of school.

- Sre Ambel, Koh Kong, Cambodia. 16 Jan. 2013.

© Thomas Cristofolletti / Ruom





C.S (14) works a couple days a week in the plantation to help his family. In order to facilitate the cutting, sugar cane fields are burnt before harvesting.  
- Sre Ambel, Koh Kong, Cambodia. 16 Jan. 2013

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T. N. (61) walks back home after a day working in the plantations. She was evicted from her 7 hectares of farm land in 2011, and was forced to accept 300 USD in compensation. Now she and her family are no longer self-sufficient and have fallen into debt.

- Amliang commune, Kampong Speu, Cambodia. 08 Jan. 2013.

© Thomas Cristofolletti / Ruom







Man hugs his newborn daughter at Bos relocation site. His house was burned down by the military on behalf of the sugar company and his rice crop was looted. He was allocated one hectare of remote forested land to replace his home and five hectares of rice land.

- Bos relocation site, Oddar Meanchey. 13 Feb. 2013.

© Nicolas Axelrod / Ruom



Girl works clearing land at Bos relocation site for her 'adopted family' in exchange for her father's debt.

- Bos relocation site, Oddar Meanchey. 13 Feb. 2013.

© Nicolas Axelrod / Ruom



Laborers leave a manual worker camp to go harvest sugar cane at the Phnom Penh Sugar plantation.

- Amliang, Kampong Speu, Cambodia. 17 Feb. 2013.

© Nicolas Axelrod / Ruom



Cane workers come back home after a hard day's work.

- Chhouk village, Sre Ambel district, Koh Kong, Cambodia. 15 Jan. 2013.

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## Introduction

In March 2001, the European Commission adopted the EBA initiative, granting preferential access to the European market for all products from Least Developed Countries (LDCs), except arms and ammunitions.

The logic of the EBA initiative, according to its proponents, is that increased trade fosters economic growth, job creation and consequentially, poverty reduction. It is asserted that the provision of preferential tariffs to LDCs stimulates investment, leading to increased efficiency, productivity and international competitiveness;<sup>1</sup> and enhances LDC export earnings, promoting industrialization and diversification of their economies.<sup>2</sup>

An apparent contradiction of the EBA initiative, however, is that it was designed with the explicit intention of luring private investment to the world's poorest countries, yet it contains no safeguards to ensure that this investment does no harm to the poor people whom the EBA ultimately purports to benefit. The assumption of the European Commission (EC) is that even with no safeguards in place to prevent adverse impacts, increased investment resulting from preferential market access will necessarily lead to positive, pro-poor outcomes.

NGOs concerned about land grabbing in Cambodia claim that this assumption is devastatingly mistaken. They point to EBA as an unwitting driver of land grabbing and human rights violations in the agro-industrial sector. They have called upon the EC to investigate human rights abuses perpetrated by companies that are benefiting from the EBA scheme.<sup>3</sup> While the EC claims that the EBA is bringing jobs and prosperity to Cambodia, the case of Cambodia's rapidly developing sugar industry tells a different story. NGOs have pointed to the impoverishment of those who have been displaced and dispossessed by large-scale economic land concessions (ELCs) granted to sugar companies seeking to cash in on the lucrative European trade preferences.

To obtain more empirical evidence on this question, Equitable Cambodia, Inclusive Development International (IDI) and the Hands off the Land Alliance decided to conduct an *ex post* human rights impact assessment (HRIA) of the EBA initiative in Cambodia. The HRIA focuses on the sugar sector because of the clear linkages between industrial sugarcane development in Cambodia and the EBA initiative, and the well-documented forced evictions and other human rights abuses that have occurred in this sector. It is based on a review of relevant documents and the findings of in-depth interviews, household surveys and focus group discussions with Cambodian farmers from three provinces who lost their land due to industrial sugarcane development.

It is hoped that the findings of this HRIA will inform European and Cambodian decision-makers and propel them to take action to redress the human rights violations suffered by affected Cambodian communities. The findings also point to the need for European policy-makers to establish new human rights safeguards within the Generalized System of Preferences (GSP) to give effect to the EU's and its Member States' human rights obligations.



# Everything But Arms and the Cambodian Sugar Rush

In the 1960s, the United Nations Conference on Trade and Development (UNCTAD) advanced the idea of improving export market access for developing countries in order to foster development. At the UNCTAD II Conference in New Delhi in 1968, the Generalized System of Preferences, or GSP, was adopted in order to increase developing countries' export earnings, promote their industrialization and accelerate their rates of economic growth.

The GSP is a formal system of exemption from the most favored nation principle (MFN) of the World Trade Organization (WTO) (formerly the General Agreement on Tariffs and Trade or GATT). MFN effectively requires WTO member countries to treat imports coming from all other member countries equally. In 1979, the GATT established a permanent exemption to the MFN obligation through the Enabling Clause, which allowed contracting parties to the GATT to grant preferential tariff treatment to developing countries under their respective GSP schemes. The only caveat was that these schemes had to be "generalized, non-discriminatory and non-reciprocal" with respect to the beneficiary countries.<sup>4</sup>

The European Union's GSP contains three separate arrangements: the standard GSP, which is available to the broadest group of developing countries; GSP+, which is open to 'vulnerable' countries that have ratified and implemented 27 international conventions on the principles of sustainable development and good governance; and 'Everything But Arms,' which provides the most generous arrangement for least developed countries.<sup>5</sup>

The Everything But Arms Agreement was adopted in 2001 against the backdrop of the Millennium Development Goals, which emphasized 'aid for trade'. In particular, Target 13 calls on rich nations to "address the special needs of the least developed countries." Indicator 38 refers to the "proportion of total developed country imports (by value and excluding arms) from developing countries and from least developed countries."

Under the EBA agreement, 49 countries currently classified by the United Nations as LDCs are granted full duty-free and quota-free access to the EU for all their exports except arms and ammunitions. Exceptions for a limited period of time were made for rice, bananas, and sugar, which were fully phased into the EBA arrangement over several subsequent years. Market access for sugar produced in the world's poorest countries was fully liberalized by October 2009 in conjunction with the reform of the EU sugar regime. In addition to granting duty- and quota- free access, the scheme requires importers to pay a guaranteed minimum price for sugar from LDCs, which has been three times higher on average than the world market price.<sup>6</sup>

"Cambodia is a prime example of the Everything But Arms scheme's power as an engine of growth. In the last 10 years, the duty free and quota free access to the E.U. market has allowed Cambodia to more than double its exports to the E.U., in particular in the textile and footwear sector, which provide direct employment for hundreds of thousands of Cambodians."

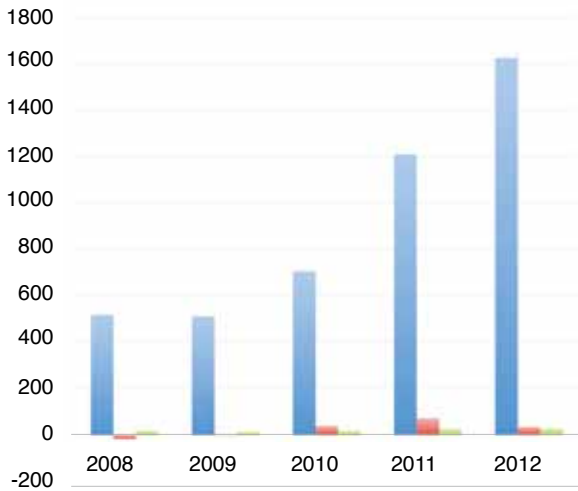
- Jean-Francois Cautain, EU  
Ambassador to Cambodia (Cambodia  
Daily, April 2013)

## Everything But Arms in Cambodia

Cambodia has had access to EBA since the scheme's inception in March 2001. Data released in 2013 by the European Commission and the Cambodian Ministry of Commerce indicates that the arrangement has led to rapidly growing Cambodian exports to the EU. According to the figures, exports from the Kingdom grew to \$2.32 billion in 2012, which represented 42 percent of Cambodia's total

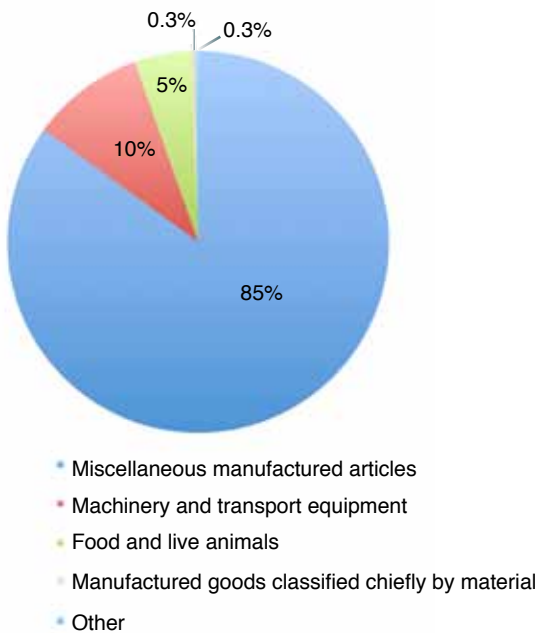
**Figure 1: Cambodia Trade with the EU**

Cambodia, Exports to European Union (2008-2012)



Period	Exports to EU (millions of euros)	Variation (% , y-o-y)	EU Share of Total Exports (%)
2008	518	-16.4	17.5
2009	511	-1.5	14.3
2010	705	38	16.7
2011	1211	71.9	25.9
2012	1627	34.3	26.8

European Union, Imports from Cambodia (2012)



SITC Sections	Value (Millions of Euro)	Share of Total (%)
Miscellaneous manufactured articles	1524	85.00%
Machinery and transport equipment	173	9.60%
Food and live animals	87	4.80%
Manufactured goods classified chiefly by material	6	0.30%
Commodities and transactions n.c.e	1	0.10%
Crude materials, inedible, except fuels	1	0.10%
Beverages and tobacco	1	0.10%
Chemicals and related prod, n.e.s	0	0.00%
Mineral fuels, lubricants and related materials	0	0.00%

Source: European Commission, DG Trade-G2 – Statistics sector (May 2013)

exports in that year and a 23 percent increase from the previous year.<sup>7</sup> Footwear and garments, followed by bicycles and auto parts obtained the highest utilization rates. Together these sectors comprise 95 percent of Cambodia’s total EU exports. The other 5 percent comes from the agricultural sector (see Figure 1). According to the Delegation of the European Union to Cambodia, the agriculture sector experienced an “exponential increase” in exports to the EU in 2010.<sup>8</sup>

## EBA Beckons Big Sugar

An UNCTAD study on the effects of the EBA initiative on the sugar industries of LDCs predicted that from 2009 each country would be able to export its entire sugar production to the EU at above-world-market prices, while meeting local sugar consumption needs through imports from the lower-priced world market. The study found a sustained increase in sugar production in LDCs since the announcement of the EBA initiative. It suggested that the sugar companies, all based in non-EBA countries, were investing in these LDCs with a “view to taking advantage of EBA quota-free access in 2009.”<sup>9</sup>

The case of Cambodia, while not examined in the UNCTAD study, has closely mirrored its findings. In 2006, Cambodia’s sugar cane holdings were negligible. By 2012 it had more than 100,000 hectares of land under lease to agro-industrial firms for cane production.<sup>10</sup> Since EU tariffs and quotas for sugar were fully phased out for EBA countries in 2009, the value of annual Cambodian sugar exports jumped from USD 51,000 to 13.8 million in 2011. Ninety-two percent of exports went to the European Union during this period (see Table 1).

The sugarcane boom has been led by Thai sugar companies looking to capitalize on the EBA scheme and Ly Yong Phat, a Cambodian business tycoon and highly influential senator from the ruling Cambodian People’s Party (CPP).

According to all of the companies involved, EBA has been a primary motivator for their investments in Cambodia. An assistant to Ly Yong Phat explained that the duty-free imports would reduce costs, allowing the company to compete with other sugar producing countries. “We would have difficulties if we didn’t have these duty-free imports,” he told the Cambodia Daily.<sup>11</sup> In a 2007 letter submitted to the Stock Exchange of Thailand, the CEO of Thai sugar company KSL Group explained that its planned investments in Cambodia will be “an expansion of sugar business, a core business of KSL, into a neighboring country, and also get the special privilege under EBA in exporting sugar to EU with high selling price [sic].”<sup>12</sup> Mitr Pohl, the largest Thai sugar producer, told the Bangkok Post that it was also investing in Cambodia in order to benefit from the duty-free sugar exports and guaranteed minimum price under the EBA scheme.<sup>13</sup>

**Table 1: Development of Cambodian sugar exports in thousands of dollars**

Year	2007	2008	2009	2010	2011
Total sugar exports to EU	61	28	51	3850	12,995
Total sugar exports	66*	429*	174*	4256*	13,842*
Note: * Estimated			Source: UNCTAD, 2013		

## CHAPTER 2:

# Cambodia's Industrial Sugar Development and Trade Flows

The lack of transparency and law enforcement in the granting and monitoring of ELCs has enabled concessionaires to expand their land holdings and skirt the law, either by registering their concessions under various businesses, placing concessions side-by-side or leasing in partnership with others, such as under the name of a spouse. It has also helped to conceal the role of foreign investors, international financiers and major global brands involved in the market chain.

This chapter assembles the information that is available on the three major Cambodian industrial sugarcane operations, including the primary producer companies and their buyers, and the land concessions they received in the provinces of Koh Kong, Kampong Speu and Oddar Meanchey, which are the focus of this human rights impact assessment.



Map 1: Location of major sugarcane concessions in Cambodia



## Koh Kong

In August 2006, the Ministry of Agriculture, Forests and Fisheries (MAFF) awarded two ELCs in Botum Sakor and Sre Ambel districts of Koh Kong province to Koh Kong Plantation Co. Ltd (KKPC) and the Koh Kong Sugar Co. Ltd. (KCSI) for industrial sugar production.<sup>14</sup> Both companies were formed out of a partnership between KSL Group of Thailand, Ve Wong Corporation of Taiwan and Senator Ly Yong Phat.<sup>15</sup> KSL currently holds a controlling 70 percent ownership stake in both companies<sup>16</sup> and Ve Wong Corporation holds a 30 percent stake.<sup>17</sup> Ly Yong Phat reportedly sold his shares to KSL in 2010.<sup>18</sup>

The concessions cover 9,400 ha and 9,700 ha respectively for a duration of 90 years.<sup>19</sup> While the concessions were technically issued to two separate Cambodian legal entities, KKPC and KCSI, an examination of official documentation reveals that they occupy the same office and applied for the concession, received approval, and signed the concession contracts on exactly the same days.<sup>20</sup> The concessions are located side-by-side and have been developed into a single sugarcane plantation with a total area of 19,100 ha. The plantation is, by their own admission, owned by KSL and Ve Wong Corporation.<sup>21</sup> The concessions are therefore in breach of Cambodian law, which prohibits the “issuance of land concession titles on several places relating to surface areas that are greater than [10,000 hectares] in favor of one specific person or several legal entities controlled by the same natural persons.”<sup>22</sup>

While Cambodian law permits the granting of state private land to private developers for ELCs, the concessions that were granted to KKPC and KCSI included land that was owned by local farmers in Chi Kha, Trapaing Kandaol and Chouk villages of Chi Kha Leu Commune, Sre Ambel District. According to the Cambodian legal aid organization, Community Legal Education Center (CLEC), which is providing legal representation to the affected villagers, 456 families were dispossessed by the concessions.<sup>23</sup>

The villagers hold documentation that attests to their possession rights under the 2001 Land Law.<sup>24</sup>

Village maps that were produced for the three villages in February and March of 2006 as part of the donor-funded Participatory Land Use Planning (PLUP) project provide further evidence of the villagers’ occupation and use of the land inside the concession. These maps clearly indicate that the land was used for a variety of smallholder land uses.<sup>25</sup> Figure 2 presents an overlay of the three PLUP maps with the concession boundaries. This is consistent with Google Earth images from 2003 overlaid with the concession boundaries (see Image 1), which also shows a mix of forest and farmland inside the concession that was granted three years later.

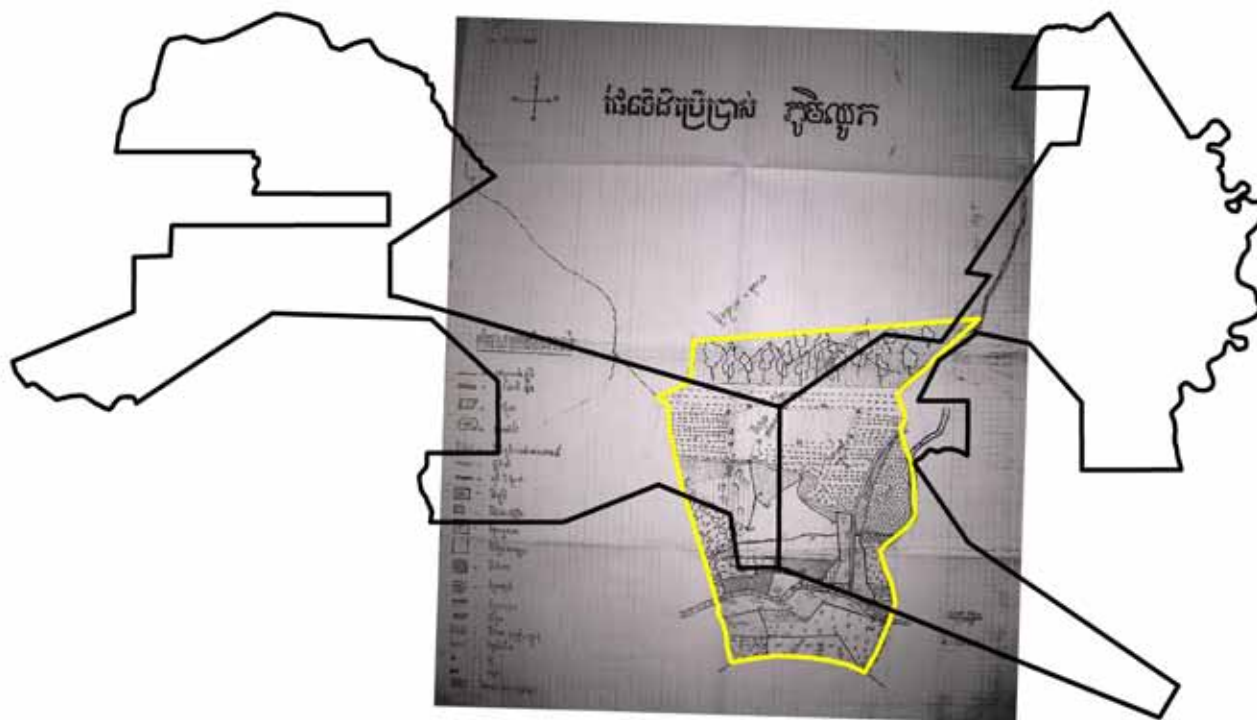
The private ownership of land inside the concession was also recognized by an inter-ministerial working group led by MAFF, which carried out a study of the land requested by the two companies in April 2006. The study, which was obtained by Equitable Cambodia, states that, “the land requested by the two companies overlapped protected areas, development zone protection forest, concession forest, concession land and the land of local people.”<sup>26</sup>

After forcibly seizing the villagers’ land in the preceding years (see Chapter 5), KSL opened a sugar-processing factory in Sre Ambel in January 2010. Six months later, Cambodia’s first shipment of sugar in four decades, valued at roughly 3.31 million USD, left Koh Kong for the United Kingdom.<sup>27</sup> The 10,000 ton shipment was delivered to UK sugar giant Tate & Lyle, which had earlier signed five year contracts with KSL to purchase all of its output from Cambodia and Laos at the price of 19 cents a pound.<sup>28</sup> Since 2010, Tate & Lyle’s refinery has reportedly received 48,000 tons of sugar from Cambodia, estimated at 24 million euros.<sup>29</sup>

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a The Land Law (2001) recognizes “possession rights” of anyone who can prove that their possession began before the Land Law was passed in August 2001 and was unambiguous, non-violent, notorious to the public, continuous and in good faith. Possession rights are considered a *right in rem* and are roughly equivalent to ownership.

Figure 2: PLUP map overlaid with Koh Kong concession boundaries



Satellite Image 1: 2003 Google Earth images overlaid with Koh Kong concession boundaries





## Kampong Speu

In February 2010, Phnom Penh Sugar Co. Ltd. received approval from the Cambodian government for an ELC of approximately 9000 ha in Thpong district, Kampong Speu province. Kampong Speu Sugar Co. Ltd. was awarded an adjacent ELC of 9052 ha in Oral district.<sup>30</sup> The side-by-side concessions are registered to Ly Yong Phat and his wife Kim Heang.<sup>31</sup> Little attempt was made by the Cambodian government authorities to demonstrate that the concessions are really for two separate companies. The letter of approval for the Phnom Penh Sugar concession is an exact replicate of the Kampong Speu concession with only the name of the concessionaire hand-corrected at the top.<sup>32</sup>

On March 21, 2011, Prime Minister Hun Sen signed a sub-decree allowing land in the Oral Protected Area to be reclassified and the Kampong Speu Sugar concession to be expanded by 4,700 ha.<sup>33</sup> This brought the total landmass of the three concessions to over 23,000 ha.

