



## Case Dossier: Cambodia

Sugar cane plantations, human rights violations and EU's "Everything But Arms" initiative

**HANDS OFF THE LAND**

TAKE ACTION AGAINST LAND GRABBING



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### HANDS OFF THE LAND

TAKE ACTION AGAINST LAND GRABBING

a joint project of TNI, FIAN International, FIAN Netherlands, FIAN Germany, FIAN Austria, IGO in Poland and FEEL in Germany.



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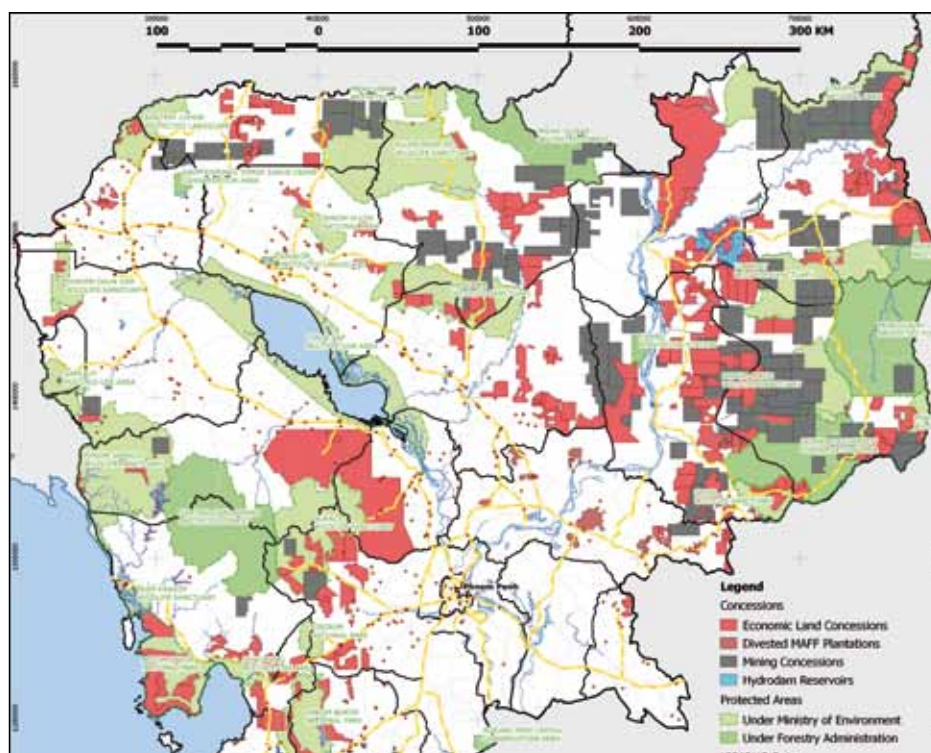
Over the last few years the Cambodian Government has leased out vast quantities of land to private domestic and foreign investors for the purpose of large-scale agro-industrial plantations. These so called Economic Land Concessions (ELCs) totalise today 2.6 million hectares of land, a size equivalent to 65 percent of Cambodia's total arable land. This development is going hand-in-hand with a surge in domestic land conflicts, as local communities are forcibly deprived of their access to land, water and other natural resources, resulting in the violation of their human right to food, to housing and to water. The sugar industry is one of the key players in this development. Strongly incentivised by the European Union's trade initiative "Everything But Arms" (EBA), large tracks of land are transformed into sugar cane plantations, in order to profit from preferential access to the EU market, with higher sugar prices. Until today, the European Commission refuses to investigate the human rights violations associated with these ELCs. While fuelling and rewarding land grabs, this EU initiative also discriminates against small-scale food producers, the backbone of food security in Cambodia.

## 1 | Agriculture, Hunger and Land Grabs in Cambodia

The question of land access in Cambodia is at the core of the population's food security, given that the bulk of the 2.2 million undernourished people in Cambodia – 15 percent of the total population – have been identified as land-poor farmers with less than 0.5 hectare, landless people in rural areas, female-headed households, and indigenous communities whose land is being encroached.<sup>1</sup> Between 76 and 80 percent of the Cambodians live in rural areas, most of them depending on access to land for their livelihoods.<sup>2</sup> 83 percent of farmers are net food consumers.<sup>3</sup>

In the early 1990ties land use in Cambodia was largely organised on the basis of needs, which resulted in an equitable land distribution and "effectively zero landlessness."<sup>4</sup> Today, the lack of access to productive land is one of the most severe problems in Cambodia. According to a national survey of 2004, **66 percent of the rural household lack sufficient access to land**: 21 percent of the rural households are landless and 45 percent are land-poor, owning less than one hectare.<sup>5</sup> While instruments are needed to increase access to land and other resources for these groups to reduce hunger, the dominant government policies and international trade policies are further reducing the space for such instruments, while exacerbating rural landlessness.

In Cambodia, the government is leasing vast quantities of land to private investors. These land grabs are largely facilitated through a scheme that grants Economic Land Concessions (ELC) for large-scale agro-industrial purposes. Today, approximately 2.6 million hectares of land<sup>6</sup> – a size equivalent to roughly 65 percent of Cambodia's total arable land<sup>7</sup> – have been granted to private companies for agro-industrial development (see picture 1). In the process, the power to decide how and for what purposes land and other associated natural resources like water can be used now and in the future is captured away from the people who have traditionally depended on them for their livelihoods. Many of the ELCs encroach on land used by rural communities for food production (e.g. rice fields, community forests, grazing land, villages and water resources), leading to a surge of land conflicts. Rights groups estimate that far more than half a million people, 3.5 percent of the total population, have been affected or displaced by land conflicts.<sup>8</sup>



Picture 1: Economic Land Concessions in Cambodia as of March 2013. © Licadho

1 FAO (2013) Food Security Indicators.

2 The National Institute of Statistics (2010), accessed at [http://www.nis.gov.kh/nis/CSSES/Data/CSSES\\_Demography.html](http://www.nis.gov.kh/nis/CSSES/Data/CSSES_Demography.html); FAO (2011) Cambodia and FAO. Achievements and success stories, p.1. Following the FAO 73 of the 80 percent of the rural population depend on agriculture, which constitutes 91 percent of the rural population.

3 UN-High Level Task Force on the Global Food Security Crisis (2009) Country Fiche Cambodia.

4 World Bank (2007) Sharing growth: equity and development in Cambodia, p. x.

5 Sophal (2008) Impact of high food prices in Cambodia, p.14.

6 ADHOC (2013) A Turning Point?

7 FAO estimates the size of arable land in Cambodia for 2011 at 4 million hectares (see FAOStat).

8 Following LICADHO the land conflicts took place between 2000 and 2014. They occurred almost entirely in the 13 provinces monitored by LICADHO, which represent roughly half the country. See: <http://www.licadho-cambodia.org/pressrelease.php?perm=342>.



## 2 | Sugar Plantations in Cambodia: Nothing but Grabs

In the last few years at least 100,000 hectares have been granted as ELCs to private companies for agro-industrial sugarcane production, most of it in the provinces of Koh Kong, Kampong Speu and Oddar Meanchey.<sup>9</sup> This rapidly expanding sugar industry has been accompanied by serious and systematic human rights violations. People have been forcibly evicted and their property destroyed; they lost access to their land, water and life in dignity; they have been criminalized and denied access to justice. Women and children were disproportionately affected. These violations result in destructions of rural livelihoods, loss of income and overall impoverishment of villagers.

*“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)<sup>10</sup>*

The development of the Cambodian sugar industry is also subjected to numerous local liabilities infringements, which include the national Land Law (2001) for the protection of tenure rights and the Sub-Decree #146 on Economic Land Concessions (2005) containing safeguards to mitigate risks associated with expulsions, etc. For example, many ELCs exceed the maximum allowed size of 10,000 hectares and/or ignore provisions that sharply restrict involuntary resettlements or provisions on consultations with the local population before granting ELCs.