When asked about the legality of the concessions, Chheng Kim Srun, a spokesperson for both Phnom Penh Sugar and Kampong Speu Sugar, dismissed the 10,000 ha ceiling on land plots imposed by the Land Law. “We are a real company working on the land to plant sugarcane, not like other companies who receive land without developing anything,” she told the Phnom Penh Post. “It’s fine for government to give us more than what the law says – it’s just a little surplus.”<sup>34</sup>

According to community representatives, the Phnom Penh Sugar concession encroaches on more than 2000 hectares of farmland belonging to approximately 1100 families in ten officially recognized villages of Amliang commune, Thpong district and at least another five unrecognized villages.<sup>35</sup> An additional six villages are affected by the Kampong Speu Sugar concessions in Oral district, though the number of people impacted in these villages could not be verified (see Table 2).

**Table 2: Affected villages in Thpong and Oral districts, Kampong Speu province**

Affected villages in Amliang commune, Thpong district	Affected villages in Trapaing Chor commune, Oral district
Kraing Cham Bok O'Ang Khum / Chrouk Roussey Snoul Kraing Doung Thnol Bom Bek Koma Meas Tum Neab Kork Ta Kaong Thmor Kob Thnoul* O'Pralov* Pis* Prek* O'Da*	Plourch (resettled to Trapaing Prolet) La'ngim Srea'kin Sork Veng Chan Ping Krang Tabeang
*Village unrecognized by local authorities	

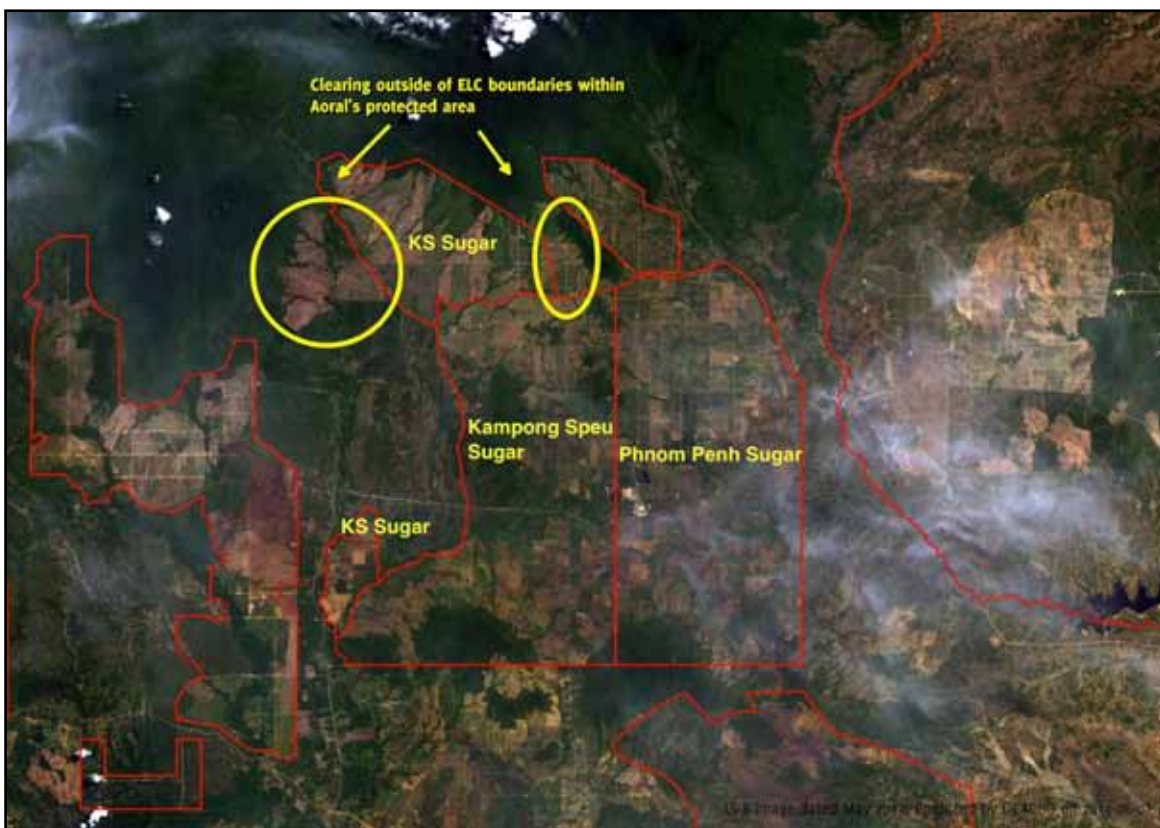
The vast majority of affected people claim to have been living in the area for more than five generations, since the time of the French protectorate. After the Khmer Rouge period, people were able to reoccupy their ancestral farmland. Most people have documentation issued by local authorities in the 1980s and early 1990s that proves their legal possession. Some even have documentation dating back to the 1950s.

In addition to farmland, the concessions overlapped thousands of hectares of surrounding grazing land, water resources and registered community forest that villagers in Thpong and Oral districts relied upon for collection of non-timber forest products during the lean months.

Ly Yong Phat's company began planting sugarcane in 2011 and opened a 150 million USD sugar processing factory in December 2012.<sup>36</sup>

Satellite imagery from 2013 shows that most of the land in the Phnom Penh Sugar and Kampong Speu Sugar concessions has been cleared and planted. The image below also shows that the company has cleared forest beyond its boundaries and further into the Oral Protected Area.

**Satellite image 2: Clearing outside of sugar Kampong Speu concessions in Oral Protected Area**



## Oddar Meanchey

On January 24, 2008, the Ministry of Agriculture, Forests and Fisheries awarded three ELCs totaling 19,700 hectares in the Samrong and Chong Kal districts of Oddar Meanchey province to the Angkor Sugar Company, Tonle Sugar Cane Company and Cane and Sugar Valley Company. The concessions were granted for 70 years for sugar production and a processing plant. It is clear that the three concessions are all linked, as MAFF records indicate that the three companies applied for the concessions on the same day, received approval from MAFF on the same day and signed the concessions contracts on the same day.<sup>37</sup>

A search of the directors of the three companies reveals that they are, or were, senior figures in the Thai sugar giant Mitr Phol Sugar Corporation. The Director of Cane and Sugar Valley is Mitr Phol President, Krisda Monthienvichienchai; the Director of Tonle Sugar is Mitr Phol Managing Director, Buntoeng Vongkusolkit; and the Director of Angkor Sugar is Tat Wanakornkul, who was Executive Vice-President of Mitr Phol at the time.<sup>38</sup> The companies also appear to have an affiliation with Ly Yong Phat, as villagers affected by the concessions were told in 2007 that if they want to file complaints against the companies, they should be addressed to H.E. Ly Yong Phat, “since he is in charge of all of them.”<sup>39</sup>

Conscious of the illegality of owning concessions larger than 10,000 hectares, the company issued a statement in 2012, explaining that “Mitr Phol owns one company and is partnering with two other companies not owned by Mitr Phol.”<sup>40</sup> The company also stated that, “the amount of land available to the project has been significantly reduced after surveying our private land, undergoing public consultation and identifying land set aside for any reason by the government.”<sup>41</sup>

On August 23, 2012, the Council of Ministers issued three sub-decrees retroactively reclassifying the land covered by the concessions as State private land. The sub-decrees do not mention what the status of the land was prior to the reclassification.<sup>42</sup>

The three sugarcane concessions overlap significantly with private land and commons in Samrong and Chong Kol districts.

The most notorious evictions linked to these concessions took place in Bos village, Kriel commune in 2008 and 2009. People reportedly began settling in Bos village in 1998, after the area was cleared of landmines by the mine action NGO, Halo Trust. In 2003, the Bos village chief submitted a request to the commune chief asking for permission to distribute residential plots and farm land in the rapidly growing O’Bat Moan settlement of Bos village. The request was approved and around 180 families residing in Bos at the time were given 30m x 60m residential plots and five hectares of farmland. Officials from the commune level Forest Administration, the commune council and district authorities reportedly attended the land distribution ceremonies.<sup>43</sup>



In 2006, with support from the EU and Ockenden International and in close cooperation with the provincial governor and forestry officials, community forestry projects began to be established in the area.<sup>b</sup>

<sup>b</sup> Community Forestry is a program established by Cambodian law that aims to formally hand over stewardship of forested areas to the communities that have traditionally managed them and depend upon them for their livelihoods.

The largest of these projects in the province was the Ratanak Rukha and Ratanak Sambath forestry communities, which comprised 16 villages in Kriel commune, including Bos/O'Bat Moan (see Table 3).

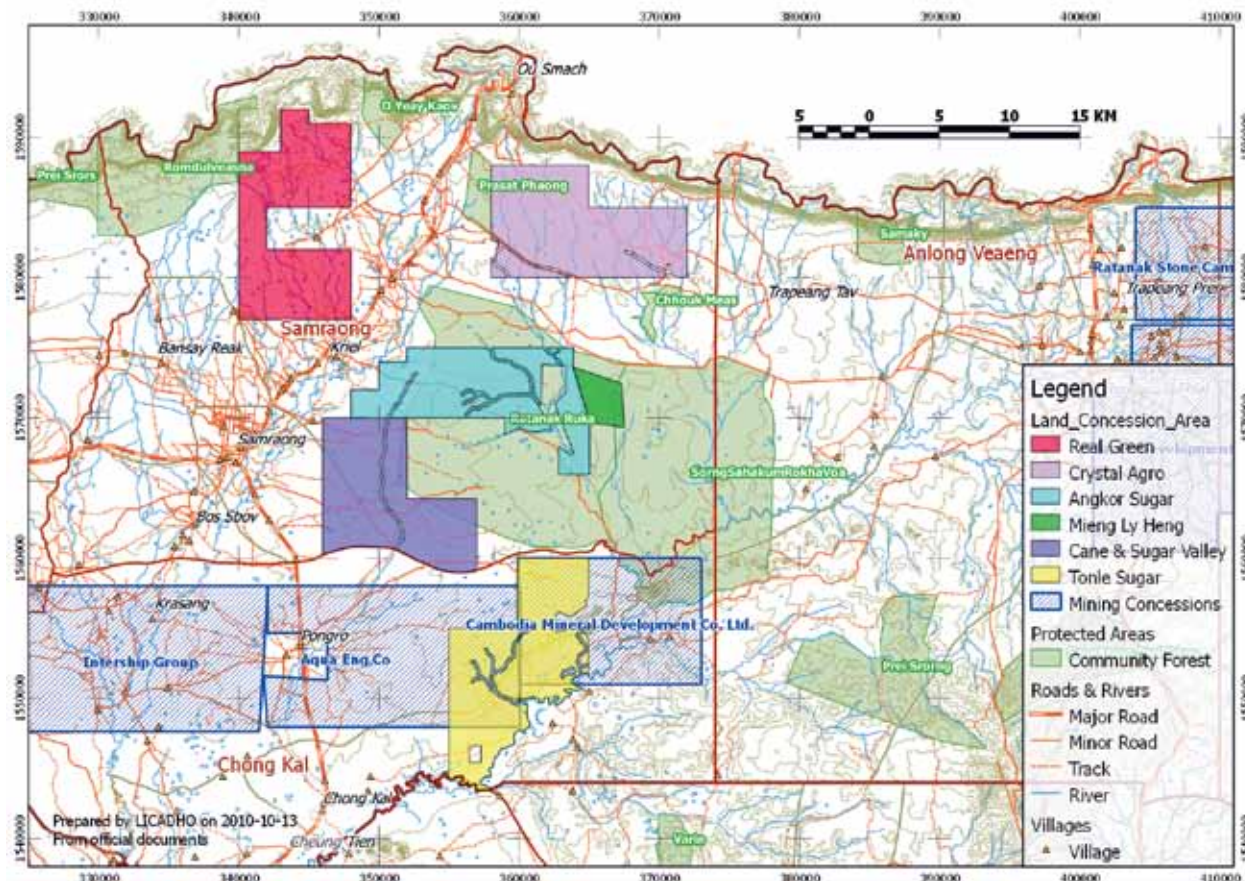
**Table 3: Member villages of the Ratanak Sambath and Ratanak Rokha forestry communities**

Samrong Commune		Kriel Commune	
Pol	O'Roussey	Ktum	Bos / O'Bat Moan
Chuuk	Kuk Chres	Tamant	Sokram
Daunken	Chaob	Trapaing Veng	Kirivan
Bak Nim	Kon Damrey	Champa Sok	

In October 2007, the three sugar concessions received approval from MAFF. The Angkor Sugar concession overlaps almost entirely with the Ratanak Rukha forestry community, as shown in Map 2.

A letter was reportedly issued that year by provincial authorities stating that 31 villages occupying an area of 4,500 hectares were located within the boundaries of the three concessions.<sup>44</sup>

**Map 2: Angkor Sugar concession overlapping Ratanak Ruka Community Forest**



## Key Companies Involved in Cambodia's Sugar Trade

The sugar industry operates behind a shroud of secrecy in Cambodia through shell companies set up to skirt legal size limitations on land concessions and obfuscate the identities of the real beneficial owners. The identities of importers and industrial end-buyers are even less transparent, as this information is deemed 'commercially sensitive' and concealed from public view. Nevertheless, the authors have assembled some background information on the key companies involved in Cambodia's sugar trade:

### L.Y.P Group

Ly Yong Phat, born in Koh Kong province, is a prominent businessman and ruling party senator. He also serves as the Vice President of the Cambodia Chamber of Commerce and as a Special Economic Advisor to Prime Minister Hun Sen.

In 1999, Senator Ly Yong Phat established the L.Y.P. Group to conduct domestic and interregional operations in hospitality, real estate, infrastructure and utilities, trading and distribution as well as agroindustry. The company has developed duty free shops and luxury resorts, including the beachfront Koh Kong Resort, Phnom Penh Hotel, O-Smach Resort and the 64 acre Koh Kong Safari World. The company's planned satellite Garden City in Phnom Penh spans 1000 ha and includes among other things a hotel, an exhibition center, a transportation hub, residential and office space and an education and research center. The Group claims to be a leader in electricity and one of the "leading bio-energy and infrastructure players in Cambodia," with bridges, toll roads, a deep-sea port and electricity and water supply projects in Koh Kong, Oddar Meanchey and Phnom Penh.<sup>45</sup>

The Senator reportedly holds an interest in 10 sugar and rubber plantations and a Special Economic Zone, spanning 86,000 hectares and accounting for roughly 4.3 percent of land concessions nationwide.<sup>46</sup>

The Phnom Penh Sugar Company, which states on its website that it is a wholly owned subsidiary of LYP Group, claims to have taken "comprehensive approaches to environmental responsibility" since the beginning of its operations.<sup>47</sup> The company claims to have built a system to transform its toxic waste into bio-fertilizers that it "gives away...to villagers to use in their orchards."<sup>48</sup> The company also claims to have "the most energy efficient factory in Cambodia," citing its use of bagasse, a by-product of the cane based sugar manufacturing process, to produce energy for its 16 Mw power plant. Excess electricity not used for the factory is "sold to government and villagers with an acceptable price."<sup>49</sup> As for its impacts on the surrounding community, the company claims:

People who lived there for years received fairly [sic] compensation in cash from the company or land from the government for their land ownership. While villagers in the area used to do farming, earn from logging, drink improper water quality, got no access to electricity, and experience bad road condition, everything have been positively changed. Phnom Penh Sugar Co. Ltd. provided more than 2,500 jobs, excluding the employment opportunity created by small merchants and retailers surrounding the factory.<sup>50</sup>

### KSL Group and the Khon Kaen Sugar Industry Public Co. Ltd

Established in 1945 by Chuan Chinthammit and two associates, KSL Group has become one of the leading sugar producers in Thailand.<sup>51</sup> Chamroon Chinthammit, who was appointed Managing Director in 1996, currently leads the company. After establishing four sugar business affiliates with factories in the Northeastern, Eastern and Western regions of Thailand, KSL Group has expanded its sugar business to include electricity and ethanol production. In March 2005, KSL Group listed its sugars businesses on the Security Exchange of Thailand as a public company, Khon Kaen Sugar Industry PCL.<sup>52</sup>

In addition to its four sugar plants in Thailand, KSL also owns and operates sugar plants in Lao PDR

## Ly Young Phat: The “King of Koh Kong”

Known as the “King of Koh Kong,” Ly Yong Phat is a prominent figure in Cambodia. The former cigarette and alcohol trader is an Oknha<sup>c</sup>, a senator, and a casino tycoon. Rumored to be in possession of dual Thai/Cambodian citizenship, Ly has lured Thai investment into Cambodia. As a leading benefactor of the ruling party, with close connections to Prime Minister Hun Sen, the Senator holds considerable sway over the levers of Cambodian power. He has also been a controversial figure due to his infamously unethical business practices.



As described in depth in this report, the Senator has been implicated in violent forced evictions to make way for sugarcane plantations in three provinces, using the military, courts and other apparatus of the State as tools at his disposal. Ly’s financial ties to the military have evidently played a significant role.<sup>53</sup> In February 2010, Prime Minister Hun Sen announced that the Government planned to formalize relationships between various military units and private businesses. LYP Group had agreed to provide financial support for six units of the Royal Cambodian Armed Forces.<sup>54</sup> Two of the military units that LYP Group sponsors, Battalion 42 and Battalion 313, have reportedly been present during forced evictions to clear land for plantations the Senator is affiliated with or to quash protests by affected communities.<sup>55</sup>

Ly Yong Phat has also not shied away from investments that are harmful to the environment. In addition to the sugar concessions described in this report, which have involved significant deforestation, his LYP Group was awarded more than 4,000 hectares of protected land in Botum Sakor National Park.<sup>56</sup> His company has also been awarded sand-dredging concessions in Koh Kong province that extend deep into the protected areas of Peam Krasop Wildlife Sanctuary and Koh Kapik Ramsar Site, causing damage to environmentally significant ecosystems.<sup>57</sup>

## Chamroon Chinthammit

Chamroon Chinthammit has been the Managing Director of all KSL Group sugar companies since 1996. His family controls 68 percent of the company’s shares. Chinthammit was named by Forbes as one of Thailand’s 50 richest people in 2013, with a net worth estimated at US \$510 million.<sup>58</sup> He is also the chairman of the Koh Kong Sugar Company.



<sup>c</sup> The prestigious title of Oknha, traditionally awarded to district and provincial governors and close advisors to the King, dates from the 15th Century. In 1995, a sub-decree extended recognition to individuals who contribute toward the national rebuilding of the Kingdom. Donations of \$100k or higher receive the esteemed title of Oknha.

and Cambodia, which started commercial production in 2009/2010. According to Tris Rating, production in both countries was lower than expected “due to the lack of skilled labor and difficulties in farm management.”<sup>59</sup> KSL expected production at these two plants to reach a break-even level in the 2011/2012 period.<sup>60</sup> At the inauguration of KSL’s plant in Koh Kong in January 2010, Mr Chamroon said that the company was aiming for a total production of 2 million ton within five years.<sup>61</sup>

All raw sugar produced from KSL’s plants in Cambodia and Laos is exported to the European Union under the EBA arrangement.<sup>62</sup>

KSL states that corporate social responsibility (CSR) is a top priority for the company and that “projects beneficial to society have been carried out including improving environments, enhancing standard of living and community wellness, and maintaining Thai cultural identity.”<sup>63</sup> While the website states that CSR activities involve “promoting and supporting social activities, charitable donations, and volunteering for communities,”<sup>64</sup> it is unclear whether the company has any policies to mitigate the adverse social and environmental impacts of its business operations.

When Cambodian groups launched a public campaign to highlight human rights abuses and seizure of land by sugar companies in Cambodia, the London-based Business and Human Rights Resource Centre wrote to KSL to ask for a response. KSL did not respond.<sup>65</sup>

## Ve Wong Corporation

Ve Wong Corporation is a Taiwanese company in operation since 1959.<sup>66</sup> The company has four business divisions: Food, Trading, Construction, and General Development. The company operates four distribution centers, 25 sales offices and two plants in Taiwan; three other plants are located overseas. In order to ensure acquisition of the raw materials required to produce monosodium glutamate (MSG) in a country with limited land area, the company jointly established the Thai Fermentation Industry Co., Ltd. with the KSL Group in 1966.<sup>67</sup> The main raw materials necessary for MSG production, the company’s main product, are tapioca starch and sugarcane.<sup>68</sup>



Due to Ve Wong’s alleged involvement in land grabbing in Cambodia, NGOs in Taiwan initiated a campaign against the company. In 2011, protestors held a demonstration in front of Ve Wong head office in Taipei to draw attention to the impacts of the Koh Kong sugar concessions. After the protest, Ve Wong issued a statement saying that while the company held 30% of the shares in the Cambodian companies, Koh Kong Plantation Co. Ltd. and Koh Kong Sugar Industry Co. Ltd, “our Thai partners are in charge of the daily operations of the companies and have never informed us about what the human rights groups have stated.”<sup>69</sup>

Ve Wong released another statement in response to an enquiry into the allegations of land seizures and human rights abuses from the Business and Human Rights Resource Centre on July 24th, 2012. Ve Wong stated that it had written to the two Cambodian companies and they responded that, “they have rented the land legally from the Cambodian government.”<sup>70</sup> However, according to Ve Wong, the companies promised, “if there is any evidence proving that Koh Kong Plantation Co. Ltd. and Koh Kong Sugar Industry Co. Ltd illegally acquired the land from residents, the companies are willing to return [the land] and compensate all relocation costs of all affected families.”<sup>71</sup>

## Tate & Lyle

Tate & Lyle is a subsidiary of Tate & Lyle PLC, a British multi-national corporation that has been importing and refining sugar at its Silvertown refinery on London’s Thames River for more than 130 years. Producer of the world’s oldest brand – Lyle’s Golden Syrup – Tate & Lyle was Europe’s leading cane producer. The company was making two-thirds of its profits from sweeteners like Splenda, as

well as starches and ethanol production, when it sold off the remainder of its historic sugar business to American Sugar Refining (ASR) in 2010. The £211m million transaction included the company's European refineries in London and Lisbon and the rights to use the Tate and Lyle and Lyle's Golden Syrup brands in perpetuity.<sup>72</sup>

Tate & Lyle's Code of Ethics states that it "expects its suppliers to uphold international business standards and to be fully compliant with all applicable laws and regulations, including those regarding freedom of association and collective bargaining, non-discrimination, working hours, wages, health and safety, protection of the environment, anti-corruption / anti-bribery, and the prevention of child or forced labour."<sup>73</sup>

Tate & Lyle's Chief Executive, Javed Ahmed, states in a note on the company's website that Tate & Lyle believes "in doing what is right, no matter what... Integrity is one of our Core Values, and we must never compromise it."

Following the news revelations that Tate & Lyle was importing sugar from Koh Kong, Equitable Cambodia<sup>d</sup> wrote to its directors on July 28, 2010 and provided the company with extensive documentation of human rights violations perpetrated by its supplier. In an email response to the letter, Group Vice President Rowan Adams stated that Tate & Lyle is "committed to upholding high standards of behaviour" through its supply chains, citing its involvement with Fair Trade and the Better Sugar Cane Initiative (now known as Bunsucro).<sup>74</sup> Adams stated that Tate & Lyle carried out a "rigorous due diligence process to ensure that the supplier met [its] ethical standards."<sup>75</sup> He further stated that Tate & Lyle would conduct an audit of its Cambodian supplier, in line with its standard practice, to evaluate the supplier's "social, ethical and environmental performance and identify any shortcomings."<sup>76</sup>

When contacted again in early September 2010, Mr. Adams referred to the sale of Tate and Lyle, completed on September 30th, and stated:

As a consequence of the sale, we no longer have any business which has dealings in Cambodia or with Cambodian suppliers. We see no need, therefore, to have any discussion with you about your campaign but suggest you take your allegations about this third party to the relevant authorities for investigation.<sup>77</sup>

## **American Sugar Refining, Inc.**

American Sugar Refining, Inc. is a privately held company, headquartered in Yonkers, New York, which claims to be "the world's largest vertically integrated sugar refiner in the world."<sup>78</sup> Formerly the North American sugar refining business of Tate & Lyle, before its new owners acquired it in 2001, ASR is popularly known by its ubiquitous American brand name Domino Sugar.

ASR holds Tate & Lyle's former European Sugar Refining business as a private limited company registered in England under the name T&L Sugars Limited. Tate & Lyle Sugars, as it is popularly known, continues to purchase 100 percent of the sugar produced from the Koh Kong plantation in Cambodia under the terms of the January 2010 agreement between KSL and Tate & Lyle. According to the Guardian newspaper, 97 percent of Cambodia's sugar exports went to the EU in 2012 and Tate & Lyle Sugars bought 99 percent of them.<sup>79</sup>

It cannot be stated with certainty where the sugar from Koh Kong ultimately ends up, but it is highly likely that it has gone into the products of the UK's top food and beverage companies, with the exception of Associated British Foods<sup>e</sup>, given that Tate and Lyle Sugars is the only supplier of refined cane sugar in the UK.

ASR is owned by Florida Crystals Corporation (64%) and the Sugar Cane Growers Cooperative of Florida (36%). Florida Crystals is a wholly owned subsidiary of the Fanjul Corporation, previously Flo-Sun, a vast sugar and real estate conglomerate owned by the Fanjul brothers and headquartered

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d At the time, Equitable Cambodia was known as Bridges Across Borders Cambodia.

e ABF owns British Sugar, which is a producer of beet sugar and a competitor of Tate & Lyle Sugars.



in Palm Beach County, Florida. Led by Alfonso “Alfy” Fanjul and José “Pepe” Fanjul, the Fanjul’s company holdings include over 400,000 acres of sugar plantations, hotels and resorts, an airport in the Dominican Republic and the largest renewable energy plant in North America.<sup>80</sup> The Fanjuls have long been mired in controversy for their role in the destruction of the Florida Everglades, while using their outsized political influence to avoid footing the \$20 billion dollar bill to restore the vast wetlands area,<sup>81</sup> and for slave-like labor conditions for Jamaican and Haitian migrant workers on their sprawling plantations in Florida and the Dominican Republic.<sup>82</sup>

ASR states that it is “committed to understanding the health and safety, environmental, labor, and human rights issues associated with [its] supply chains.”<sup>83</sup> Its company policy is to purchase goods and services that: “are produced and delivered under conditions that uphold fundamental human rights; do not involve the abuse or exploitation of any persons; are grown, produced, manufactured and sold in accordance with the laws of the country of origin; and minimize negative impacts on environment.”<sup>84</sup>

Equitable Cambodia<sup>f</sup> wrote to the directors of ASR on October 21, 2010, shortly after they acquired Tate & Lyle Sugars, to seek their comments on the allegations of land seizures and human rights violations against their new Cambodian suppliers. No response was received from the company by the time of publication.

## Mitr Pohl

Mitr Phol Sugar Corporation (MPSC) is a privately owned group of companies established in 1946 by the Vongkusolkit family. From humble beginnings as a small household industry producing syrup for nearby sugar mills, MSCP opened its first factory in 1956.<sup>85</sup> Mitr Pohl is now Thailand’s leading producer and exporter of sugar and the largest producer in Asia. The Vongkusolkit family collectively owns 100 percent of the company’s shares through Mid-Siam Sugar Co., Ltd. Its chairman, Isara Vongkusolkit appeared as number nine on Forbes magazine’s list of Thailand’s 40 richest people in 2011, with a net worth of \$ 1.4 billion.<sup>86</sup>

In addition to its five mills in Thailand, MPSC has operations and investments in China, Lao PDR, Vietnam, Cambodia and Australia.<sup>87</sup> According to Thai media reports, Mitr Pohl secured a concession of between 16,000-18,000 hectares in Cambodia, with plans to grow sugarcane for ex with a focus on the right adequate to foodport to Europe under the EBA program.<sup>88</sup> Mitr Pohl has stated that its Cambodia operation is expected to produce 100,000 tons of raw sugar per year.<sup>89</sup>

On its website, Mitr Phol states that it is “serious about social responsibility starting from shareholders, executives, staffs and concerned parties namely cane growers, trade partners, customers, staffs’ families, mills neighboring communities and the public.”<sup>90</sup> Its vision is “to be good citizen of the society and strongly determined to stand tall as world-class standard Corporate Model for social responsibility and sustainable development [sic].”<sup>91</sup>

Equitable Cambodia<sup>g</sup> wrote to the directors of Mitr Pohl on December 17, 2010 requesting information on the company’s involvement in land concessions resulting in forced evictions in Oddar Meanchey province in 2008 and 2009. No response was received.

Business & Human Rights Resource Centre invited Mitr Phol Group to respond to reports that its Cambodia operations are implicated in human rights abuses. On July 24, 2010, the company issued a response, stating:

Mitr Phol does not support encroachment on private land or forced eviction, or the destruction of private property. In Cambodia, we initially sought out sparsely populated areas and have followed a land concession process prescribed by law. This process has been led by the local and national government officials and its principles are also reflected in project agreements with government authorities. [...] Mitr Phol has been informed that this process has been according to the law and fully documented.<sup>92</sup>

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f At the time, Equitable Cambodia was known as Bridges Across Borders Cambodia.

g At the time, Equitable Cambodia was known as Bridges Across Borders Cambodia.

## Approach and Methodology of Human Rights Impact Assessment

The EU, its Member States, and Cambodia have binding obligations under international law to respect, protect and fulfill human rights, including through their trade and investment policy and agreements. Human rights treaty bodies and special procedures of the Human Rights Council have called upon States to conduct human rights impact assessments of their trade and investment agreements.<sup>h</sup> The UN Special Rapporteur on the Right to Food, Olivier de Schutter, has stated that States are obliged under international law to carry out systematic Human Rights Impact Assessments (HRIAs) *ex ante* (prior to the conclusion of any trade or investment agreement) and *ex post* (following implementation of the agreement).

The Special Rapporteur on the Right to Food has developed *Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreements*, which provide States with guidance on how best to ensure that the trade and investment agreements they conclude are consistent with their obligations under international human rights law. According to these principles, the HRIA should be prepared by a body or group of experts that is **independent** and possesses multidisciplinary expertise, including **human rights expertise**. The process should be **transparent** and based on sources of information that are made public and a clear methodology. It should be **inclusive and participatory**, considering the views of the communities directly affected by the trade or investment agreement and referring explicitly to their concerns and how these concerns could be addressed. It should make **explicit reference to the normative content of human rights obligations** and incorporate **human rights indicators** into the assessment. Finally, the HRIA must have **status** and feed into the policy-making process.<sup>93</sup>

The European Commission has thus far not responded positively to calls from civil society<sup>i</sup> and the European Parliament<sup>j</sup> for an investigation into the human rights impacts of the EBA initiative in Cambodia, despite allegations of serious harms. Equitable Cambodia, Inclusive Development International and the Hands off the Land Alliance have therefore decided to conduct their own HRIA of the EBA in Cambodia.

As civil society organizations (CSOs), the assessors have faced certain limitations in undertaking this HRIA. Due to the lack of transparency surrounding land deals in Cambodia, much official information about the deals under review in the HRIA was either limited or unavailable. Moreover, ELCs, land seizures and the impunity of powerful individuals are sensitive topics in Cambodia, so requests for interviews with Cambodian government authorities were mostly either denied or ignored. Similarly, written requests for information from the companies involved were denied or ignored. Information gaps thus remain in the facts of each case study, though the authors have attempted to verify all facts presented through at least two sources and have generally succeeded in doing so.

Relatedly, in all research areas affected people have faced lost economic opportunities, intimidation, harassment, imprisonment and bodily harm for challenging the forced evictions and land seizures they have faced. As a result, the climate of fear that pervaded the research areas posed a significant obstacle to the research. Local officials, local NGOs and some affected people were nervous about

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h See, for example, Committee on Economic, Social and Cultural Rights, concluding observations regarding Ecuador (E/C.12/1/Ass.100), para. 56; Committee on the Rights of the Child, concluding observations regarding El Salvador (CRC/C/15/Add.232), para. 48; Committee on the Elimination of Discrimination against Women, concluding observations regarding Colombia (CEDAW/C/COL/CO/6), para 32; report of the Special Rapporteur on the right to food on his mission to the World Trade Organization (A/HRC/10/5/Add.2), paras. 37-38. [Cited in the Report of the Special Rapporteur on the right to food, Addendum: Guiding principles on human rights impact assessments of trade and investment agreements (A/HRC/19/59/Add.5), footnote 1]

i See, Letter to EU Commissioner for Trade, Karel de Gucht from Cambodian and International CSOs, 26 June 2012; available at: [http://www.boycottbloodsugar.net/wp-content/uploads/2012/10/De-Gucht-Reply\\_14\\_08\\_2012.pdf-pdf](http://www.boycottbloodsugar.net/wp-content/uploads/2012/10/De-Gucht-Reply_14_08_2012.pdf-pdf)

j See, European Parliament, Joint motion for a resolution on the situation in Cambodia (1012/2844(RSP)); available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+MOTION+P7-RC-2012-0478+0+DOC+XML+V0//EN>

being interviewed. Researchers were questioned by local authorities in all research areas and even followed by police in one area. This obstacle, combined with a lack of resources, meant that the assessors were unable to interview people in several areas adversely impacted by the sugar industry. It also limited the ability of the assessors to determine the total number of affected people. Nonetheless, the assessors were still able to interview a reasonably sized sample of affected people, who were willing to speak openly about their experiences, enabling both a qualitative and quantitative analysis.

Within these constraints, the authors sought to follow the criteria and methodology proposed in the *Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreements* [hereafter “*HRIA Principles*”]. Based on these principles, the HRIA first examines the normative content of the international obligations of the EU and its Member States, Cambodia and the sugar companies, with a focus on the human right to food, the human right to adequate housing, the prohibition of forced evictions and the prohibition of child labor (Chapter 4). It uses the human rights-based indicators, using the international human rights framework as a benchmark to assess state and corporate responsibility and obligation (Chapter 5). And it follows the recommended methodological steps of a) screening, b) scoping, c) evidence gathering, d) analysis and e) conclusions and recommendations:

a) The assessment started with a **screening** phase. This included a preliminary analysis of: i) which industrial sectors were connected to the EBA; ii) of these sectors, which ones were most likely to cause adverse human rights impacts; and iii) which human rights are most likely to have been affected. This analysis determined the scope of the assessment.

The HRIA focuses on the sugar sector in Cambodia for three reasons. First, human rights violations associated with agro-industrial concessions, particularly for sugar production, have been well documented in media, NGO and UN reports, making it clear that this sector has been particularly problematic. Second, the preliminary analysis found that the development of the Cambodian sugar industry has been linked to the EBA arrangement, with 10 million kg of sugar exported to the EU under the scheme in 2010 and 22.5 million kg in 2011 (see Chapter 1).<sup>94</sup> And third, consistent with the *HRIA Principles*, the limited resources available required the assessors to limit the scope of the HRIA to population groups **most likely to be affected**.

The assessors undertook a desk review of the reports that were publicly available concerning ELCs for sugar production in Cambodia. This review clearly indicated that forced evictions and land seizures were the primary human rights problem associated with sugar concessions, though there had not been any empirical study conducted yet on the impacts of the evictions on affected communities. The assessors therefore decided to focus the HRIA on **the process and outcomes of evictions** caused by the development of the sugar industry, with a focus on **the right adequate to food and the right to adequate housing**. Following evidence gathering in Koh Kong, the first research area that was examined, it emerged that child labor was also a serious human rights problem associated with the sugar industry. As a result, the scope of the assessment was expanded to cover the issue of **child labor** and the indicators and questionnaires were modified for subsequent evidence gathering in Kampong Speu and Oddar Meanchey.

b) The decision to focus on these areas was followed by a **scoping** phase where a framework with human rights indicators and questionnaire was developed for the household interviews and focus group discussions that formed the basis of the subsequent phases of evidence gathering and analysis. The indicators and questions were modified as the investigation moved from one research location to another, taking into consideration new issues that emerged in the previous location. The human rights indicators and questionnaire used for the evidence-gathering phase are based on the *UN Basic Principles and Guidelines on Development-based Evictions and Displacement (2007)*, which are the most recent and comprehensive interpretation of international law obligations with respect to displacement of this kind.

c) The **evidence-gathering** phase comprised desk and field research to collect both quantitative and qualitative data, in order to provide deeper insights into the multi-dimensional human rights impacts under assessment.

Desk research included a review of secondary literature, trade data, policy documents, legislation, official documentation and maps related to sugar concessions, and media reports. Fieldwork included field reconnaissance, in-depth interviews, household surveys and focus group discussions. The

household survey included questions to assess compliance with international law obligations: before, during and after evictions. Household and community level food security was assessed using methodology developed by the World Food Program (WFP).

Given village characteristics, sampling techniques differed between villages. As not all residents were currently present at the resettlement sites in Kampong Speu and Oddar Meanchey due to migration, convenience sampling techniques were used. In Koh Kong, random sampling was used. Only households that lost land in the three research locations were surveyed. In addition, the household survey was refined after data collection in Koh Kong to capture both pre and post concession characteristics more thoroughly, as well as to simplify data collection. As a result, data presentation may be slightly different.

Household surveys and focus group discussions were conducted with a total of 243 affected people across three provinces. These were supplemented by 26 interviews with 35 NGO staff, community leaders and local officials. Research areas and sample characteristics are illustrated in Tables 4-6.

d) Based on the results of these evidence-gathering activities, the assessors undertook an **analysis** to determine whether and to what extent EBA has had adverse human rights impacts in Cambodia. Like the evidence-gathering phase, the human rights framework governing development-based displacement and child labor guided the analysis.

e) Finally, the HRIA includes a set of **recommendations for duty-bearers**, which are summarized at the outset of this report.

**Table 4: Research areas**

Province	District & Commune	Represented villages
Koh Kong	Sre Ambel district, Chi Kha Leu commune	Chi Kha Trapaing Kandaol
Kampong Speu	Thpong district, Amliang commune	Kork, Chrouk O'Roussey, O'Ang Khum, O'Pralov, Snoul, Kraing Dong, Amliang, Pis*
Kampong Speu	Oral district, Trapaing Chour commune	Trapaing Prolet*
Oddar Meanchey	Konkreil Commune, Samrong district	Samrong, Trapaing Veng, Tamant, Ktum, Bos/O'Bat Moan*

\*Resettlement village

**Table 5: Focus group discussions**

	Koh Kong	Kampong Speu	Oddar Meanchey	Total
<b>Number of FGD</b>	3	5	5	13
Total number of participants	23	33	56	112

**Table 6: Household survey sample characteristics**

	Trapaing Kandaol	Chi Kha	O'Bat Moan	Trapaing Prolet	Pis	Total
Sample size	33	38	7	14	29	121
<b>HH head gender (%)</b>						
Male	86.8	71.1	42.9	71.5	75.9	-
Female	13.2	28.9	57.1	28.6	24.1	-
<b>HH head age</b>						
Mean, years	43	45	41	41	44	-

## Legal Framework for Human Rights Impact Assessment

This HRIA focuses on the implications of forced evictions and land seizures for the human right to adequate housing and the human right to food. This chapter explains the normative content of these rights, their basis in international law and the international framework governing evictions and displacement. It also explains the international legal framework on child labor, which was found during the evidence-gathering phase to be a widespread phenomenon on the sugar plantations. Finally, the chapter explains how the obligations that correspond with these normative frameworks apply to the Kingdom of Cambodia, the European Union and the companies involved in Cambodia's sugar industry.

### The Human Right to Food

The right to food is enshrined in Article 25 of the *Universal Declaration of Human Rights* (1948) and Article 11 of the *International Covenant on Economic, Social and Cultural Rights* (1966), which recognizes “the fundamental right of everyone to be free from hunger.”

*General Comment No. 12* (1999) of the UN Committee on Economic, Social and Cultural Rights (CESCR), the authoritative interpretation of the right to food, provides further details:<sup>k</sup>

The right to adequate food is realized when every man, woman and child, alone and in community with others, has physical and economic access at all times to adequate food or means for its procurement.<sup>95</sup>

It explains that the “core content of the right to adequate food” implies **1) availability**, which includes the ability of “feeding oneself directly from productive land and natural resources,” and **2) accessibility**, which is sustainable over the long-term and does not interfere with the enjoyment of other rights.<sup>96</sup>

States have three types of obligations under the right to food:

- **The obligation to respect** existing access to adequate food requires States parties not to take any measures that result in preventing such access.
- **The obligation to protect** requires measures by the State to ensure that third parties, including private enterprises and individuals, do not deprive individuals of their access to adequate food.
- **The obligation to fulfill** requires States to pro-actively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood in order to facilitate their ability to feed themselves. Whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfill that right directly.<sup>97</sup>

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k The CESCR is the body of 18 independent experts mandated to monitor implementation of the International Covenant on Economic, Social and Cultural Rights by its States parties. The Committee was established under ECOSOC Resolution 1985/17 of 28 May 1985 to carry out the monitoring functions assigned to the UN Economic and Social Council (ECOSOC) in Part IV of the Covenant. The General Comments promulgated by the Committee are the authoritative interpretation of the rights and duties in the Covenant.

# The Human Right to Adequate Housing

The right to adequate housing is also enshrined in Article 25 of the *Universal Declaration of Human Rights* and Article 11 of the *International Covenant on Economic, Social and Cultural Rights* as an integral part of the right to an adequate standard of living.<sup>1</sup>

*CESCR in its General Comment No. 4* (1991), identifies a number of elements that must exist for the enjoyment of the right, including:

1. **Legal security of tenure:** This includes, at minimum, protection against forced eviction and harassment.
2. **Availability of services, facilities and infrastructure:** Facilities essential to health, security, comfort and nutrition must be available, including but are not limited to, safe drinking water, sanitation and washing facilities and energy for cooking, heating and lighting.
3. **Affordability:** Expenditures for housing should be compatible with income levels and other basic human rights should not be compromised in order to secure housing.
4. **Habitability:** There should be adequate space and protection against the elements and risks of disease or structural hazards.
5. **Accessibility:** Everybody, including disadvantaged groups, should have access to adequate housing, without discrimination.
6. **Location:** Adequate housing must allow access to hospitals, schools, other social services, and jobs or land suitable for farming. Housing should not be built on polluted or unsafe sites.
7. **Cultural Adequacy:** Housing should be designed and built in a manner that respects people's traditions and culture.<sup>98</sup>

## Forced Evictions: A Gross Violation of Human Rights

It is widely recognized that forced evictions are amongst the most disempowering violations of human rights and “one of the most supreme injustices any individual, family, household or community can face.”<sup>99</sup> Forced evictions are considered “a practice that does grave and disastrous harm to the basic civil, political, economic, social and cultural rights of...both individual persons and collectivities.”<sup>100</sup> The UN Human Rights Commission has affirmed in two resolutions (1993/77 and 2004/28) that the practice of forced evictions constitutes “a gross violation of a range of human rights.” These include the right to adequate housing, right to adequate food, as well as the rights to security of person, freedom of movement and choice of residence, privacy and security of the home, health, education, work and due process, amongst others. When the actions of companies and private actors lead to forced evictions, the State is failing in its duty to protect from interference with these rights.