### 2.1 | Sugar cane concessions in Koh Kong and Oddar Meanchey

With an effort to bypass the Cambodian land law, which prohibit the same person to control superficies greater than 10,000 hectares<sup>11</sup>, the **Koh Kong** plantation is technically based on two concessions. The concessions are located side-by-side and have developed into a single sugarcane plantation with a total area of 19,100 ha. The plantation is, by their own admission, owned by KSL Sugar (Thai) and Ve Wong corporations (Taiwanese) through two Cambodian legal entities.<sup>12</sup>

456 families owned land on the concessions granted. They were not informed or consulted about the project.<sup>13</sup> Villagers came under attack in 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. Most of the farmers lost all their vegetable land holdings. The two community forests, totalling 1,800 ha were completely destroyed. Over the following months, land clearances continued, with villagers injured or gunshot wounded during evictions. One community activist was found axe murdered after documenting and actively protesting the evictions. Only 23 families were compensated, ranging between US\$ 75 and 750.<sup>14</sup> Local communities also have less access to water as local resources have been blocked, polluted, covered over with earth or excessively used for irrigation of the new plantations.<sup>15</sup>

The Thai sugar corporation Mitr Phol, Asia’s biggest sugar and bioenergy producer, controls three concessions in **Oddar Meanchey** totalling 19,700ha since 2008 for sugar production and a processing plant. Ly Yong Phat, the Cambodian Tycoon owning the Phnom Penh Sugar plantation (see Kampong Speu case), has been reportedly involved as well in this project.<sup>16</sup>

4,500 ha of land of 31 villages are within the boundary of these concessions. One of the concessions (Angkor Sugar) almost entirely overlapped with community forest and affecting 16 villages alone.<sup>17</sup> The village of Bos was completely destroyed: first evictions took place in 2008 without prior notice and saw company staff demolishing 154 houses, under the guidance of local authorities. Further forced evictions were carried out in 2009, while several days before, a mixed group of provincial and district military police surrounded and sealed off the village.<sup>18</sup> 214 families went homeless.<sup>19</sup>

Only 14 families received replacement land, though remained hungry and without adequate shelter. Land was covered in forest that most families were unable to clear, barely suitable for rice cultivation, potentially contaminated with landmines, and with no water access. Others families were left without access to the minimum elements of their basic human rights to food, clothing, shelter and essential medical services; evictions have in some cases led to extreme hunger and deterioration of health. Many families resorted to illegal migrations to Thailand.<sup>20</sup>

In early 2014 the Coca Cola Company disclosed that Mitr Phol is one of its top three global sugar suppliers.<sup>21</sup>

9 Equitable Cambodia & Inclusive Development International (2013) Bittersweet Harvest, p.22.

10 Ibid., p.1.

11 Land Law, Article 59.

12 Equitable Cambodia & Inclusive Development International (2013), p.25.

13 Ibid. In a written reply KSL told FIAN that they “met with villagers” while leaving it unclear when, with whom and with which result these meetings occurred.

14 Ibid., p.64. In the same written reply KSL told FIAN that they “paid compensation to the majority of them”, again leaving unclear if compensation was adequate.

15 Ibid., pp. 59, 64.

16 Cambodia Daily (4th June 2013) Authorities Deny Abuses at Thai Plantation Tied To CPP Senator: “Oddar Meanchey province deputy governor Lon An yesterday confirmed CPP Senator Ly Yong Phat’s involvement in a trio of sugar cane plantations that rights groups took to the National Human rights Commission of Thailand last week”.