The protection against forced eviction applies to all households, regardless of their tenure status.<sup>101</sup>

The *UN Basic Principles and Guidelines on Development-based Evictions and Displacement* [hereafter, *Eviction Guidelines*] defines forced evictions as:

acts and/or omissions involving the coerced or involuntary displacement of individuals, groups and communities from homes and/or lands and common property resources that were occupied or depended upon, thus eliminating or limiting the ability of an individual,

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<sup>1</sup> The right to adequate housing and its corresponding state obligations are also recognized in, *inter alia*: Article 5 of the *International Convention on the Elimination of All Forms of Racial Discrimination* (1965); Article 14 of the *International Convention on the Elimination of All Forms of Discrimination against Women* (1979); Article 27 of the *Convention on the Rights of the Child* (1989) and Article 43 of the *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families* (1990).

group or community to reside or work in a particular dwelling, residence or location, without the provision of, and access to, appropriate forms of legal or other protections.<sup>102</sup>

While forced evictions, as defined above, are in all cases illegal, evictions are allowed in certain circumstances and when certain protections are properly in place. Evictions are only lawful in exceptional circumstances, such as to make way for a development project that is genuinely in the public interest. All feasible alternatives to eviction must first be explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, displacement.

In circumstances in which an eviction is considered justified, it must be carried out in accordance with general principles of reasonableness and proportionality. The eviction must also occur in strict compliance with the procedural protections described in CESCR's *General Comment No. 7*.<sup>103</sup>

No one should be made homeless or vulnerable to the violation of other human rights as a result of eviction. The State is obligated to ensure in consultation with the affected families that they have access to adequate alternative housing, resettlement in a reasonable location with basic services and/or access to productive land as appropriate.<sup>104</sup>

In response to the global crisis of land grabbing and tenure insecurity, which has had particularly severe implications for the enjoyment of the right to food globally, the *Voluntary Guidelines on Governance of Tenure of Land, Fisheries and Forests in the context of national food security* [hereafter, *Tenure Guidelines*] were promulgated by the Food and Agriculture Organization (FAO) and officially endorsed by the 125 member countries of the Committee on World Food Security on May 11, 2012. The *Tenure Guidelines* call upon States *inter alia* to “protect legitimate tenure rights, and ensure that people are not arbitrarily evicted and that their legitimate tenure rights are not otherwise extinguished or infringed.”<sup>105</sup>

## The Prohibition of Child Labor Under International Law

Child labor is a crime in most jurisdictions around the world and has been prohibited under international law in some form since the founding conference of the International Labor Organization (ILO) in 1919. Since the adoption of the first Minimum Age Convention in 1919, the ILO has continued to pursue the goal of effective abolition of child labor by advancing the principle that minimum age standards should be linked to schooling. Convention No. 138 provides that the minimum age for admission to employment shall not be less than the age of completion of compulsory schooling.<sup>106</sup>

The global consensus on child labor elimination was consolidated in the adoption of ILO Convention 182, which set the priorities for the effective abolition of child labor by first tackling the worst forms of child labor.

Child labor that is proscribed under ILO Conventions ratified by the overwhelming majority of countries falls into three categories:

- **The unconditional worst forms of child labor:** these include slavery, trafficking, debt bondage and other forms of forced labor, forced recruitment of child for use in armed conflict, prostitution and pornography, and illicit activities.
- **Labor performed by a child who is under the minimum age specified for that kind of work:** this includes labor that is likely to impede the child's education and full development. The minimum age for work should not be below the age for finishing compulsory schooling, which is generally 15. Children between the ages of 13-15 years old may do light work, as long as it does not threaten their health and safety, or hinder their education or vocational orientation and training.
- **Labor that is hazardous:** this includes labor that jeopardizes the physical, mental or moral well being of a child, either because of its nature or because of the conditions in which it is carried out.<sup>107</sup>



The *Convention on the Rights of the Child* (1989) is the first legally binding international instrument that incorporates the full range of human rights for children. Article 32 states that children have the right to be:

protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

States Parties are required to take legislative, administrative, social and educational measures to ensure implementation of this article, and in particular:

- Provide for minimum age(s) for admission to employment;
- Provide for appropriate regulation of the hour and conditions of employment;
- Provide for appropriate penalties or other sanctions to ensure effective enforcement of these measures.

## The Human Rights Obligations of the Kingdom of Cambodia

The Kingdom of Cambodia has ratified both the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*, as well as the *Convention on the Rights of the Child*, the *Convention on the Elimination of All Forms of Discrimination Against Women*, and the *Convention on the Protection of the Rights of All Migrant Workers and Their Families*. Cambodia has also ratified the *ILO Minimum Age Convention (No. 138)* and the *Worst Forms of Child Labor Convention (No. 182)*. As a member of the Committee on World Food Security, Cambodia also endorsed the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Forests and Fisheries*.

Article 31 of the Constitution of the Kingdom of Cambodia states:

The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, and conventions related to human rights, women's and children's rights.

As such, the Cambodian government has a binding legal obligation under international law and under its own Constitution to respect, protect and fulfill the human rights enshrined in these international agreements.

## The Human Rights Obligations of the European Union

All European Union Member States have ratified the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*, as well as other key human rights conventions. The European Court of Justice has ruled that the EU itself must also comply with the human rights agreements ratified by its Member States.<sup>m</sup>

These treaties give rise to international obligations when the EU and its Member States act both within and outside their borders. The *Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights*, adopted in September 2011 by a group of experts in international law and human rights, clarify the scope and nature of States' extraterritorial duties under

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<sup>m</sup> See Opinion 2/94, Accession of the European Community to the European Convention for the Safeguard of Human Rights and Fundamental Freedoms, [1996] ECR I-1759, para. 33. See also Case C-540/03, Parliament v Council, [2006] ECR I-5769.

international law.<sup>108</sup> They affirm that States have an obligation to respect, protect and fulfill economic, social and cultural rights in situations over which their acts or omissions bring about “foreseeable effects on the enjoyment of these rights outside their territory,” and in situations in which they are in a position, through separate or joint acts, to “exercise decisive influence” or to take measures to realize these rights extraterritorially.<sup>109</sup> States are obliged to “desist from acts and omissions that create a real and foreseeable risk of nullifying or impairing the enjoyment of economic, social and cultural rights extraterritorially” (ie to avoid causing harm).<sup>110</sup> These obligations apply to international trade, investment and development cooperation agreements, which must be elaborated, interpreted and applied in a manner consistent with States’ human rights obligations.<sup>111</sup>

These extra-territorial human rights obligations are also enshrined in the *Treaty on European Union (consolidated version 2012)*, which states in Article 2 that respect for human dignity and human rights are among the core values on which the Union is founded. Article 3(5) extends the Union’s obligation to respect human rights to “its relations with the wider world.” Article 21 reaffirms:

The Union’s action on the international scene shall be guided the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.

Furthermore, Article 207 of the *Treaty on the Functioning of the European Union (consolidated version 2012)* states that the common commercial policy “shall be conducted in the context of the principles and objectives of the Union’s external action.”

The *EU Strategic Framework and Action Plan on Human Rights and Democracy*, adopted in 2012, reaffirms the Union’s commitment to advance human rights and respect for international law through all of its external actions. It states the EU “will promote human rights in all areas of its external action without exception” and promises to integrate the promotion of human rights into trade, investment, corporate social responsibility and development policy.<sup>112</sup>

The EU is therefore bound, under both international and EU law, to respect, protect and fulfill human rights in its foreign trade relations and has expressed a policy commitment to do so.

As previously noted, the preparation of human rights impact assessments prior to and after the conclusion of trade and investment agreements, or the adoption of unilateral trade and investment policies, is an essential element in meeting these obligations. The *Maastricht Principles* state that, “States must conduct prior assessment, with public participation, of the risks and potential extraterritorial impacts of their laws, policies and practices on the enjoyment of economic, social and cultural rights.”<sup>113</sup> These assessments should be made public and they should inform the measures that States must adopt to prevent violations or ensure their cessation as well as to ensure effective remedies.<sup>114</sup>

As the Special Rapporteur on the Right to Food has explained:

Human rights impact assessments are a tool to ensure consistency and coherence between the obligations of States under international law and other international agreements to which they are parties, and thus to overcome, or at least mitigate, the problems resulting from the fragmentation of international law.<sup>115</sup>

Based on the results of the human rights impact assessment, the Special Rapporteur has elaborated a range of appropriate responses when an incompatibility is found, including but not limited to:

- a) Termination of the agreement;
- b) Amendment of the agreement;
- c) Insertion of safeguards in the agreement;

d) Provision of compensation by third-State parties;

e) Adoption of mitigation measures.<sup>116</sup>

In recognition of these obligations, the European Parliament called upon the European Commission, in its resolution of November 08, 2010, to “conduct human rights impact assessments in addition to sustainability assessments.”<sup>117</sup>

## The Human Rights Responsibilities of Sugar Companies

While States hold the primary responsibility to respect, protect and fulfill human rights, international law increasingly recognizes that human rights responsibilities also attach to non-state actors, including corporations. Accordingly, in July 2011, the UN Human Rights Council unanimously endorsed *the UN Guiding Principles on Business & Human Rights*. This set of 31 principles was designed to guide States and businesses in implementing the UN ‘*Protect, Respect, and Remedy*’ Framework.<sup>118</sup>

The *Framework* and the *Guiding Principles on Business and Human Rights* are predicated on three pillars:

- The State Duty to Protect Human Rights
- The Corporate Responsibility to Respect Human Rights
- Access to Remedy

The **duty to protect** reaffirms key international law principles (described above) concerning the obligation of States to protect their citizens from human rights abuses by third parties, including corporations.<sup>119</sup>

The **corporate responsibility to respect** human rights means that companies “should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.”<sup>120</sup> Companies know and show that they respect human rights by:

- (a) Having a human rights policy;
- (b) Conducting human rights due diligence (identifying, preventing, mitigating and accounting for how they address their impacts on human rights);
- (c) Putting in place processes enabling remediation of any adverse human rights impacts they cause or to which they contribute.<sup>121</sup>

Human rights due diligence includes identifying and assessing “any actual or potential adverse human rights impacts with which they may be involved either through their own activities *or as a result of their business relationships* [emphasis added].”<sup>122</sup> States should develop binding human rights due diligence guidelines as part of their obligation to protect.

The **access to remedy** pillar of the *Business and Human Rights Framework* sets out the steps that States should take to ensure effectiveness of domestic judicial and non-judicial mechanisms in addressing business-related human rights abuses.<sup>123</sup> It also calls upon businesses to establish or participate in “effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.”<sup>124</sup>

The *Tenure Guidelines* reaffirm that business enterprises have a responsibility to respect human rights, as well as legitimate tenure rights.<sup>125</sup> They call upon States to provide access to effective judicial remedies for negative impacts on human rights and legitimate tenure rights by business enterprises.<sup>126</sup> Furthermore, where transnational corporations are involved, the *Tenure Guidelines* affirm that their home States have “roles to play in assisting both those corporations and host States to ensure that businesses are not involved in the abuse of human rights and legitimate tenure rights.”<sup>127</sup>

## Findings of Human Rights Impact Assessment: The Consequences of EBA-Driven Industrial Sugar Development in Cambodia

As of December 2012, approximately 2.6 million hectares of land - a size equivalent to approximately 75 percent of Cambodia's total arable land mass - had been granted to private companies as ELCs for agro-industrial development.<sup>128</sup> This sell-off has led to an erosion in the enjoyment of human rights by a significant segment of the population that has endured forced evictions and reduced access to farming, grazing and forest land and water resources at the hands of concessionaires. Human rights monitoring organizations have recorded the cases of at least 700,000 people across the country who have been dispossessed of their land as a result of ELCs.<sup>129</sup> Surya Subedi, the UN Special Rapporteur on the Situation of Human Rights in Cambodia, concluded in his 2012 report to the Human Rights Council that:

There are well documented, serious and widespread human rights violations associated with land concessions that need to be addressed through remediation.<sup>130</sup>

The sugar industry has been one of the worst offenders. Its development has been accompanied by forced evictions, seizure of farmland and commons, destruction of property, crops and protected forests and the use of violence, intimidation and harassment against local communities.

This chapter uses the structure of the *UN Eviction Guidelines* to assess the evictions<sup>n</sup> associated with sugar plantation development in Cambodia, documenting human rights violations that occurred **prior to, during and after** evictions.

### General State Obligations and Preventive Measures

The *UN Eviction Guidelines* call upon States to take all necessary measures to ensure protection from forced evictions and the enjoyment of the human right to adequate housing, including security of tenure.<sup>131</sup> While Cambodia bears the primary obligation to take such measures to protect people from forced evictions within its territory, the EU and its Member States also have an obligation to protect people from foreseeable risks of adverse human rights impacts resulting from its trade policies in other countries.

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<sup>n</sup> In accordance with the *UN Eviction Guidelines*, this report uses the term "eviction" to describe displacement from homes and/or seizure of land that is depended upon to support livelihoods.

## Implementation of Cambodia's Obligations to Take Preventative Measures

### UN Basic Principles and Guidelines on Development-based Evictions and Displacement (2007)

22. States must adopt legislative and policy measures prohibiting the execution of evictions that are not in conformity with their international human rights obligations. States should refrain, to the maximum extent possible, from claiming or confiscating housing or land, and in particular when such action does not contribute to the enjoyment of human rights [...]

28. States should adopt, to the maximum of their available resources, appropriate strategies, policies and programs to ensure effective protection of individuals, groups and communities against forced evictions.

Cambodia's Land Law, adopted by the National Assembly on July 20, 2001, was an important step towards establishing an adequate legal framework for the protection of tenure rights. Yet, there remain significant gaps and deficiencies in the Cambodian regulatory framework with respect to evictions. Most notably there is no legislative tenure security for renters or people residing on State land, no adverse possession rights for people who occupied or were granted land or buildings after August 30, 2001, and no comprehensive regulations to govern evictions, compensation and resettlement processes. Moreover, the positive legal protections that exist in the Land Law are often not respected and enforced on the ground.

In recognition of the absence of a comprehensive land registration system in Cambodia, the Land Law bestowed legal rights akin to ownership on households that fulfill a number of criteria.<sup>o</sup> Persons who peacefully and in good faith settled on State private property before the passage of the law in August 2001, and have continued to occupy the land in a manner that was unambiguous and known to the public, are vested with legal possession rights.<sup>132</sup> This excludes occupiers of State public land, such as households on land along rivers or railway tracks, and those residing on someone else's privately held land, such as renters or squatters. Nonetheless, for the majority of Cambodian households, most of which do not have formal title to their land, the legal recognition of possession is highly significant in terms of legislative tenure security. The law confers a number of rights on legal possessors, including the exclusive right to exchange and transfer the property and the right to apply for title.<sup>133</sup>

Importantly, with respect to evictions, the Land Law makes a penal offence any act that hinders peaceful possession of land in an area not yet covered by the cadastral index map.<sup>134</sup> This means that if a household has not yet had its rights to the land adjudicated and determined through proper legal processes, its possession of the land should not be interfered with, including by threat of or actual eviction. The effect of this provision is to place a legislative moratorium on eviction of all households whose rights have not yet been legally assessed. In practice, this moratorium is routinely ignored, as evidenced in all of the cases examined in this assessment.

The Cambodian government's ELC policy poses one of the most significant risks to the land rights regime by undermining the security of tenure of vulnerable population groups that farm and reside on land that is targeted for investment. While the *Sub-Decree on Economic Land Concessions (2005)* provides some legal safeguards intended to mitigate these risks, including the prohibition of involuntary resettlement of "lawful land holders," and respect for "access to private land,"<sup>135</sup> these safeguards have either been disregarded or proven inadequate to protect the rights of affected people, as demonstrated in the findings that follow.

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<sup>o</sup> Note that the concept of legal possession was recognized in earlier land laws but was updated and clarified in the 2001 law.

## Implementation of the EU's Obligations to Take Preventative Measures

### **UN Basic Principles and Guidelines on Development-based Evictions and Displacement (2007)**

27. States should ensure that binding human rights standards are integrated in their international relations, including through trade and investment, development assistance and participation in multilateral forums and organizations. States should implement their human rights obligations with regard to international cooperation, whether as donors or as beneficiaries. States should ensure that international organizations in which they are represented refrain from sponsoring or implementing any project, programme or policy that may involve forced evictions, that is, evictions not in conformity with international law, and as specified in the present guidelines.

### **Voluntary Guidelines on the Responsible Governance of Tenure of Land, Forests and Fisheries (2012)**

12.4 Responsible investments should do no harm, safeguard against dispossession of legitimate tenure right holders and environmental damage, and should respect human rights. Such investments should be made working in partnership with relevant levels of government and local holders of tenure rights to land, fisheries and forests, respecting their legitimate tenure rights. They should strive to further contribute to policy objectives, such as poverty eradication; food security and sustainable use of land, fisheries and forests; support local communities; contribute to rural development; promote and secure local food production systems; enhance social and economic sustainable development; create employment; diversify livelihoods; provide benefits to the country and its people, including the poor and most vulnerable; and comply with national laws and international core labour standards as well as, when applicable, obligations related to standards of the International Labour Organization.

The *UN Eviction Guidelines* call upon States to ensure that extra-territorial human rights protections are incorporated into their trade relations, while the *Tenure Guidelines* call for policies that promote “responsible investments in land, fisheries and forests that support broader social, economic and environmental objectives” and respect human rights. However, the EBA agreement contains no legal safeguards or instruments to protect people from forced evictions and other human rights violations that may foreseeably result from increased investment in beneficiary countries by companies seeking to take advantage of these trade privileges.

The only regulatory measures relevant to the EBA scheme that address human rights are the “Temporary Withdrawal” provisions of Council Regulation No 732/2008 of 22 July 2008 (hereafter the “*GSP Regulation*”). Under these provisions, preferential arrangements may be withdrawn temporarily, in respect of all or of certain products originating in a beneficiary country, due to “the serious and systematic violation of principles” laid down in the core human rights covenants and conventions, “on the basis of the conclusions of the relevant monitoring bodies.”<sup>p</sup> However, despite the statements of the Special Rapporteur on the human rights situation in Cambodia and treaty bodies on this subject,<sup>136</sup> as well as the appeals of affected communities, the European Commission has refused thus far to launch an investigation into whether preferences should be withdrawn for Cambodian sugar on this basis.

Moreover, when the GSP was overhauled in 2012, no safeguards were put into place to avoid fueling the global land grabbing crisis that has exploded since 2008.<sup>137</sup> The Commission was aware of the risk that EBA may encourage land grabbing by incentivizing investment in LDCs with weak land

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p Regulation 732/2008 expires on December 31, 2013 and will be replaced by Regulation 978/2012, adopted on October 25, 2012. The new regulation gives the Commission the power to withdraw preferences on the basis of all relevant information, rather than exclusively on the basis of the conclusions of the monitoring bodies (Article 19(6)).

tenure protection regimes, as this concern was brought to its attention by Cambodian civil society groups as early as August 2010.<sup>138</sup> Despite having this information, the Commission undertook no human rights impact assessment of the GSP scheme before it was reauthorized in 2012. The failure to assess and mitigate the foreseeable human rights risks of EBA constitutes a violation of the EU's and its Members States' obligation to respect and protect human rights in its external action.

## Prior to Evictions

Under international law, evictions can only occur in exceptional circumstances. Any eviction “must be (a) authorized by law; b) carried out in accordance with international human rights law; c) undertaken solely for the purpose of promoting the general welfare; d) reasonable and proportional; [and] (e) regulated so as to ensure full and fair compensation and rehabilitation [...]”.<sup>139</sup> In particular, before any decisions regarding evictions are taken, the international human rights law principles of transparency and participation must be respected.<sup>140</sup> These procedural requirements apply to all vulnerable persons and affected groups, irrespective of whether they hold title to home and property under domestic law.<sup>141</sup>

## Exceptional Circumstances

### **CESCR General Comment No. 4, The Right to Adequate Housing (1991)**

18. [...] the Committee considers that instances of forced eviction are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.

The Cambodian *Sub-decree on Economic Land Concessions* cites several purposes for granting such concessions, including inter alia: encouraging investment in agro-industrial development; increasing employment and intensification and diversification of livelihood opportunities in rural areas; and generating state revenues through economic land use fees, taxation and related service charges.<sup>142</sup>

While these aims could potentially promote the general welfare, ELCs are primarily a vehicle for private profit making and are not undertaken ‘solely for the purpose of promoting the general welfare.’ The *UN Eviction Guidelines* clarify that the promotion of general welfare refers to “steps taken by States consistent with their international human rights obligations, in particular the need to ensure the human rights of the most vulnerable.”<sup>143</sup> Given the adverse human rights impacts of the government's ELC policy that are documented in this report, impacts which have been borne predominantly by the most vulnerable, there can be no credible argument that the purported public benefits of ELCs are sufficient to justify evictions under international law.

Moreover, the purported general welfare benefits of ELCs have largely failed to materialize.<sup>144</sup> As Surya Subedi wrote in his report on the human rights impacts of Cambodia's land concession policy:

[T]hroughout my analysis, I struggled to fully comprehend the benefits of many land concessions that the Government has granted. In general, it is not clear to what extent the people of Cambodia have actually benefited from land concessions [...].<sup>145</sup>

### **Declaration on the Right to Development (1986) : Article 2**

1. The human person is the central subject of development and should be the active participant and beneficiary of the right to development.

### **UN Basic Principles and Guidelines on Development-based Evictions and Displacement (2007)**

32. [...] Comprehensive and holistic impact assessments should be carried out prior to the initiation of any project that could result in development-based eviction and displacement, with a view to securing fully the human rights of all potentially affected persons, groups and communities, including their protection against forced evictions. "Eviction-impact" assessment should also include exploration of alternatives and strategies for minimizing harm.

37. Urban or rural planning and development processes should involve all those likely to be affected and should include the following elements: (a) appropriate notice to all potentially affected persons that eviction is being considered and that there will be public hearings on the proposed plans and alternatives; (b) effective dissemination by the authorities of relevant information in advance, including land records and proposed comprehensive resettlement plans specifically addressing efforts to protect vulnerable groups; (c) a reasonable time period for public review of, comment on, and/or objection to the proposed plan; (d) opportunities and efforts to facilitate the provision of legal, technical and other advice to affected persons about their rights and options; and (e) holding of public hearing(s) that provide(s) affected persons and their advocates with opportunities to challenge the eviction decision and/or to present alternative proposals and to articulate their demands and development priorities.

38. *States should explore fully all alternatives to eviction.* All potentially affected groups and persons, including women, indigenous peoples and persons with disabilities, as well as others working on behalf of the affected, have *the right to relevant information, full consultation and participation* throughout the entire process, and to propose alternatives that authorities should duly consider [...].

40. Prior to any decision to initiate an eviction, authorities must demonstrate that the eviction is unavoidable and consistent with international human rights commitments protective of the general welfare.

Contrary to Cambodian laws and regulations requiring social and environmental impact assessments to be undertaken with public participation and be made publicly available prior to the approval of any ELC project,<sup>q</sup> there is no evidence that any such assessments were conducted for any of the sugarcane concessions under review. If any EIAs were conducted, affected people interviewed for this study were not consulted on them and the research team could not find any evidence of their existence. There is also little evidence that alternatives were meaningfully explored by the companies and authorities to avoid or minimize evictions.

In relation to the Koh Kong concessions, which are the only ones under review for which the concession agreements are publicly available, the agreements signed by MAFF do state that the

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<sup>q</sup> Sub-decree No. 146 on Economic Land Concessions (2005), Article 4, requires environmental and social impact assessments to have been completed with respect to the land use and development plan for economic land concession projects prior to the granting of the ELC. Sub-decree No 72 on Environmental Impact Assessment Process (1999), Article 1, states that there must be public participation in the EIA process. The Law on Forestry (2002), Article 4, also says that the all EIA document for projects that affect forests should be available to the public.



concessions contain land that is “legally owned by local residents” and land that is “kept for natural conservation.”<sup>146</sup> The agreements state that the land that is legally owned by local residents is not available for the companies’ use “unless a mutual agreement is reached.”<sup>147</sup> It requires the concessionaires to cooperate with the competent institutions to complete a survey of these areas within three months and “either exclude or facilitate the compensation for all relevant land areas [sic].”<sup>148</sup> However, Ly Yong Phat’s employees reportedly began clearing the villagers’ land in May 2006, three months before these agreements were even signed.<sup>149</sup> Once the land clearing began, the survey was apparently abandoned and the government failed to enforce the provisions of the concession agreement that attempted to avoid evictions in the excluded areas.

Comprehensive and participatory human rights impact assessments prior to carrying out the evictions and land seizures in Koh Kong, Kampong Speu and Oddar Meanchey would have foreseen the significant human and environmental costs involved and determined that evictions were not necessary. Smaller concessions could have been granted to the companies to develop sugar plantations on unoccupied State private land without resorting to eviction and destruction of forests. Out-grower arrangements could have been explored with the surrounding communities.

However, rather than conducting impact assessments and consulting affected communities on alternatives, villagers interviewed for this study report being duped or intimidated into handing over their land to the sugar companies, if it was not taken by force. At every stage of the process of granting and developing the sugarcane concessions, information about the projects was withheld or misrepresented to affected people.

Interviewees at the Pis resettlement site recalled how the chief of Amliang commune came to convince people to give a section of their land for a new road. Since the current road was nearly impassable in the rainy season, people were excited and generally willing to donate a section of their land. Villagers later learned that the Commune Chief had lied. Unable to read, they had unwittingly signed their land over to Ly Yong Phat’s sugar company.<sup>150</sup>

In another resettlement area, Trapaing Prolet, interviewees recalled that the commune chief and two commune councilors approached households to collect thumbprints. The residents were told that the document would permit their land holdings to be mapped and a land rights document issued. However, one literate woman discovered that the document granted the land in question to the sugar company. No one thumb-printed the document. Two months later Ly Yong Phat’s real estate agent and a staff member of the district-level agricultural office returned to convince the people to trade their land for a plot of the same size in the new Pis village. Villagers had heard from the families resettled to Pis that the same promise was not honored. No one agreed to thumbprint the new document. During a third visit, the Commune Chief of Trapaing Chour, the Plourch Village Chief and the same staff member of the district-level agricultural office offered families more land, \$200 for moving costs as well as \$1.75 per tree lost. Families remained reluctant, as the replacement land on offer was significantly smaller. During all visits, company representatives met with people individually or in small groups. Villagers were told that they lived on the land illegally and that their ownership was not recognized because they had purchased their land from people who did not hold proper documentation. The tactic was ultimately successful; most people were reluctant to challenge the powerful interests involved.<sup>151</sup>

Interviewees from Snoul, Kok, O’Ang Khum and O’Pralov villages recalled a meeting in January 2010, when the Commune Chief warned them that the sugar company was coming to grab their land. He then asked people to thumbprint a petition to contest the sugar company and receive ownership rights to their land. The contents of the document were read out loud to the group. Unable to read the document, villagers provided their thumbprints. Several months later, they realized that they had been tricked by the Commune Chief when company bulldozers turned up and began clearing their land.<sup>152</sup>

One focus group participant from Kork village said:

There were no meetings. There were no compensation negotiations. We were forced. We did not want to sell our land for such a low price.<sup>153</sup>

He recalled that company representatives approached each family separately and told them that the other villagers had already agreed to sell their land. He said the representatives reportedly told him:

“if you don’t accept you will get nothing. We will still take the land.”<sup>154</sup>

Another farmer from Kraing Doung, unwilling to sell with so many children to support, also reported being bullied to give up her land. She said the Commune Chief told her, “If you don’t sell we’ll come back with soldiers to make the road.” The woman eventually agreed to sell a 40m-wide section along the entire side of her 13 ha of land for \$2000. As she was promised access to her *chamcar* (farm) and rice fields, she thumb-printed the sale document on March 22, 2010. Although she was paid \$200 as an installment, the men kept delaying the final payment. When she inquired, they told her that the land belonged to the chief of police and ‘Excellencies.’ She never received the rest of the money and the company took the entire 13 ha.<sup>155</sup>

Villagers in Oddar Meanchey also reported a campaign of intimidation aimed at coercing them into accepting “compensation offers” proposed by the authorities on behalf of the concessionaires. According to the Cambodian human rights organization LICADHO, under the compensation agreements, villagers were obliged to accept land plots assigned to them by the authorities “or lose everything” and be subjected to criminal investigations. Villagers reported to LICADHO at the time that the compensation offers consisted of land that was much smaller than the plots that were taken from them or land that was already owned by others.<sup>156</sup>

One villager from Ktum village said:

The company didn’t make any consultation with us before taking our lands. When they started bulldozing our lands, we complained to the chief of the commune, and he promised to offer compensation but didn’t state clearly how much. Later on, they offered us one hectare of land and said ‘take it or leave it.’ Some people who have other plots, they didn’t accept it since they have their relatives to support; unlike me, I have nothing, so I unwillingly accepted it.<sup>157</sup>

At none of the sites visited by the assessment team had people been consulted or included in the decision-making process regarding the evictions and land seizures. Villagers described intimidation tactics employed by the authorities and company staff and a lack of information regarding project approval as well as resettlement and compensation processes. When they sought out information from local authorities, no assistance was provided.

## Eviction Notice and Reason for Eviction

### **UN Basic Principles and Guidelines on Development-based Evictions and Displacement (2007)**

**41.** Any decision relating to evictions should be announced in writing in the local language to all individuals concerned, sufficiently in advance. The eviction notice should contain a detailed justification for the decision, including on: (a) absence of reasonable alternatives; (b) the full details of the proposed alternative; and (c) where no alternatives exist, all measures taken and foreseen to minimize the adverse effects of evictions. All final decisions should be subject to administrative and judicial review. Affected parties must also be guaranteed timely access to legal counsel, without payment if necessary.

**42.** Due eviction notice should allow and enable those subject to eviction to take an inventory in order to assess the values of their properties, investments and other material goods that may be damaged. Those subject to eviction should also be given the opportunity to assess and document non-monetary losses to be compensated.

Adequate notice of eviction was not provided in any of the research areas. The majority of affected families surveyed first learned of the development project on the day their land was cleared. In all areas, people were unaware of project implications and were taken by surprise when land clearing activities began.

Pis residents learned about the sugar concession when bulldozers and approximately 30 soldiers armed with guns and stun batons arrived to clear their land and demolish their homes in February 2010.

One Pis resident recalled:

At first I didn't recognize what was happening. It was only a few days before our land was cleared and they evicted us from our homes that we heard about the ELC. We had no warning.<sup>158</sup>

Another farmer from Pis stated that he learned of the ELC on the same day they expected him to move. Ten armed soldiers instructed him to leave. He asked to have a few more days to gather his belongings but they refused. Six workers who were assigned the task of clearing his land invited themselves to sleep in his house for two nights before demolishing it with a bulldozer the following day.<sup>159</sup>

No notice was provided prior to the first round of evictions in O'Bat Moan village in 2008. Before the second round of evictions in 2009, households were told to leave three to four days before the police surrounded the village and their homes were burned to the ground. According to two former residents of O'Bat Moan, including the village representative, even though they received orders to leave a few days in advance, households were not notified that their belongings would be set on fire.<sup>160</sup>

In no areas was any official reason for eviction provided by the authorities to those interviewed for this study. Households surveyed in each area reported being informed by soldiers or tractor drivers that their land belonged to the state and that the farmers had no right to be there.



## During Evictions

The procedural requirements for ensuring respect for human rights during the actual process of evictions are spelled out in paragraphs 45-51 of the *UN Eviction Guidelines*. These procedural requirements uphold the rights to security of person and home, which are protected by the *International Covenant on Civil and Political Rights*.

### Police Presence, Intimidation and Injury During Eviction

#### **International Covenant on Civil and Political Rights (1966) - Article 17**

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

#### **UN Basic Principles and Guidelines on Development-based Evictions and Displacement (2007)**

**45.** The procedural requirements for ensuring respect for human rights standards include the mandatory presence of governmental officials or their representatives on site during evictions. The governmental officials, their representatives and persons implementing the eviction must identify themselves to the persons being evicted and present formal authorization for the eviction action.

**46.** Neutral observers, including regional and international observers, should be allowed access upon request, to ensure transparency and compliance with international human rights principles during the carrying out of any eviction.

**48.** Any legal use of force must respect the principles of necessity and proportionality, as well as the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and any national or local code of conduct consistent with international law enforcement and human rights standards.

#### **Land Law of Cambodia (2001)**

##### **Article 253**

Any person who uses violence against a possessor in good faith of an immovable property, whether or not his title has been established or it is disputed, shall be fined from 1,500,000 Riel to 25,000,000 Riel and/or imprisoned from six (6) months to two (2) years irrespective of the penalty for violence against a person.

In addition to the above penalty, the violator shall be liable for civil damages that were caused by his violent acts.

If the violence was ordered by a person other than the perpetrator, who did not personally participate in the commission of such violence, he shall be subject to the same penalties as the perpetrators of the violence.

##### **Article 254**

Under no circumstances shall the use of private force be authorized in order to protect a person's title to property or to enforce a court order for the expulsion or forced removal of an occupant. [...]

Violent forced evictions were carried out to clear land for sugarcane plantations in all of the research areas.

Villagers in Chi Kor Leu commune, Sre Ambel district, Koh Kong province came under attack on May 19, 2006 when demolition workers with bulldozers and excavators, accompanied by armed police and military police, arrived without warning and began clearing their land and crops.<sup>161</sup> Despite the villagers' protests, the land invasions continued over the following months. An Asian Human Rights Commission (AHRG) urgent action appeal detailed the forced eviction of 250 families in Chi Kor Leu commune on September 19, 2006:

The police destroyed the villagers' crops and houses by bulldozer and brutally attacked the villagers who resisted the eviction. Five villagers were reportedly injured by the police assault and two others were injured by police gunfire.<sup>162</sup>



Military police hired by Ly Yong Phat's sugar company fire shots at villagers resisting clearing of their land, injuring 2 people.

2006 © LICADHO

According to the report, and corroborated by photographic evidence, police fired live ammunition in the air and towards the ground to threaten the villagers. Two villagers received non-fatal gunshot wounds while others were beaten with rifle butts.<sup>163</sup> The evictions were carried out without a court order in violation of Cambodian law.<sup>r</sup>

On December 15, 2006, Mr. An In (35), a community activist who had been documenting and actively protesting the land clearances, was found murdered with three axe blows to the back of his head in Chi Kor village.<sup>164</sup> Nobody has been charged to this day for An In's murder.<sup>165</sup>

Sixteen months later, in Oddar Meanchey province, Angkor Sugar Company staff wearing T-shirts with logos saying "Donated by H.E. Ly Yong Phat" demolished 154 houses in Bos/O'Bat Moan village under the guidance of local authorities.<sup>166</sup>

Further forced evictions were carried out in Bos/O'Bat Moan village in October 2009. Several days before the second raid, a mixed group of provincial and district military police surrounded and sealed off the village. The village chief and three villagers were arrested. One 25 year-old man was severely beaten by police and knocked unconscious. Other villagers who had been active in protesting the evictions went into hiding out of fear of arrest.<sup>167</sup>

On October 9, Forestry Administration officials and Royal Cambodian Armed Forces (RCAF) troops set up roadblocks at the entrances to the village, barring human rights workers and the media from entering to observe the evictions. A contingent of approximately 150 police, military police, hired demolition workers, and RCAF troops from Battalion 42 proceeded to bulldoze and burn around 100 houses to the ground.<sup>168</sup> According to documents released by the government, Battalion 42 is sponsored by Ly Yong Phat's O'Smach Casino company.<sup>169</sup>

The authorities did not present a court order authorizing the evictions. They proceeded to destroy all of the villagers' belongings.<sup>170</sup>

Women and children took refuge at the nearby Kork Thlork pagoda while most of the men fled to the forest fearing arrest.<sup>171</sup> According to interviews with evictees, when they arrived at the pagoda im-

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<sup>r</sup> According to Article 35 of the Land Law, only competent authorities acting on behalf of the State are vested with the power to evict an occupant. Read in conjunction with article 248, it may be assumed that an eviction under this provision can only occur after a household's claim to legal possession is adjudicated and determined to be invalid. A private property owner who wishes to evict an occupant from his or her land must obtain a court order after presenting a valid title. The use of violence against good faith possessors, either by authorities or private persons, is prohibited under Cambodian law and punishable by up to two years in prison (Article 253, 254, and 261).



Women in O'Bat Moan village watch their farm house burn. October 2009 © LICADHO

mediately after the eviction, authorities tried to force them to thumbprint a document stating that they had voluntarily burned their houses and that they agreed to accept the compensation offered. While four or five illiterate families thumb-printed the document, the rest of the papers were collected by one woman and thrown back at the officials. When the police tried to arrest her, a fistfight erupted between the evictees and the police. During this time, the woman became so upset that she passed out and the villagers took her to the hospital for treatment.<sup>172</sup> On October 11, the families were reportedly forced out of the pagoda by the authorities.<sup>173</sup>

A similar pattern emerged in Kampong Speu province a few months later, when Ly Yong Phat's sugar company carried out forced evictions of local farmers whose land and homes lay inside his twin concessions in Oral and Thpong districts. With no prior notice and no court order, company staff accompanied by military, police and local authorities began clearing the villagers' land in February 2010. One village, Pis, was totally destroyed and its residents were forcibly relocated onto small residential plots of rocky land at the foot of the mountain. During the clearing, some of the residents were instructed to collect 25 USD for moving costs at the office of the sugar company.<sup>174</sup>

Outraged at the destruction of their property and crops and the meager compensation that they were offered, on March 18, 2010 around 500 residents of Amliang commune protested outside the company's local makeshift office. When company representatives refused to come out to meet them, protesters torched two company-owned structures made of wood and thatch. According to media reports, three days before the incident the villagers met with Phnom Penh Sugar Company representative Chheang Kim Srun, who offered them 200 USD per hectare for rice land and 100 USD per hectare for plantation land that was taken, warning that if they didn't accept it, "they would get air instead."<sup>175</sup>

One protester told the Cambodia Daily:

I know setting fire and burning down these makeshift shelters was illegal and we are at risk of facing charges of property destruction, but the patience of human beings is limited. We cannot bear to see our land grabbed anymore by rich businesspeople.<sup>176</sup>

After this incident, hundreds of soldiers were sent to provide security for the Phnom Penh Sugar Company, which continued to clear the villagers' land. The troops deployed were from Battalion 313 – a former Khmer Rouge battalion with direct financial links to the Phnom Penh Sugar Company.<sup>177</sup> One

villager told the Phnom Penh Post at the time:

The [company] employees did not listen to us because they have police and soldiers standing next to the excavators to ensure they can clear the land.<sup>178</sup>

In all research areas, the team observed local police officers and soldiers moonlighting as private security guards for the sugar companies. Villagers reported that the soldiers continue to monitor their movements and activities. They also reported rent seeking by the police offers for use of public access roads and other common areas such as forests by local communities.

The violence, injury and apparent murder that occurred in conjunction with evictions for sugarcane plantations in Koh Kong, Kampong Speu and Oddar Meanchey represent violations of the right to liberty and security of person and the right to life. In addition to the Cambodian Penal Code, which prohibits battery with injury and homicide, the use of violence against peaceful possessors is also prohibited under the penal provisions of the Land Law and punishable by up to two years in prison.<sup>179</sup> Those who order the violence, even if they do not participate in the acts, are subject to the same penalties.<sup>180</sup> However, nobody has faced prosecution for the violence perpetrated against the Koh Kong, Oddar Meanchey and Kampong Speu communities displaced by sugarcane plantations.

### Timing of the evictions

UN Basic Principles and Guidelines on Development-based Evictions and Displacement (2007)

49. Evictions must not take place in inclement weather, at night, during festivals or religious holidays, prior to elections, or during or just prior to school examinations.

In all research areas, no consideration appears to have been given to the timing of evictions and land seizures. In particular, land seizures were carried out just prior to harvests, contributing to the impoverishment and food insecurity of affected families.

One woman in O'Bat Moan was ordered to vacate her home just after she had given birth and was in weak physical condition. Other women were pregnant at the time. When they were forced out of the pagoda along with approximately 70 children, two days after the eviction, they wanted to take shelter from the rain but had nowhere to go.<sup>181</sup>

Others who were forcibly evicted were sick at the time. One resident of Krang Doung was home alone and lying in bed recovering from a snake bite to her ankle when the company came to clear her land. She could hear the tractors from where she lay but she could do nothing to stop what was happening. She told the research team:

I could only cry. If I was able to walk that day, I would have begged the Commune Chief for just two hectares.<sup>182</sup>

Another woman interviewed from Pis was in the hospital when the company took her land.<sup>183</sup>

The state's failure to provide special protection for vulnerable persons, and particularly for pregnant women, during evictions is a human rights violation. The *International Covenant on Economic, Social and Cultural Rights*, Article 10(2), states: "Special protection should be accorded to mothers during a reasonable period before and after childbirth."

## Losses and destruction of property

### **Universal Declaration of Human Rights (1948)**

#### **Article 17(2)**

No one shall be arbitrarily deprived of his property.

### **Voluntary Guidelines on the Responsible Governance of Tenure of Land, Forests and Fisheries (2012)**

7.1. When States recognize or allocate tenure rights to land, fisheries and forests, they should establish, in accordance with national laws, safeguards to avoid infringing on or extinguishing tenure rights of others, including legitimate tenure rights that are not currently protected by law. In particular, safeguards should protect women and the vulnerable who hold subsidiary tenure rights, such as gathering rights.

### **UN Basic Principles and Guidelines on Development-based Evictions and Displacement (2007)**

50. States and their agents must take steps to ensure that no one is ... arbitrarily deprived of property or possessions as a result of demolition, arson and other forms of deliberate destruction, negligence or any form of collective punishment. Property and possessions left behind involuntarily should be protected against destruction and arbitrary and illegal appropriation, occupation or use.

At least two villages were completely destroyed to make way for industrial sugar plantations: Pis village in Kampong Speu and O'Bat Moan in Oddar Meanchey. At least 214 families in O'Bat Moan village lost their homes. Many residents lost all their personal possessions in the fire. Plourch households relocated to Trapaing Prolet in Kampong Speu also lost their homes. Confirmed data on the number households that lost their homes in Kampong Speu was unavailable at the time of writing.