17 Equitable Cambodia & Inclusive Development International (2013), p.30.

18 Ibid., p.55.

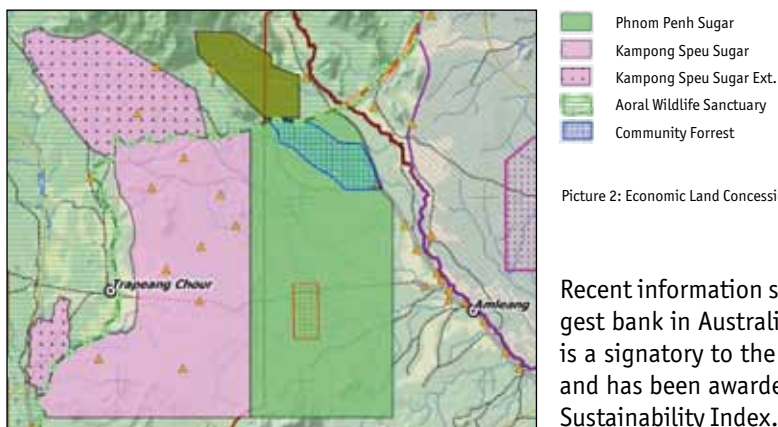
19 Ibid., p.59.

20 Ibid., pp.60-70.

21 Coca Cola (2013) The Coca-Cola Company Commitment: Land Rights and Sugar.

## 2.2 | Kampong Speu sugar cane concessions

In February 2010, the Cambodian government approved two side-by-side ELCs in Thpong and Aoral districts, Kampong Speu Province, for the companies Phnom Penh Sugar PPS (~9,000 ha) and Kampong Speu Sugar KSS (~9,000 ha). The companies are owned by the Cambodian tycoon Ly Yong Phat and his wife.<sup>22</sup> On March 2011 Prime Minister Hun Sen signed a sub-decree allowing land in the Aoral Protected Area to be reclassified and KSS concession to be expanded by 4,700 hectares. Today the consolidated twin concession is totalling over 23,000 hectares of land (picture 2).<sup>23</sup>



Picture 2: Economic Land Concessions for PPS and KSS including community forest boundary<sup>24</sup>

Recent information showed that the Australian ANZ Bank, the third largest bank in Australia, has provided significant funding for PPS.<sup>25</sup> ANZ is a signatory to the Equator Principles, a global ethical banking code and has been awarded as the most sustainable bank by the Dow Jones Sustainability Index.<sup>26</sup>

Back in 2007 villagers and local authorities disagreed to a first request to cooperate with a company that proposed a sugar plantation. In 2009 company staff, now identified by the villages to be of PPS and KSS, came back and just informed the villagers that they will clear the forests while the rice fields will be untouched. Around 300 villagers protested against these activities, went to the company site and the commune council, demanding the formal acknowledgement of their legal possession rights before the company gets active. While this demand was ignored, the company also started to destroy rice fields and houses in 2010. The villagers collected 1,350 thumbprints for a petition against this project (picture 3).<sup>27</sup>

To get control of the land, the company used tricks, intimidation and forced eviction. Villagers unable to read were lured to thumb-print documents handing over their land while being told by the Commune Chief it was to construct a road, map their land rights or even a petition to contest the sugar company project (sic). Other villagers were bullied and coerced into accepting so-called “compensations offers” proposed by the authorities on the behalf of the concessionaires – sometimes never receiving the money. Villagers of O’Ang Khum have been proposed unacceptable low compensation: US\$ 200/ha for their rice fields, US\$ 100/ha for other land.<sup>28</sup> Those “compensation offers” were reportedly accompanied by notions like “if you don’t accept you will get nothing. We will still take the land” or if they don’t accept “they would get air instead.”<sup>29</sup> Eleven Trapaing Prolet households received a combined total of US\$ 2,265, with individual payments ranging from US\$ 15 to 500 for the loss of their homes, land and crops, as well as moving costs. Some farmers in this area received replacement land plots ranging from 0.156 ha to 3 ha.<sup>30</sup>



Picture 3: Thumb-prints collected in 2010 against the project

*“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” (Kork villager)<sup>31</sup>*

One village, Pis was completely destroyed. With no prior notice and no court order, residents learned about the sugar concessions when company bulldozers and about 30 soldiers armed with guns and stun batons arrived to clear their land and demolish their homes in February 2010.<sup>32</sup> The military troops deployed to protect the company’s land clearances have direct financial links to the company. Some villagers have been resettled to plots too small to produce enough food (0.2 ha) and on land very difficult to farm (rocky and sand soil, see picture 4). Some have received cash compensation ranging from US\$ 20 to 900.<sup>33</sup>

22 Furthermore, both companies are subsidiaries of the L.Y.P. Group. See: <http://www.lypgroup.com/download/lyp-group-brochure.pdf>.