Households in all research areas lost rice, plantation/orchard, grazing and forest land as well as the associated crops and common resources that sustained their livelihoods. In Koh Kong, farm losses ranged from .5 ha to 33 ha with a mean of 6 ha. At least 60 out of 69 sampled households lost all chamcar (vegetable garden/orchard) land holdings. In Kampong Speu, chamcar losses were roughly 3 ha and rice land losses averaged 1.6 ha. Sampled households in Oddar Meanchey each lost 5 ha of rice land.

Farmers were left with feelings of anger and disempowerment about their losses. One man from O'Pralov village stated:

It was my land – it has been in my family since the time of my ancestors. Now everything is gone. There are no palm trees – nothing. The only thing you will find is rocks.<sup>184</sup>

Another many in Trapaing Prolet said:

We have lost land. We have lost fruit trees. We were ready to harvest our food when the tractors came to clear the land. Our land is everything to us.<sup>185</sup>

In all research areas, land clearings were carried out just prior to harvesting time. Crops lost to the concession included *inter alia* rice, watermelon, fruit, vegetables, maize, cassava, sweet potatoes, and soybean. In all areas, the findings indicate that households lost investments as well as income opportunities related to agricultural production. In Koh Kong, families who grew watermelon said that they earned 750 USD for each yield after 55 days of cultivation.<sup>186</sup> CLEC estimates that market losses



averaged between 500 USD and 1000 USD per year per farmer. In Kampong Speu, farmers reported roughly 275 USD in annual market losses per household. In Oddar Meanchey, annual market-related losses from rice crops averaged 1,570 USD per family.

The concessions also led to a loss of livestock holdings. After the sugar companies took the land, less grazing land is available and cows and buffaloes have thus transitioned from a household asset to an economic liability. Livestock trespassing onto concession land was reported in all areas to often lead to informal 'fines' issued by soldiers or security guards. In addition, livestock in Koh Kong and Kampong Speu have been injured and killed by company guards. Households have resorted to selling animals as a safeguard against the rent-seeking activities of ELC guards or to compensate for the financial setback of land loss. One Koh Kong household reduced their herd from 50 to 7 after losing access to grazing land. Others sold livestock to pay for medical and daily living expenses.

An evicted resident from O'Bat Moan said:

All of my animals ran away when they burned down my house. I couldn't get them back.<sup>187</sup>

Households evicted from O'Bat Moan reported losing all of their possessions in the evictions. One woman reported losing clothes, mats, family books and important documents, 10,000 Baht (approximately 230 Euros), a tv, radio, over 100 chickens, 3 pigs and 2 dogs. She also lost her rice harvest, which was reportedly stolen by the military.<sup>188</sup>

In all research areas, interviewees reported that common property resources they relied upon for livelihood support were lost or degraded as a result of plantation development. Forests were a particularly important source of livelihood support for families that grazed animals and collected forest products such as bamboo, wood, honey, beeswax, medicines, rattan, firewood, and many plants, which they could sell. Forests also supplied deer, wild cow, fish, rabbits, and snakes.

Entire forests have been destroyed and access to remaining forest is denied or monitored by company security guards hired to protect the concessions. In addition, the quality of the remaining forests in all research sites has deteriorated since the establishment of the plantations. According to the Community Forest Network, the Angkor Sugar concession in Oddar Meanchey reduced the size of the Ratanak Sambak Community Forest from 28,772 to 12,872 ha, affecting 16 villages. In Kampong Speu, residents reported that Amliang Community Forest and Taleo Community Forest, totaling 1,805 ha was completely destroyed to make way for the sugar concession. The community forests were both registered with the Forestry Administration. Other forests totaling roughly 1000 ha were also destroyed within the concession boundaries. Since losing access to forests, less fish, food and medicines are available and families have to travel further to find similar pre-concession amounts. There have also been severe economic impacts from the loss of forests. The Group Leader in Trapaing Prolet said:

Everything is gone. The forest and fishing areas are gone. The people who cut wood here are related to the company – we don't have access. If we go we'll get kicked out.<sup>189</sup>

Local communities also have less access to water in all research areas as local water resources have been blocked, polluted, covered over with earth or grabbed by the sugar companies to meet plantation requirements. Respondents in Kampong Speu and Koh Kong reported that sugar mill processes and agricultural inputs have contaminated water resources, so people and livestock can no longer access these sources for drinking and household use without getting sick. Residents of Snoul, O'Ang Khum, Kork, and O'Pralov lost fishing resources when the sugar company covered the land, dammed up the water and covered the streams. Fish are more scarce and residents can no longer find edible water plants such as morning glory and lily that used to grow locally.

## After Evictions

Under the International Covenant on Economic, Social and Cultural Rights any deliberately retrogressive measures that impair the enjoyment of Covenant rights amount to a violation of international human rights obligations, unless such measures can be justified based on the totality of the rights in the Covenant and in the context of the full use of the maximum available resources.<sup>190</sup>

States also have an immediate obligation to ensure the enjoyment of minimum essential levels of Covenant rights. As the Committee on Economic, Social and Cultural Rights stated in its General Comment No. 3, “a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, *prima facie*, failing to discharge its obligations under the Covenant.”<sup>191</sup>

Paragraphs 52-68 of the *UN Eviction Guidelines* provide guidance on the steps that must be taken to ensure that those affected by evictions do not suffer a retrogression in their enjoyment of economic, social and cultural rights and that they enjoy, at the very least, the minimum essential levels of these rights.

### Living Conditions Immediately After Evictions

#### **UN Basic Principles and Guidelines on Development-based Evictions and Displacement (2007)**

**43.** Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. The State must make provision for the adoption of all appropriate measures, to the maximum of its available resources, especially for those who are unable to provide for themselves, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available and provided. [...]

**52.** The Government and any other parties responsible for providing just compensation and sufficient alternative accommodation, or restitution when feasible, must do so immediately upon the eviction, except in case of force majeure. At a minimum, regardless of the circumstances and without discrimination, competent authorities shall ensure that evicted persons or groups, especially those who are unable to provide for themselves have safe and secure access to: a) essential food, potable water and sanitation; b) basic shelter and housing; c) appropriate clothing; d) essential medical services; e) livelihood sources; f) fodder for livestock and access to common property resources previously depended upon; and g) education for children and childcare facilities. States should ensure that members of the same extended family or community are not separated as a result of evictions.

The forced evictions in O’Bat Moan village rendered approximately 214 families homeless. The evictions occurred just prior to the rice harvest, which was stolen by the military after the evictions. With their homes and belongings destroyed and their rice crop looted, these families were left without access to the minimum elements of their basic human rights to food, clothing, shelter and essential medical services. The morning after the evictions, the provincial office offered each of the 76 families that fled to the Koptlok pagoda 20 kg of rice, four cans of fish, one bottle of soy sauce, one bottle of fish sauce and one plastic tarp measuring roughly 2m<sup>2</sup>. These food rations could feed a family of five for approximately one month. Authorities then reportedly forced the villagers out of the pagoda.<sup>192</sup> The evicted families regrouped at public shelters along the roadside, where they were monitored by police, military police and RCAF soldiers.<sup>193</sup> LICADHO, which monitored the immediate aftermath of the evictions, observed at the time:

The humanitarian situation of the families remains critical, many lack basic food supplies, mosquito nets and tarpaulins.<sup>194</sup>

Two years later, when Equitable Cambodia first visited the evicted families at the Bos relocation site, the humanitarian situation remained grave. The few families evicted from O'Bat Moan who were able to get replacement land remained hungry and without adequate shelter. One woman exclaimed, "they abandoned us in the forest."<sup>195</sup>

The 2007 report of the UN Special Representative for human rights in Cambodia documented the early impact of the sugar concessions in Koh Kong:

The clearing of rice fields and orchards belonging to villagers in Sre Ambel district has affected over 400 families; some have little or no land remaining for farming, and are surviving on last year's rice harvest. The concession has also restricted the availability of grazing land for villagers' livestock, and company security guards have reportedly seized or shot cattle straying into the concession area.<sup>196</sup>

The situation for most of these families has remained precarious over the past six years. One elderly woman in Chi Kha Leu said:

Nowadays I feel so depressed, because I am getting older, I have no land. I don't know how to generate income to support our living. When I am sick, I don't have money for medication and the remaining land is too small that we cannot survive from farming on it.<sup>197</sup>

A man at the Pis relocation site, who had previously owned a 3.5 ha plot of housing and chamcar land, recalled his eviction experience for the assessment team:

They took my belongings from my house and loaded them into the dump truck. When I arrived at the new location my belongings were piled up in a heap. They just dumped everything on the ground.

When asked why he was laughing uncomfortably he stated, "I am laughing because it is unbelievable. Almost everything I owned was destroyed." He received no payment for his land, and was offered 150 USD for moving his belongings to the new Pis village. He was told that if he did not accept the offer, he would receive nothing.<sup>198</sup>



Villagers seek shelter from the heat in the remnants of their house days after their eviction.  
- O'Bat Moan village, Oddar Meanchey. October 2009 © LICADHO.



Two years later seven families remain at the Bos relocation site. Only 14 of the 214 families from O'Bat Moan who were evicted received replacement land.  
-Bos relocation site, Oddar Meanchey. October 2011. © Bridges Across Borders Cambodia.

## Compensation, Rehabilitation, Resettlement and Return

### UN Basic Principles and Guidelines on Development-based Evictions and Displacement (2007)

55. Identified relocation sites must fulfil the criteria for adequate housing according to international human rights law. These include: (a) security of tenure; (b) services, materials, facilities and infrastructure such as potable water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services, and to natural and common resources, where appropriate; (c) affordable housing; (d) habitable housing providing inhabitants with adequate space, protection from cold, damp, heat, rain, wind or other threats to health, structural hazards and disease vectors, and ensuring the physical safety of occupants; (e) accessibility for disadvantaged groups; (f) access to employment options, health-care services, schools, childcare centres and other social facilities, whether in urban or rural areas; and (g) culturally appropriate housing. In order to ensure security of the home, adequate housing should also include the following essential elements: privacy and security; participation in decision-making; freedom from violence; and access to remedies for any violations suffered.

59. When return is possible or adequate resettlement in conformity with these guidelines is not provided, the competent authorities should establish conditions and provide the means, including financial, for voluntary return in safety and security, and with dignity, to homes or places of habitual residence. Responsible authorities should facilitate the reintegration of returned persons and exert efforts to ensure the full participation of affected persons, groups and communities in the planning and management of return processes. Special measures may be required to ensure women's equal and effective participation in return or restitution processes in order to overcome existing household, community, institutional, administrative, legal or other gender biases that contribute to marginalization or exclusion of women.

66. Competent authorities have the duty and responsibility to assist returning persons, groups or communities to recover, to the maximum extent possible, the property and possessions that they left behind or were dispossessed of upon their eviction.

67. When return to one's place of residence and recovery of property and possessions is not possible, competent authorities must provide victims of forced evictions, or assist them in obtaining, appropriate compensation or other forms of just reparation.

60. [...] Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, such as: loss of life or limb; physical or mental harm; lost opportunities, including employment, education and social benefits; material damages and loss of earnings, including loss of earning potential; moral damage; and costs required for legal or expert assistance, medicine and medical services, and psychological and social services [...]

63. To the extent not covered by assistance for relocation, the assessment of economic damage should take into consideration losses and costs, for example, of land plots and house structures; contents; infrastructure; mortgage or other debt penalties; interim housing; bureaucratic and legal fees; alternative housing; lost wages and incomes; lost educational opportunities; health and medical care; resettlement and transportation costs (especially in the case of relocation far from the source of livelihood). Where the home and land also provide a source of livelihood for the evicted inhabitants, impact and loss assessment must account for the value of business losses, equipment/inventory, livestock, land, trees/crops, and lost/decreased wages/income.

Despite significant loss of housing, land, property and resources supporting livelihoods, compensation was generally not provided. When compensation was given, losses were undercounted and undervalued, and the process was characterized by a lack of participation, threats and corruption. According to one Pis resident:

I felt forced to sell my land. There was no way that I could reject the offer. The company would surround my house with sugar cane. I would not have access to the land around me and I would be completely isolated.<sup>199</sup>

Villagers in Koh Kong said that the company representatives visited their homes to discuss compensation and they were warned:

The land is lost – it is up to you whether you receive compensation or not. If you don't agree, we will get the land for free. Farmers either take compensation or wait 95 years to get the land back.<sup>200</sup>

The majority of households surveyed in Koh Kong received no compensation for their losses. Only 23 households surveyed received compensation, ranging between 75 USD and 750 USD with a mean of 243 USD.

Households interviewed who were relocated to Pis received a plot of land that measures 40 x 50m<sup>2</sup> (or .2 ha) and cash compensation ranging from 20 to 900 USD. The plots are difficult to farm because they have rocky, sandy soils, are far too small to produce enough food for a family, and many lack access to water. Moreover, the land does not support the types of crops that families grew pre-eviction, especially rice.

Eleven Trapaing Prolet households interviewed received a combined total of 2,265 USD, with individual payments ranging from 15 to 500 USD for the loss of their homes, land and crops, as well as moving costs. Farmers in this area received replacement land plots ranging from .156 ha to 3 ha.

In O'Bat Moan, for the vast majority of the 214 families that lost their homes, farmland, crops, animals and personal property, no cash compensation or replacement land was provided. Homeless and landless, most people migrated to Thailand or Phnom Penh for work while others left the area to stay with relatives. Only 14 families from O'Bat Moan received any form of resettlement, which included one hectare of land covered in forest that most families have been unable to clear due to the costs involved and the demanding physical requirements. Some people expressed concerns that the land may also be contaminated with landmines.<sup>201</sup> Given the unsuitability of the replacement land for cultivation, only one family produces rice there.<sup>202</sup>

People who lost land to the sugar concessions in other villages in Oddar Meanchey, including Trapaing Veng, Ktum, and Tamant, reported receiving replacement land in 2010 amounting to between 10 and 30 percent of their prior holdings. In many cases, the land that was provided was already occupied by other people.<sup>203</sup> No cash compensation was provided to households who lost land in Oddar Meanchey.

Shelter was not provided at any of the resettlement sites in Oddar Meanchey and Kampong Speu. Housing at the sites, cobbled together with basic materials by the evicted families, are generally rudimentary and do not provide sufficient protection against pests or extreme weather events. Since households cannot access forested areas as before, farmers make repairs using plastic sheeting, fertilizer or rice bags. In all resettlement areas, households lack sanitation and safe drinking water.

As each resettlement site is remote, transportation is more difficult to arrange, more time consuming and more costly. As a result, access to health care, education and the outside community is more restricted compared to the pre-eviction situation.

The road to the Bos village relocation site is rutted, muddy, and blocked by a chest-deep river during the rainy season. The location is remote and extended family members – the most important form of social security in Cambodian society – are not easily reachable. Disabled residents in need of regular health care attention in particular face more difficulty than before.

Families at the two Kampong Speu relocation sites also described their location as remote and dif-

difficult to access. One farmer in Trapaing Prolet said:

It's hard to make a decent living here. The road is bad and school is far away. Everything was closer before. We don't have enough water. There is no river or lake nearby so we rely on the rain. It's hard to farm here. To the outsider, sometimes if you look at the beautiful view it appears that we have a decent life. But we don't. The company is close-by and always watching us. We are not even free to talk. The new jobs pay lower so we don't have enough money for food.<sup>204</sup>

Households at the resettlement sites lack security of tenure. Most have no land documentation. Pis residents were provided with new family books, but no address is recorded in the document. Residents feel insecure because authorities, company employees, and security guards are watching them. In Kampong Speu, most of households interviewed are concerned that their current land holdings may be lost to the sugar company.

In none of the areas were evicted farmers granted the right to return to farm former land holdings. In Kampong Speu, a thick cement wall was built along the highway to prevent trespassers from accessing the concession. In all other areas, ditches and barbed wire fences demarcate the lines of the concessions and private security firms, or police officers and soldiers moonlighting as security guards, have been hired to protect concession boundaries.

People in all areas reported that they are unable to move freely within their communities because of constant harassment and rent-seeking by company staff and security guards. One household in O'Pralov complained that a dormitory for the plantation workers that was built next door has no sanitation facilities for the workers. The workers defecate in plastic bags and throw the waste over the fence and into the household garden. The workers also steal fruit and flowers from the garden and harass the household for living on what they claim is company land. Villagers from Chrouk O'Roussey and O'Pralov are harassed by company officials, the police and soldiers when they conduct maintenance on their homes. Residents have been told that they are not allowed to make improvements to their property. One woman reported being visited by about a dozen soldiers in September 2011 to tell her that she cannot build anything or make any improvements to her home.<sup>205</sup>

Villagers surveyed in Koh Kong and Kampong Speu reported ongoing extortion from company guards and soldiers for going about their daily affairs. Villagers surrounding the sugar concessions are required to pay a fee for trespassing livestock, to use a road, or to transport collected forest products. In Koh Kong, livestock caught on concession land has been shot or held for ransom by the company's security guards. According to CLEC, in the year after the evictions began, approximately sixty cows and buffalos had been seized or killed by company guards.<sup>206</sup> In Kampong Speu, if livestock wander into the concession boundaries, farmers must pay 25 USD per trespassing cow to the soldiers.<sup>207</sup> In Trapaing Prolet, when villagers travel to another village or transport wood from the foot of the mountain, soldiers collect \$1 to \$2 for each round trip. If they do not want to pass by the guards to avoid paying the fee, they must take a longer, more difficult route.<sup>208</sup> In Oddar Meanchey, households collecting firewood or mushrooms from the forest often are required to pay 5,000 to 10,000 riel (1.25 - 2.50 USD) or between 10 and 20 cans of rice to the security guards.<sup>209</sup>



Shelters erected by displaced villagers at the Bos relocation site lack protection from the elements.  
October 2011 © Bridges Across Borders Cambodia.



## Impacts on the Human Right to Work and Livelihood

### **Universal Declaration of Human Rights (1948)**

#### **Article 23**

Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

### **International Covenant on Economic, Social and Cultural Rights (1966)**

#### **Article 1(2)**

[...] In no case may a people be deprived of its own means of subsistence.

#### **Article 6(1)**

The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

### **UN Basic Principles and Guidelines on Development-based Evictions and Displacement (2007)**

43. [...] Alternative housing should be situation as close as possible to the original place of residence and source of livelihood of those evicted.

52. At minimum, regardless of the circumstances and without discrimination, competent authorities shall ensure that evicted persons or groups, especially those who are unable to provide for themselves, have safe and secure access to: [...] livelihood sources [...]

Industrial sugar production has led to a deterioration of livelihoods, loss of income and overall impoverishment of affected households surveyed. Respondents in all areas reported the problem of underemployment after they lost their land-based livelihoods due to the sugar concessions. Living in remote areas without dynamic labor markets, families with low levels of education have few choices.

For the majority, scratching out a living on a small plot of lower quality replacement land is insufficient for a household's survival. One 64-year old woman from Chi Kha Leu lost 11 ha and had to sell off her 37 cattle over the past six years to survive. She explained:

We are now living a very hard life, because we can only grow rice on one paddy field harvesting only about 400 hundred sheaf of rice. It is very little. The income from working on the farm is not enough, not enough for living. Sometimes, we can afford nothing to eat. We need to support five members of our family.<sup>210</sup>

Many of the families in the study areas, and especially Oddar Meanchey, resorted to illegal migration to Thailand after they lost their land. Reasons cited include a lack of employment on the plantations, insufficient income, lack of food, debt, and illness. In many cases the migrant obtains a loan to pay the 65 to 100 USD smuggling fee (per migration incidence) to a Khmer intermediary. Thai bosses may also front the fee, which is subsequently deducted from workers' salaries. Illegal migration is considered an undesirable option and respondents only leave for the money. Some leave children and spouses behind while other families go together. Although migrants report better wages in Thai-

land, they contend with smugglers and corrupt police and employers, who in some cases exploit their illegal status.<sup>211</sup>

Those who stay have no choice but to work on the sugar plantations. One farmer from Kampong Speu said:

I begged for a job at the sugar company. I told them that they took my land and now I have nowhere to work. I told them that if they don't give me this job, how can I make money?<sup>212</sup>

An elderly woman who works on the plantation sometimes faints from the long hours under the sun. She said:

I'm old and I can't work well. But I have to go [to the cane fields]. I lost my land. What other business can I do?<sup>213</sup>

Plantation workers in Kampong Speu work an average of 9 hours per day and earn 3 USD. During particularly busy periods, workers may continue until 10 pm for 2 USD more. In Koh Kong, laborers may work from 8 am to 8 pm without overtime pay and for the same per bundle rate of 100 riel or 0.2 US cents. Workers are not allowed to leave the cane field unless ill.<sup>214</sup>

Employment can expose laborers, including pregnant women and children, to significant hazards due to a lack of compliance with workplace health and safety regulations. According to plantation workers interviewed, no fertilizer/herbicide spraying instruction was given to laborers and no protective gear is provided or used. Physical reactions reported include addiction to the smell of the fertilizer, itchy skin, and allergies. One female cane cutter in Pis village observed that the skin on the hands, lower legs, and feet of fertilizer spreaders breaks open. When asked why some people do the job she states, "The people have no choice – the boss tells them what to do and they need the work."<sup>215</sup> In Koh Kong, others reportedly threw-up blood after spraying.<sup>216</sup>

In addition, sugar industry work is not steady. During the months of June through October, Cambodia's rainy season, the majority of people have no work.