23 Equitable Cambodia & Inclusive Development International (2013), p.27.

24 Map taken from: Human Rights Council (2012) Report of the Special Rapporteur on the situation of human rights in Cambodia, Surya P. Subedi, Addendum, A human rights analysis of economic and other land concessions in Cambodia, p.129.

25 Inclusive Development International (22nd January 2014) “ANZ bankrolls massive land grab in Cambodia”, <http://www.inclusivedevelopment.net/anz-bankrolls-massive-land-grab-in-cambodia/>

26 This includes the highest ranking in the social dimension. See: <http://www.sustainability-indices.com/review/industry-group-leaders-2013.jsp>.

27 Equitable Cambodia & Inclusive Development International (2013), p.80.

28 Ibid., p.56.

29 Ibid., pp.52, 56, 75.

30 Ibid., p.64.

31 Ibid., p.51.

32 Ibid., p.53.

33 Ibid., p.64.



Picture 4: Reallocation site 'New Pis'



Picture 5: Forest around rice fields already cleared while some rice fields still existed in mid-2010



Picture 6: Demarcation of destroyed community forest

**Many families lost access to agricultural land.** Overall the concession has been documented encroaching on more than 2,000 hectares of farmland belonging to approximately 1,100 families in fifteen villages in Amlaing commune in Thpong district, and Trapaing Chor commune in Aoral district. For most of the affected people the land taken by the company was ancestral.<sup>34</sup>

*"It was my land – it has been in my family since the time of my ancestors. Now everything is gone." (O'Pralov villager)<sup>35</sup>*

**Community forests**, essential for activities such as grazing, gathering fruits, herbs and medicine, wood collecting, were also destroyed. Amlaing Community Forest and Taleo Community Forest, totalling 1,805 ha were completely cleared, while villagers estimate that an additional 1,000ha of forests were also destroyed within the concession boundaries.<sup>36</sup> Destruction of community forests in the northwestern part of Trapaing Chor commune (Srea'kin village) was ongoing until 2013 (see picture 2, 5 and 6).

**Access to water** has also been eroded as local water resources have been blocked (for instance with dams, see picture 7), polluted or depleted by the company to meet plantation requirements. Sugar mill processes and agricultural inputs have contaminated water resources, so many 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 also lost fishing resources, and can no longer find edible water plants such as morning glory and lily that used to grow locally.<sup>37</sup>

*"Everything is gone. The forest and fishing areas are gone." (Trapaing Prolet villager)<sup>38</sup>*

Despite military and police intimidation, community representatives succeeded in having the government returning some 1,000 hectares to several villages. However, the size of land returned was far less than what the villagers owned and used before the company came.<sup>39</sup>



Picture 7: Company dam in concession blocks river to La'ngim Village

34 Ibid., p.27.  
 35 Ibid., p.58.  
 36 Ibid., p.59.  
 37 Ibid.  
 38 Ibid.  
 39 Ibid., p.80.



### Box 1: Adverse incorporation into the plantation economy

In the context of this case dossier, adverse incorporation<sup>40</sup> can be understood as the process of coercing poor people into the sugar cane plantation economy on unfavourable terms. Through the loss of access to land, including forests and water resources, villagers lost long-term and sustainable strategy options to sustain their livelihood. They are virtually forced to decide between migrating to the city/ another country or accept a precarious and poorly paid job in the sugar cane plantation (it could be also described as forced proletarianization).

In Amlaing commune, many people were having a broader and resilient pattern of livelihoods before the plantation project had started. Peasant families reported earning roughly US\$ 500 to 1,000 a year per hectare through rice farming only. In addition all farming families pursued further activities like cultivating banana, pineapple and mango groves, pigs, chickens and buffaloes raising, collecting of forest fruits and water plants, fishing, wood and charcoal production, being divers, teachers and others. This mix provided for a relatively stable and sustainable (long-term) source of food, income and livelihood.

Now many people are trapped in a situation with a high dependency on poorly paid jobs in the sugar cane plantation. Most of them have a job for two to six months a year paid around US\$ 3 a day. This can lead to extremely problematic situations. For instance, a cane harvest in Amlaing delayed by two weeks in late 2012 due to weather conditions resulted in 80 percent of the people in New Pis (reallocation site), now dependent on jobs in the plantation, to suffer from hunger.<sup>41</sup>

This embeds the Cambodian sugar-driven land grabs within the broader context of the expansion of large-scale capital-based production vis-à-vis the destruction of peasant farming and local food systems; and calls into question the overall production model that sustain policies conducted in name of 'development' (see the following chapter).

## 3 | Development for whom? EBA and the Cambodian Sugar Rush

The trade initiative "Everything But Arms" (EBA) was adopted in 2001 by the European Union (EU) against the backdrop of the Millennium Development Goals, which emphasized 'aid for trade'. Designed with the explicit intention of promoting development in the world's poorest countries, the initiative grants full duty-free and quota-free access to the European market for the 49 countries classified as Least Developed Countries (LDCs). Market access for sugar was fully liberalized by October 2009, which is especially relevant as the EU guarantees a minimum sugar price higher than the world market price.<sup>42</sup> In 2012 for example it has been € 175 higher per ton.<sup>43</sup>

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 stimulates international investment, promotes industrialization and diversification of their economies.<sup>44</sup> Data suggest EBA has been indeed fuelling a boom in Cambodian sugar industries and their exports to the EU. According to all of the companies involved in sugar cane plantations, EBA has been a primary motivator for their land acquisitions and operations in Cambodia.<sup>45</sup> Whereas in 2006 sugar cane holding were negligible, Cambodia now has roughly 100,000 hectares of land under agro-industrial sugar cane production. Consequently, all exports progressively directed towards the EU (see table 1).

**Table 1: Development of Cambodian sugar exports to the EU<sup>46,47</sup>**

	2008	2009	2010	2011	2012	2013
Total sugar exports to EU, in thousands of dollars	28	51	3,851	13,229	10,614	51,615
Sugar exports to EU compared to total sugar exports, in percentage	6.5%	30%	90%	94%	100%	-
Sugar exports to EU, in tons	-	-	10.000	22.500	15.501	64.917

If the surge in exports undeniably had a significant impact upon the Cambodian economy, the question remains who most benefited from it, as thousands of the country's poorest families were forcibly deprived from land access – the basis for their livelihoods. From August 2010 on, civil society, including the local communities, formally and repeatedly expressed concern towards the EU over EBA as a driver of land grabbing and human rights violations in the agro-industrial sector.<sup>48</sup> In September 2012 the affected communities directly demanded from Trade Commissioner Karel de Gucht to "stop the discrimination against

40 See for example: De La Crux (2012) Land Title to the Tiller. Why it's not enough and how it's sometimes worse, p.14f. Accessible at: <http://repub.eur.nl/pub/31516>.

41 Based on two interviews in January 2013, a community rep estimated 80 percent suffered hunger another person reported that „most of them suffered from hunger crying and begging for some rice when we visited them”.

42 Equitable Cambodia & Inclusive Development International (2013), p.20.

43 Own calculation based on European Commission: DG AGRI (2013) Sugar Price Reporting.

44 Equitable Cambodia & Inclusive Development International (2013), p.19.

45 Ibid., p.22.

46 Source: UNCTADStat 2014 and EUROSTAT – Context 2014.

47 USD 51,615 (line 1, 2013) converted from 38,390 thousands of Euros.

48 In August 2010 a first letter was addressed to Mr. Rafael Dochoa Moreno, Charge d'Affairs of the EU Delegation to Cambodia, followed by multiple letters to EU Commissioner De Gucht.