Respondents in Oddar Meanchey stated that the sugar company refuses to hire local villagers to work on the plantation because it is afraid that the farmers will cause problems. Instead workers are brought in from other areas in Cambodia.<sup>217</sup> In Kampong Speu workers from the immediate area were not hired for the first year.<sup>218</sup>

Assessment findings indicate that livelihood impacts resulting from industrial sugarcane development have led to an overall process of proletarianization of affected small-holder farmers. This impact was conveyed by farmers who spoke about their loss of freedom. Compared to farming independently, work on the cane plantations is controlled by the company and the intermediaries. Work conditions are worse and more tiring; the farmer no longer determines schedules and the wages are low. Many households are unable to make enough income to make ends meet.

One woman from Pis said:

Before we were free to do what we wanted – we worked for ourselves. We could take it easy and spend time with our families. Now we have nothing, only firewood. Even water is hard to find now so we have to buy it in the dry season. We have bowls, but no food."<sup>219</sup>

In all areas, farmers stated that they preferred to farm their own land and reap the benefits of their labor for their families as they did prior to the arrival of the sugar industry.

One man in Oddar Meanchey questioned the rationale of the government's policy:

Almost all villagers including me can earn very little income since the company took our farmland... The government said the company would bring us advancement in our liv-

ing standards. But once the Royal Government granted the economic land concession, people ran into severe hardship since we got no proper compensation. We don't know if the Royal Government tries to increase the poverty or reduce the poverty. They stated that they would create the job market for everyone, yet I don't think so. It doesn't bring any development. I think they are developing from rich to poor. The poor has become poorer. Yet those officials have become richer.<sup>220</sup>

## Impacts on the Human Right to Food

### International Covenant on Economic, Social and Cultural Rights (1966)

#### Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food [...] and to continuous improvement in living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed [...].

### CESCR General Comment No. 12: The Right to Adequate Food (1999)

14. [...] Every State is obliged to ensure for everyone under its jurisdiction access to the minimum essential food which is sufficient, nutritionally adequate and safe, to ensure their freedom from hunger.

15. The right to adequate food, like any other human right, imposes three types or levels of obligations on States parties: the obligations to *respect*, to *protect* and to *fulfill*. [...] The obligation to *respect* existing access to adequate food requires States parties not to take any measures that result in preventing such access. The obligation to *protect* requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food. The obligation to *fulfil (facilitate)* means the State must pro-actively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including food security.

20. While only States are parties to the Covenant and are thus ultimately accountable for compliance with it, all members of society [including] the private business sector - have responsibilities in the realization of the right to adequate food. The State should provide an environment that facilitates implementation of these responsibilities. The private business sector – national and transnational - should pursue its activities within the framework of a code of conduct conducive to respect of the right to adequate food, agreed upon jointly with the Government and civil society.

36. In the spirit of article 56 of the Charter of the United Nations, the specific provisions contained in articles 11, 2.1, and 23 of the Covenant and the Rome Declaration of the World Food Summit, States parties should recognize the essential role of international cooperation and comply with their commitment to take joint and separate action to achieve the full realization of the right to adequate food. In implementing this commitment, States parties should take steps to respect the enjoyment of the right to food in other countries, to protect that right, to facilitate access to food and to provide the necessary aid when required. States parties should, in international agreements whenever relevant, ensure that the right to adequate food is given due attention [...].

In each research area, the majority of households reported increased food insecurity after the sugar concessions, as a result of reduced access to land and natural resources that affected communities previously depended upon to realize their right to food. (See Losses and Destruction of Property section.)

O'Bat Moan households were particularly hard hit when the sugar company prevented them from harvesting their rice crop, leaving them without essential food in the immediate aftermath of the evictions. As previously noted, their crops were reportedly later looted by the military and company guards.<sup>221</sup> The theft of essential foodstuffs from evictees constitutes a gross violation of the right to adequate food.

The forced evictions have in some cases led to extreme hunger and possibly even starvation. One 55 year-old woman interviewed by the assessment team at the Bos relocation site appeared extremely malnourished. She takes care of her 3 grandchildren, and lives in a tiny hut with them at the isolated resettlement site. Her daughter is working in Thailand but has not communicated in years. After their house was burned down in the eviction, her husband built another small house. He then passed away. A neighbor told the team after the interview that everyone believes he starved to death because the family never has enough food. They didn't have money for any ceremony so one monk just came to burn the body. She told the team that she had no idea what she would feed her grandchildren that day, because they were completely out of food.<sup>222</sup>

Food stocks are important assets for Cambodian households. Paddy rice is typically saved as seed stock while paddy and milled rice are stored for future food consumption as well as loaned and traded for goods between households. Food stocks provide a measure of insurance against farming and household shocks and thus increase household food security. Before the ELCs were established, households had the ability to grow and store paddy rice, but the vast majority of households - 71, 65 and 100 percent in Koh Kong, Kampong Speu, and Oddar Meanchey respectively - reported less food stocks post-concession. One woman in Temant village explained that before the eviction her family was able to harvest 2 to 3 tons of rice from their five hectares, which was enough for the family to eat and sell in order to buy other goods. It has taken them 3 years to clear the one ha of forest land that they received in exchange for their five hectares of paddy, and it is not even enough land to feed the family.<sup>223</sup> Similar stories were heard repeatedly in every research area. One elderly man from Kork stated:

We had land and animals but now we have lost everything, even food. At times I don't have food to eat. Farmers depend on rice land.<sup>224</sup>

A man at Pis relocation site explained the precariousness of depending on contract labor at the sugar plantation for his livelihood:

If it rains there is less work. If there is only a half a day of work because of the rain, there is no money to buy food.<sup>225</sup>

In all three areas, the main food security coping strategy was a reliance on less preferred or less expensive food. In Koh Kong and Kampong Speu, households also purchased food on credit or incurred debt and borrowed food or relied on help from friends or relatives. At the relocation sites in Oddar Meanchey and Kampong Speu, most families coped by reducing the amount of food eaten in a day. For example, 24 households interviewed at the Pis relocation site reported eating 3 meals per day before their eviction, while only 6 households ate three meals per day afterward. Less reliance on family and friends may indicate limited access to social networks due to the remote location of the resettlement sites.

The granting of economic land concessions over land and natural resources that local communities depend upon for their livelihoods and food security, and the seizure of that land by private companies, represents a gross violation of the obligation to respect and protect right to food. The failure of the Cambodian government to restore people's access to adequate food, including the resources means to provide for themselves, constitutes a violation of the obligation to fulfill the right to food.

## Impacts on the Human Right to Health and the Right to Life

### **International Covenant on Economic, Social and Cultural Rights (1966)**

#### **Article 12(1)**

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

### **UN Basic Principles and Guidelines on Development-based Evictions and Displacement (2007)**

54. In order to ensure the protection of the human right to the highest attainable standard of physical and mental health, all evicted persons who are wounded and sick, as well as those with disabilities, should receive the medical care and attention they require to the fullest extent practicable and with the least possible delay, without distinction on any non-medically relevant grounds. When necessary, evicted persons should have access to psychological and social services. [...]

The indivisibility and interrelatedness of human rights was affirmed when surveying affected people in Koh Kong, Kampong Speu and Oddar Meanchey about their health status. In each research area, the majority of households surveyed reported poorer health conditions after their lives were affected by the sugar concessions. In many cases, people attributed their poorer health status to a lack of adequate food and reduced household income following the evictions. Residents at the Pis relocation site all reported that their health suffered because their families did not have enough to eat. Several dispossessed farmers in Koh Kong reported the same. One woman lamented:

I am now facing insufficient food. There is no land to farm. I only have one or two live-stock. There is no grazing land for them. We don't even have any place in the forest where we can seek for the forest by-products. Our health and the villagers' health become dilapidated, vulnerable to diseases caused by insufficient food, weak energy, diarrhea, indigestion and frequent ailments.<sup>226</sup>

Another man who lost his land to the Koh Kong sugar concession said:

Now our living condition has deteriorated. I don't have enough food to survive... My health and the villagers' health are also affected due to lack of food. They become weak, and with constant sickness such as diarrhea and indigestion.<sup>227</sup>

Others reported poor health due to migration. One woman in Temant village said that her aunt lost between 10 to 20 ha to the sugar concession. As a result, she had to send her children to Thailand with their father in 2009. When the father returned, he was very sick and coughing up black matter. He died shortly thereafter.<sup>228</sup> Three other people interviewed by the team in Oddar Meanchey reported deaths in their family or of neighbors that they attributed to stress or illness related to their loss of land and livelihoods.<sup>229</sup>

Households at all resettlement sites reported reduced access to water, compared to their situation before the concessions, with repercussions on their health. Families at the Bos and Trapaing Prolet relocation sites now collect rainwater from shallow, unprotected holes dug into the ground, which are often contaminated with frogs, insects and trash. Households at the Bos relocation site also collect water from a dam located roughly 4 km away. Water insecure families in Pis pay .75 USD for a jug of water or 3.00 USD for a large pot. As a result of inadequate water supplies to clean, cook, and drink, residents complained of increased stomach-related ailments including diarrhea.<sup>230</sup>

Villagers in Koh Kong reported widespread health impacts resulting from the sugar company's release of toxic waste into a nearby stream in 2009. The waste contaminated many water sources in the area and reportedly killed many fish, depriving villagers of an important source of protein.<sup>231</sup> Villagers who drank the water got "strange diseases" and some cattle died as a result.<sup>232</sup>

Not only did the sugar concessions cause a general deterioration in health conditions, but they also affected people's ability to pay for treatment. In Koh Kong, over 80 percent of households interviewed had at least one sick household member over the past 30 days, while 29 percent of households had at least one member visit a health facility in this time, with a mean cost of 113 USD per visit.<sup>233</sup> At least one family was unable to seek medical attention due to a lack of money, while others took out loans or sold land and cattle to pay for illnesses in the family. While families relied on the sale of livestock to pay for health expenditures before the concession, many families have sold off much of their cattle and buffalo to pay for food, leaving them with less assets to sell to cope with future health shocks.<sup>234</sup> In Oddar Meanchey, all households surveyed reported that paying for health care costs was more difficult since the evictions.<sup>235</sup> Sixty-four percent of households in Trapaing Prolet and 86 percent of households in Pis reported increased difficulty with paying for health care costs since the evictions.<sup>236</sup>

Villagers in Oddar Meanchey and Kampong Speu also reported losing access to traditional medicines as a result of reduced access to forests. This has resulted in a heavier reliance on more expensive modern medicines.<sup>237</sup>

In addition to being less able to afford health care, resettled families in Oddar Meanchey and Kampong Speu reported that health services are more difficult to reach. One pregnant woman in Trapaing Prolet explained:

There is no solution. We have to travel by *koyun* to the hospital and may have to give birth on the way. If it's raining we can't leave – we can't even walk. There is too much mud.<sup>238</sup>

Respondents in Kampong Speu and Oddar Meanchey also spoke about the impact of land loss on their mental health. One man from Trapaing Prolet said, "Sometimes I can't sleep. I worry about what will happen."<sup>239</sup> A woman from O'Bat Moan told the assessment team:

There is too much stress over money. Farming has been reduced and we don't have enough food. I think a lot and worry about what will happen to my family.<sup>240</sup>



After being relocated from her village to make way for a sugar cane plantation, Savy collects water with her two grandchildren. With no work opportunities in the relocation village Svay's daughter left to work in Thailand and she has not had news since her departure six months ago. Savy cares for her daughter's two sons. - O'bat Moun relocation village. 12 Feb. 2013. © Nicolas Axelrod / Ruom



Yim Ry (71) has a mentally disabled son. She is also taking care of a 13-month old toddler orphaned by a relative. She receives "My Boy" sweetened condensed milk from the local government for her baby. She prepares the milk with hot but unboiled water and sugar. When she is hungry she also drinks the milk in place of rice. She was injured in a motorbike accident and still wears a bandage and half cast. She needs assistance to get around and has no ability to clear her compensation land. October 2011 © Bridges Across Borders Cambodia

## Impacts on the Human Rights of Women

### **International Covenant on Economic, Social and Cultural Rights (1966)**

#### **Article 3**

The States Parties to the present Covenant undertake to ensure the right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

#### **Article 10(2)**

Special protection should be accorded to mother during a reasonable period before and after childbirth.

### **UN Basic Principles and Guidelines on Development-based Evictions and Displacement (2007)**

47. Evictions shall not be carried out in a manner that violates the dignity and human rights to life and security of those affected. States must also take steps to ensure that women are not subject to gender-based violence and discrimination in the course of evictions [...]

50. States and their agents must take steps to ensure that no one is subject to direct or indiscriminate attacks or other acts of violence, especially against women.

53. Special efforts should be made to ensure equal participation of women in all planning processes and in the distribution of basic services and supplies.

While livelihoods have been negatively affected for both men and women, the findings show that women have suffered disproportionately. Pregnant women and those taking care of children report more difficulty with fishing and collecting forest products, as they are unable to travel the extra distance required. In Kampong Speu, women farmers used to work for themselves and reap the same benefits as men, but on the plantations female workers are paid less than men.<sup>241</sup>

Women also find it more difficult to look after their children since losing their land. In Koh Kong and Kampong Speu, most women work on the sugar cane plantations. Before they farmed according to personal schedules and in most cases on land located near their homes, but now they have to be away more often and for longer periods. Two women in Pis reported leaving their children home alone due to the lack of childcare at the resettlement sites and on the sugar plantations:

We don't have enough time to take care of our children. We work all day. If grandma is working on the plantation, there is no one to take care of them and the one year old is left with the ten year old. We have no choice – we have to work.<sup>242</sup>

In Oddar Meanchey, where almost none of the affected people work on the plantations, many women have migrated away from their children. Others stayed behind while their husbands migrated. Two women in Oddar Meanchey interviewed by the assessment team appeared to be representative of a broad trend; they were left to take care of their children while their husband went to find work in Thailand. Each is now responsible for farming, forest gathering, and household-related tasks. One is pregnant and raising several children. Both women reported being abandoned by their husbands.<sup>243</sup>

Increased domestic violence was also reported by women in all areas since the evictions. One woman in Temant village said that she and her husband used to get along well until they “could hardly earn any income, then the violence started in my family.”<sup>244</sup>

The case study below illustrates the unique human rights impacts suffered by women who were evicted to make way for industrial sugar production.



## Chhaya's Story

Chhaya, 38, and her husband lost 5 hectares of housing and farming land to the Angkor Sugar concession. After being evicted from her house and land in O'Bat Moan, her family was moved to the resettlement site. She has six children aged 2, 6, 8, 10, 12, and 16 years old. She is also nine months pregnant and due to give birth any day. Her husband migrated to Thailand for work but never returned. Other Khmer people working in Thailand have seen him with another woman. They say he has a new wife and won't return.

Chhaya used to collect forest products with her husband but now she goes alone or with the children. She has land that was given to her as compensation but she is unable to farm it because it is covered in forest. She doesn't have the physical strength, or the \$200 required to hire others, to clear the overgrown plot. She isn't satisfied with the compensation she received but if she didn't accept it she was told that she would get nothing.

None of her children go to school. The rudimentary village is remote and lacks passable roads during the rainy season; conditions can be dangerous especially for small children. The school is too far; she does not want them to go on their own. She also can't afford it. They need books and uniforms to go to school. The children stay home and help her around the house instead.

Her water supply is roughly four kilometers away. She also drinks from a hole dug into the ground by her house that catches rainwater. If she's tired she drinks both sources of water without boiling it. She doesn't have enough food for her family. Before she lost her land she had paddy rice stored. She ate rice, meat, vegetables and fruit. She ate three meals a day. Now she is feeding herself at the expense of her other children to keep her unborn baby healthy. If the baby is in good health she says she can sell the infant for \$200 to someone who doesn't have children. She won't be able to sell the infant if it is sick. She isn't sure how she will cope in the future. If she continues to face such extreme financial difficulties, she says she may have to sell her other children as well.

## Impacts on the Human Rights of Children

### **Convention on the Rights of the Child (1989)**

#### **Article 27**

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

#### **Article 32(1)**

States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

ILO Convention 182 – Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999)

#### **Article 6**

1. Each Member shall design and implement programmes of action to eliminate as a priority the worst forms of child labour.

2. Such programmes of action shall be designed and implemented in consultation with relevant government institutions and employers' and workers' organizations, taking into consideration the views of other concerned groups as appropriate.

#### **Article 7(2)**

Each Member shall, taking into account the importance of education in eliminating child labour, take effective and time-bound measures to:

- (a) prevent the engagement of children in the worst forms of child labour;
- (b) provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration;
- (c) ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour;
- (d) identify and reach out to children at special risk; and
- (e) take account of the special situation of girls.

In all research areas, adverse impacts to children's living conditions, access to education, and mental and physical health were reported. Children are also routinely subjected to economic exploitation as a result of their families' loss of land.

Children in all research areas suffered from a retrogression in their enjoyment of the right to education since industrial sugar was introduced to their communities. Parents living in resettlement areas cited

the long distances and dangerous routes to get to school. A resident of Trapaing Prolet complained:

My children cannot go to school. The road is bad and the school is far away.<sup>245</sup>

The Group Leader confirmed, “The school is a 3 to 4 hour walk. Villagers don’t have money for bikes.”<sup>246</sup>

Distance is an especially daunting obstacle for handicapped or disabled children. One 17-year-old boy from Pis had an accident a few years ago and cannot walk. There are no services in the resettlement village to help a disabled person. Since the school is located some distance away, he quit studying. He stays home to take care of his siblings while his parents work on the plantation.<sup>247</sup>

With reduced household income and food security, parents are forced to reduce or eliminate school attendance. Many households reported greater difficulties paying for education-related expenses such as materials, informal teacher fees and uniforms. Families interviewed in Oddar Meanchey said they stopped sending their kids to school after Grade 4 because they cannot afford the costs.<sup>248</sup>

A mother living at Bos relocation site said:

It really impacted on my children’s education after my land was grabbed by the company. I had to force my two children to quit studying for earning income due to the financial problem as well as the far distance. Also my children seem no longer to have the feeling to study because they saw the situation in the family, lack of food and income. My 15 year old child needs to work for others.... And my biggest son needs to immigrate to Thailand for earning money.<sup>249</sup>

Families at the Pis relocation site said that households are poorer now so children cannot attend school and instead must start to work from the age of 12 to help their families buy food. In lieu of obtaining an education, children in all areas assisted their families by earning an income or by working at home. Children within households experiencing financial difficulties in turn felt obligated to help their parents and were more reluctant to study.<sup>250</sup>

A woman from Kork said:

Almost all of my kids have stopped going to school because it became too difficult to pay for their study. I lost all of my businesses. People don’t buy from my store like before – they don’t have any money. I used to grow and sell rice, but I lost that too. Each time I needed money I sold a cow.<sup>251</sup>

The newly elected Commune Chief, Mrs. Tak Nim, was particularly concerned about the impact of the sugar concessions on children.

The children are angry because their parents lost their land. Their education is affected. They stop studying in order to help their families resolve their day-to-day living.<sup>252</sup>

Child labor on the sugar plantations was widely reported in all areas and was observed and photographed by the assessment team in Koh Kong and Kampong Speu.

Children as young as 8 years old in Koh Kong regularly work alongside family members or alone cutting, tying and carrying cane bundles or in second planter/picker, sprayer and grass cutter positions.<sup>253</sup> Children in Koh Kong are paid the same as adults: 100 riel or 2 US cents per bundle. They can earn about 75 cents delivering roughly 30 bundles per day. The work is strenuous: one bundle of low quality sugarcane weighs 10 kg and a bundle of best quality cane weighs 40 kg.<sup>254</sup> The assessment team confirmed 85 children under the age of 16 working on the Koh Kong sugar plantation. The vast majority of these are under age 15, and 13 of the child laborers are only 11 years old or younger. The children come primarily from Chouk and Chi Kha villages, where their families lost their land and

livelihoods to the sugar concessions.<sup>255</sup>

In Kampong Speu, children of both sexes aged 12 to 17 work on the plantation. Pek Nim, the Amliang Commune Chief, reported that boys and girls work all day for 3 USD doing work that is “beyond their physical ability and strength.”<sup>256</sup> Pis residents said that although the manager has informed them that the company does not accept child workers due to the physical requirements of the job, children aged 12 to 13 regularly work cutting, tying, and hauling cane bundles to help their parents during the three-month harvesting season.<sup>257</sup> Plantation work was described as physically demanding because the cane is tall and the cane bundles are heavy.

Several parents expressed concern about the long-term impacts of sugar development on their children’s future. An older man from O’Pralov said:

Everywhere I go I feel sorrowful and hopeless. We think about the poverty we face. If things are this bad now, what will happen to my children when I die?<sup>258</sup>

A man from Pis lamented that when his children marry, he will have no land to give them:

This is tradition. The land I was given by the company is too small – how can we give them land?<sup>259</sup>

Another man responded:

Our children were born here, but now that our land is gone they will have no way to make a living. They have no choice but to work for the sugar company.<sup>260</sup>



9 year old boy helps his parents counting and making sugarcane bunches. - Sre Ambel, Koh Kong. 16 Jan. 2013  
© Thomas Cristofolletti / Ruom

## Accountability and Access to Effective Remedy and Reparation

### **International Covenant on Civil and Political Rights (1966): Article 2.3**

Each State Party to the present Covenant undertakes:

- a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- c) To ensure that the competent authorities shall enforce such remedies when granted.

### **UN Basic Principles and Guidelines on Development-based Evictions and Displacement (2007)**

59. All persons threatened with or subject to forced evictions have the right of access to timely remedy. Appropriate remedies include a fair hearing, access to legal counsel, legal aid, return, restitution, resettlement, rehabilitation and compensation, and should comply, as applicable, with the Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and International Humanitarian Law.

### **UN Guiding Principles on Business and Human Rights (2011)**

1. States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.

26. States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy.

27. States should provide effective and appropriate non-judicial grievance mechanisms, alongside judicial mechanisms, as part of a comprehensive State-based system for the remedy of business-related human rights abuse.

30. Industry, multi-stakeholder and other collaborative initiatives that are based on respect for human rights-related standards should ensure that effective grievance mechanisms are available.

31. In order to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State-based, should be:

- (a) Legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;
- (b) Accessible: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access.
- (c) Predictable: providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;
- (d) Equitable: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;
- (e) Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;
- (f) Rights-compatible: ensuring that outcomes and remedies accord with internationally recognized human rights;
- (g) A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms... [emphasis added]

There is ample evidence of State and corporate complicity in the serious and systematic human rights violations that have surrounded the development of industrial sugarcane plantations in Cambodia. However, nobody has been held accountable and those affected have been denied access to an effective remedy at the local, national and international levels.

The actors and institutions responsible for facilitating access to remedy at the local and national level have either been unable or willing to do so, often because they are complicit in the violations. Villagers first turned to local authorities for dispute resolution, yet in all areas local authorities served company interests instead. One source in Koh Kong told Equitable Cambodia that local authorities received gifts such as cash payments or motorbikes in exchange for project support.<sup>261</sup> People in all areas expressed anger and frustration over being lied to and cheated out of their land by local and national authorities and having nowhere to turn for help.

While some local authorities would like to represent their constituencies, one official source in Oddar Meanchey explained:

The upper level authorities push the local government... Their role as a local government official is to follow orders from above. They have no opportunity to do anything different. Some local authorities want to assist but they cannot - they might get their family in trouble.<sup>262</sup>

Hoy Choy, the former Bos Village Chief, tried to help his village defend their land, yet he was sacked from his position and threatened with arrest. After the evictions in O'Bat Moan he said, "I felt really hurt and upset, yet I couldn't say anything out loud since I would be threatened or bullied forever."<sup>263</sup> You Tho, a commune councilor in Amliang, led hundreds of villagers in his commune in protest against Ly Yong Phat's sugar company. He was stripped of his membership in the CPP and sacked from the Commune Council in response.<sup>264</sup>

Affected communities in all three areas turned to national institutions to claim their rights without success. Hoy Mai, who was pregnant when her home in Bos village was torched, told Amnesty International in 2011:

We ran across forest and swam through water to complain to Samdech [Prime Minister Hun Sen] in Phnom Penh. We thought that it was the commune and provincial authorities behind this but that if Samdech knew he would help us.<sup>265</sup>

When they arrived in Phnom Penh, the Oddar Meanchey villagers were denied access to the Prime Minister's office and other government offices. They sought shelter in a pagoda in the center of town. That night they were approached by police. Some of the men managed to escape, but Hoy Mai and three other villagers were arrested. Mai was accused of being a ringleader and taken to Siem Reap prison, where she was held for eight months, during which time she gave birth and nursed her newborn son in deplorable conditions.<sup>266</sup>

Despite the military and police intimidation that they faced, community representatives in Amliang gathered 1,350 thumbprints for a petition to the Prime Minister asking for his intervention in the case.<sup>267</sup> Hundreds of villagers met with local officials to demand that clear boundaries be set between their farmland and the sugar company's concession, while hundreds more blocked National Highway 52 to prevent company equipment from passing through.<sup>268</sup> At night, villagers slept in their rice fields fearing that they would be cleared.<sup>269</sup> The government responded in April 2010 by carving out 1050 hectares from the Phnom Penh Sugar concession along National Road 52, returning the land to villagers from Snoul, O'Angkom, Thnal Bam Bek, Toeuk Koang and Kraing Doung villages.<sup>270</sup> However, the size of land returned was less than what the villagers owned before the concession. Those families that owned land outside of the 1050 ha area were not included in the deal.<sup>271</sup> Equitable Cambodia has confirmed 253 families in four villages who received only meager cash compensation with no replacement land or no compensation at all and who continue to demand redress.<sup>272</sup>

Teng Kao, an outspoken community leader from Sre Ambel district, recalls his community's efforts to seek a remedy from State authorities:

We tried to travel on foot to Koh Kong bringing our complaint to the provincial authority. But the provincial authority met us half way. They said they would find a resolution for us. No action has been taken since then. They just promised and forgot. About a month later, [in March 2007], we tried to travel on foot again to Phnom Penh in order to submit

our complaint to the National Assembly, Senate, Cabinet office of Prime Minister Hun Sen, Ministry of Interior, Ministry of Agriculture, Forests and Fisheries, and court. Again, no action has been taken to find a resolution.<sup>273</sup>

Several months later, according to Teng Kao, the daily lives of the villagers had become much worse so they held a demonstration by blocking National Road 48 (which connects Koh Kong and Phnom Penh) in an effort to get the authorities' attention.<sup>274</sup> The strategy was successful. The Secretary of State of the Ministry of Interior, Nut Saan, convened a meeting between the companies, village representatives and their lawyers. He instructed local authorities to measure the boundaries of the village land, and demanded that the companies cease clearing the community lands and cooperate in resolving the dispute. However, according to CLEC, the authorities and company representatives ignored the Secretary's instructions.<sup>275</sup> In February 2008, representatives of 267 families from Sre Ambel district sent a second letter of complaint to the Secretary, updating him on their situation. By that time, approximately 2,000 hectares of farmland had been illegally cleared, and approximately sixty cows and buffalo had been seized or killed by security guards acting for the companies. On 2 March 2008, the Secretary suggested that each family accept two hectares of land, with no other compensation. This neither met the needs of the villagers nor constituted fair compensation for their losses. Some families accepted cash offers of \$1000 or less from the company to cease their complaints, while around 200 families have continued to demand their land back or compensation for their losses at fair market value.<sup>276</sup>

The Sre Ambel families have also pursued their case in the Cambodian courts since 2007. With legal representation from CLEC, the villagers filed civil and criminal complaints against the companies in the Koh Kong Provincial Court, citing the illegality of the ELCs, as well as theft and wrongful damage to property; battery with injury; arson; fraud; and infringements of lawful possession rights. They also filed a motion for an injunction to bar the companies from continuing to clear the land. The Court effectively took no action on the complaints for over five years, and then dismissed the criminal complaint. In 2012, the Court referred the civil complaint back to the Cadastral Commission on the grounds that it involves a dispute over untitled land, for which the Cadastral Committee has jurisdiction. The Court ignored the families' challenge of the legality of the concession itself, which the Cadastral Commission has no authority to determine.<sup>277</sup>

Rather than providing judicial remedies for victims, the Cambodian courts have been used against victims to deter them from challenging the sugar concessions and seeking redress. According to the Cambodian human rights organization ADHOC, at least 49 villagers from Amliang have been summoned to the provincial court since 2010.<sup>278</sup> In March of that year, police arrested two community leaders, including the former Commune Councilor You Tho, and only freed them after hundreds of villagers occupied the national road, demanding their release.<sup>279</sup> Another villager was arrested in December 2011 on charges of illegal occupation of land and was held for six months before being released after she agreed to give her land to the company.<sup>280</sup> At least 37 affected people have been accused or charged with crimes in Kampong Speu and 15 cases are still pending.<sup>281</sup>

Two community activists from Bos village were sentenced to two years in jail on charges of 'clearing State forest', while two others, including Hoy Mai, were released after serving more than six months in pre-trial detention when they agreed to stop their protests. Hoy Mai said that the judge told her that she would be released if she signed an agreement to withdraw all claims to her land in Bos village and accept replacement land. She signed the agreement and returned to Oddar Meanchey, but she never received any replacement land.<sup>282</sup>

None of the sugar companies operating in Cambodia have their own grievance mechanisms. They have either refused to engage with aggrieved communities or engaged them through deceit, intimidation, harassment and violence, as described previously in this report. As a result, the communities have also turned to public advocacy and tried to make use of accountability mechanisms outside of Cambodia's borders to seek justice.

Most notably, with pro bono legal assistance from American, British and Cambodian lawyers, in March 2013 two hundred families from Sre Ambel filed suit in the UK High Court against Tate & Lyle Plc and Tate & Lyle Sugars. The lawsuit accuses the companies of sourcing sugar from Koh Kong despite well-publicized information, which was provided directly to Tate & Lyle by the



Amliang villagers protest the arrest and detention of community leaders.  
- Thpong district, Kampong Speu. March 2010. © Community Peacebuilding Network

community's lawyers in 2010, that the land for the plantations was forcibly and unlawfully acquired. The villagers are seeking damages from the multi-national corporations for the value of the sugar produced on their stolen land.<sup>283</sup> The companies have mounted a full defense and counterclaim, denying that the villagers have any rightful interest in the raw sugar that they purchased from KKPC and KCSI.<sup>284</sup> Mediation between the parties in July 2013, supervised by the UK court, was unsuccessful.<sup>285</sup>

Victims have attempted, with some success, to hold the companies involved accountable through complaints to the National Human Rights Commission of Thailand (NHRCT). The Commission investigated a complaint filed in 2010 by lawyers at CLEC on behalf of the Sre Ambel families, alleging human rights violations perpetrated by KSL's subsidiaries in Koh Kong. In July 2012, the NHRCT released preliminary findings from its investigation, which it stated allowed for "a reasonable belief that human rights principles and instruments were breached" by the Thai parent company, including in particular the right to life and the right to self-determination.<sup>286</sup> A final investigation report for the Koh Kong case is expected to be released by the NHRCT by the end of 2013. In May 2013, Equitable Cambodia and LICADHO filed a second petition with the NHRCT on behalf of 602 complainants from Oddar Meanchey alleging serious human rights violations linked to the sugar concessions held by the Thai company, Mitr Phol.<sup>287</sup>

A "specific interest" was also filed on behalf of the Sre Ambel families with the US National Contact Point (NCP) for the Organization of Economic Cooperation and Development (OECD) by CLEC and EarthRights International (ERI). The complaint argues that Tate & Lyle Sugars and its corporate parent, American Sugar Refining (ASR), is in breach of the OECD Guidelines for Multinational Enterprises by virtue of its supply chain relationship with the Koh Kong plantation. According to its final report issued on June 20, 2013, ASR informed the NCP that the company was "interested in pursuing a mediated dialogue with CLEC and ERI, but that it would not participate in that process unless and until CLEC withdrew its UK civil suit."<sup>288</sup> The NCP closed the case, concluding that, "the conditions did not exist for the parties to advance to mediation," and recommending that "ASR conduct a corporate human rights policy review process, consistent with the recommendations of the Guidelines and the UN Guiding Principles."<sup>289</sup>

Additionally, affected communities have sought accountability through the grievance mechanism of



the “Bonsucro” multi-stakeholder initiative. In January 2011, two complaints were lodged with Bonsucro, formerly known as Better Sugarcane Initiative (BSI), by CLEC and Equitable Cambodia acting on behalf of affected communities in Koh Kong and Oddar Meanchey, respectively. The complaints alleged non-compliance with the BSI Code of Conduct by two of its members, Mitr Phol and Tate & Lyle. Mitr Phol withdrew voluntarily from Bonsucro shortly after the complaint was filed. Nearly two and a half years after the complaint was filed against Tate & Lyle, the Bonsucro Board issued a decision suspending Tate & Lyle Sugars from membership of Bonsucro with immediate effect. The Board cited its failure to demonstrate “adequate progress within a reasonable time-scale towards meeting the requirements of the Board to provide information regarding [the] complaint made against the company [...]”<sup>290</sup> It stated that the suspension would remain in place, until such time as Tate & Lyle Sugars satisfies one of two conditions, namely: a) Carrying out a third party review of compensation paid to the villagers and additionally carrying out an independent third party review of their supplier’s compliance with Tate & Lyle Sugars’ own Code of Conduct; or b) Reaching a resolution of the dispute to both parties’ satisfaction.

Finally, affected people have looked to the European Union to provide a remedy for harms they believe they have suffered due to the EBA initiative and the companies that are benefiting from it. Since 2010, communities displaced by the sugar industry have called upon the Commission to investigate human rights abuses in the Cambodian agro-industrial sector that are directly linked to the EBA scheme and withdraw preferential arrangements from human rights violating industries until they provide fair and just reparations to the victims.<sup>291</sup> They have appealed to provisions of *EC Regulation 732/2008*, which provides for the possibility of temporary withdrawal of trade preferences, in respect of all or of certain products in a beneficiary country, due to the “serious and systematic violation” of principles laid down in the human rights covenants, based on the conclusions of the relevant monitoring bodies.<sup>292</sup> However, despite receiving numerous requests from affected communities and NGOs citing evidence of such abuses from UN human rights reports, the Commission has refused to consult Member States on whether to initiate an investigation, ostensibly on the grounds that international monitoring bodies have not yet used the precise words ‘serious and systematic’ to describe human rights violations in Cambodia. On August 14, 2012, in response to a letter from 10 Cambodian and European NGOs, EC Commissioner for Trade Karel de Gucht, wrote:

If [the monitoring bodies] unequivocally conclude that serious and systematic violations are taking place, the European Commission will not hesitate to launch the EBA investigation. At the same time, we all need to bear in mind that the EBA initiative was created as an incentive-based tool to support development of least developed countries. Thus while the removal of preferences, in the circumstances foreseen by the regulation may be a necessary signal that a country is not on the right track, such removal is not likely to tackle the root causes of the problems, which stem more from weaknesses in Cambodia’s land management policy.<sup>293</sup>

The following month, on September 24, 2012, UN human rights envoy to Cambodia, Surya Subedi, reported to the UN Human Rights that there are “well documented serious and widespread human rights violations associated with land concessions” in Cambodia.<sup>294</sup>

On October 26, 2012, the European Parliament passed a resolution calling upon the Commission to:

[...] investigate the escalation of human rights abuses in Cambodia as a result of economic land concessions being granted for agro-industrial development linked to the export of agricultural goods to the European Union, and to temporarily suspend EBA preferences on agricultural products from Cambodia in cases where human rights abuses are identified.<sup>295</sup>

Thirteen members of the European Parliament followed up in a March 2013 letter to Trade Commissioner de Gucht and the EU’s high representative for foreign affairs and security policy, Catherine Ashton, calling for an immediate investigation into human rights abuses in Cambodia’s agro-industrial sector. In a joint response to the 13 lawmakers, Mr. de Gucht and Ms. Ashton reportedly wrote:

The European Commission is keeping the situation under close review. If the legal conditions for the activation of withdrawal procedures set out in the GSP regulation are met, the Commission will be ready to take action if this appears to be the case.<sup>296</sup>

It is unclear what the Commission believes the “legal conditions” are for the activation of withdrawal procedures, but what is clear is that the Commission has a high degree of discretion in determining when to trigger these procedures. It is only required to “request consultations” from the GSP Committee when it receives information “that may justify withdrawal” and where it considers that there are sufficient grounds for an investigation.<sup>297</sup> Member States are empowered to request consultations on the same basis. Following the consultations, however, the Commission “*may* decide...to initiate an investigation [emphasis added].”<sup>298</sup> It is not certain whether this means that the Commission *must* decide one way or the other. In the case of Cambodia, the Commission has not even formally requested consultations within the Committee because, as implied by its response to the 13 lawmakers, it has not yet received information it believes *may* justify withdrawal.

Under the new GSP regulation, effective from January 2014, the Commission has even more discretion vis-à-vis the Member States, which no longer have a role in triggering GSP Committee consultations. The new regulation also appears to raise the evidentiary requirements even higher for the Commission to determine that the procedure should be initiated. Under the current regulation, the standard of information necessary to trigger an investigation is, sensibly, lower than that required for the decision to withdraw preferences. In the new regulation, however, the standard is the same, effectively meaning that the Commission may not initiate the withdrawal procedure unless it is certain that the procedure would lead to withdrawal.<sup>299</sup>

Cambodians seeking to navigate European institutions in search of accountability have found that there is no effective, independent accountability mechanism at the European Commission, or anywhere within the EU structure, that is available to people affected by EU policies or the activities of European companies outside European borders. In the absence of such a mechanism, the EU’s legal and policy commitments to human rights abroad ring hollow to the people they are meant to serve.

## Conclusion

According to the European Commission, one of the basic objectives of the EU is “to ensure that economic growth and development go hand in hand with social justice, including core labour standards, and sustainable environmental practices.”<sup>300</sup> The EBA scheme is one of the EU’s flagship initiatives for promoting development in the world’s poorest countries, yet it is a blunt instrument without any safeguards to ensure that the development being promoted does no harm to people and the environment. The findings of this human rights impact assessment confirm that in the absence of a social justice and human rights framework, development often comes with enormous human costs.

The EBA initiative has undeniably had a significant impact upon the Cambodian economy, allowing the country to more than double its exports to the EU. The surge in exports has helped to secure or create jobs for thousands of Cambodians, predominantly in the garment and footwear industries. However, no matter how many jobs have been generated, this cannot justify – either on a legal or a moral basis - the destruction of thousands of *other* families’ livelihoods that has also resulted from the trade scheme.

It is positive that the Commission recently stated that it would “step up a gear in embedding impact assessments and evaluations in trade policy making,”<sup>301</sup> and “address all significant economic, social, human rights and environmental impacts.”<sup>302</sup> Yet, this commitment applies only to “all new trade initiatives with a potentially significant economic, social or environmental impact on the EU and its trading partners, including developing countries.”<sup>303</sup> As this report has shown, existing trade initiatives, including EBA, are also in urgent need of assessment and mitigation measures to address adverse human rights impacts.

There are better ways to promote economic growth and development in poor countries, while simultaneously promoting and not undermining human rights. The reformed GSP+ scheme, which ties trade preferences to human rights performance, is one such model. GSP+ grants trade preferences to countries that demonstrate a commitment to sustainable development and good governance.<sup>304</sup> Another pertinent example is the US-Cambodia Bilateral Textile Trade Agreement, which was in effect from 1999-2004. Under the pact, Cambodia committed to improving labor conditions and allowing ILO inspection of garment factory working conditions in return for drastically lower tariffs and quotas that guaranteed access to the US market without having to compete with China. The result was staggering: Cambodia, a country hardly known for progressive policies, adopted one of the most advanced labor codes in Asia, which was followed by the formation of 11 national labor federations and over 300 factory-level unions by 2002. At the same time, garment business boomed and the country became one of the top ten apparel exporters to the United States.<sup>305</sup>

Preferential market access for producers in the world’s poorest countries could be a positive force for *development with human rights* if companies that violate human rights were simply excluded from benefitting. Rather than the heavy handed and politically fraught process of withdrawing preferences from entire beneficiary countries, the EU should be able to blacklist individual firms for their failure to adhere to core human rights standards. Exporters from least developed countries seeking to take advantage of EBA privileges already must have the origin of their products verified by the EU. It is reasonable to expect that the EU would also conduct human rights due diligence on these companies to confirm that they have not grabbed people’s land, destroyed their homes and forests and employed their children. An accessible accountability mechanism should be established to enable affected people to bring complaints against beneficiary companies that abuse their rights and seek remedial action in the form of restitution or termination of the preferential arrangements for the violating firm.

There ought to be an international treaty banning the trade in agricultural goods produced on stolen land. However, until that day comes, if the EU is truly committed to the promotion and protection of human rights worldwide, it must reform the EBA initiative so that it no longer serves as an incentive for land grabbing.

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# List of Abbreviations

ADHOC	Cambodian Human Rights and Development Association
AHRC	Asian Human Rights Commission
ASR	American Sugar Refining
BABC	Bridges Across Borders Cambodia
BSI	Better Sugarcane Initiative
CESCR	UN Committee on Economic, Social and Cultural Rights
CLEC	Community Legal Education Center
CPP	Cambodian People's Party
CSO	Civil Society Organization
CSR	Corporate Social Responsibility
EBA	Everything But Arms
EC	European Commission
ECOSOC	United Nations Economic and Social Council
ELC	Economic Land Concession
ERI	EarthRights International
EU	European Union
FAO	Food and Agriculture Organization
GATT	General Agreement on Tariffs and Trade
GSP	Generalized System of Preferences
HRIA	Human Rights Impact Assessment
IDI	Inclusive Development International
ILO	International Labor Organization
KKPC	Koh Kong Plantation Co. Ltd.
KKSI	Koh Kong Sugar Co. Ltd.
KSL	Khon Kaen Sugar
LDC	Least Developed Country
LICADHO	Cambodian League for the Promotion and Defense of Human Rights
MAFF	Ministry of Agriculture, Forests and Fisheries
MFN	Most Favored Nation
MPSC	Mitr Phol Sugar Corporation
MSG	Monosodium Glutamate
NCP	National Contact Point
NGO	Non Governmental Organization
NHRCT	National Human Rights Commission of Thailand
OECD	Organization of Economic Cooperation and Development
PLUP	Participatory Land Use Planning
RCAF	Royal Cambodian Armed Forces
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
USD	United States Dollar
WFP	World Food Program
WTO	World Trade Organization

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