the sugar affected/evicted communities” and “immediately investigate on the situation” in terms of human rights violations. They also demanded a temporary suspension of EBA trade preferences, at least for sugar.<sup>49</sup>

While it is clear that the Thai sugar companies and the Cambodian tycoon involved considerably benefit from EBA, this comes at the expense of thousands of people who lost access to land and other natural resources. As Surya Subedi, the UN Special Rapporteur on the Situation of Human Rights in Cambodia stated, “in general, it is not clear to what extent the people of Cambodia have actually benefited from land concessions.”<sup>50</sup> A 2007 report of the United Nations Office of the High Commissioner for Human Rights concludes even more explicit: “Instead of promoting rural development and poverty reduction, economic land concessions have compromised the rights and livelihoods of rural communities in Cambodia.”<sup>51</sup>

### Box 2: EBA – a garment industry success story?

DG Trade, including Trade Commissioner Karel De Gucht<sup>52</sup>, highlighted at many occasions the positive effects of the EBA instrument in Cambodia, especially related to the boom of the garment industry.

*“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)*

While it is impossible to balance away human rights violations with possible positive effects, the positive effects themselves must be questioned from a right to food perspective. A 2013 research by CLEC revealed a shocking nutritional situation of the garment workers. Many workers were seriously malnourished due to low pay and inability to access nutritious food. Factory workers were found to consume an average 1598 calories a day – around half the recommended amount. Body mass index figures indicated that 33% of the workers are medically underweight and at risk, 25% at serious risk.<sup>53</sup> These numbers document that the human right to food of a third of the garment workers is violated.

Despite repeated allegations of serious and systematic human rights violations as detailed in section 2, the European Commission (DG Trade) has thus far not responded positively to demands from civil society and the European Parliament for an investigation into the human rights impacts of the EBA initiative in Cambodia. European Union Trade Commissioner Karel de Gucht recently stated in March 2014 that EU has no plans to investigate the allegation of EBA-driven land grabbing in Cambodia - “if there is a structural offence of human rights, we have to launch an investigation [...] But on the other hand, we are of the opinion that this is not the case with respect to sugar cane.”<sup>54</sup>

## 4 | A broader human right perspective on Cambodian land governance

Koh Kong, Kampong Speu and Oddar Meanchey concessions massively affect the enjoyment of communities’ human rights such as the right to food, housing, water, work, health, of women and children – with the issue of land surely at the center. The following section tries to address this through a human rights analysis under the combined lens of the human right to food, the UN Land Tenure Guidelines (*Tenure Guidelines* or TG)<sup>55</sup> and the Maastricht Principles on Extraterritorial Obligations of States (*Maastricht Principles* or MP).

- The *right to food* is of crucial importance for a human rights approach to land governance<sup>56</sup>, given its core content – access to productive resource such as land – is at the heart of individual and communities’ manner of securing food security in rural areas, including in Koh Kong, Kampong Speu and Oddar Meanchey provinces.
- The *Tenure Guidelines*, adopted by the UN Committee on World Food Security in May 2012,<sup>57</sup> provide specific guidance to states and other actors (including local communities) about how to apply human rights to land tenure issues.
- The *Maastricht Principles* are key in addressing the transnational nature of the sugar-driven land grabs in Cambodia, which are among others involving Thai corporate actors, Australian capital and EU’s trade policy. The Maastricht Principles include the most advanced interpretation of extraterritorial obligation (ETO) of States (“human rights beyond borders”) elaborated

49 Letter of the 10 community representatives of the communities affected by the sugar cane land grabs in the three provinces, dated September 2012.

50 Human Rights Council (2012) Report of the Special Rapporteur on the situation of human rights in Cambodia, Surya P. Subedi, Addendum, A human rights analysis of economic and other land concessions in Cambodia, p.3.

51 United Nations Office of the High Commissioner for Human Rights (2007) Economic Land Concessions in Cambodia: A Human Rights Perspective, p.1.

52 De Gucht mentioned it at his visit to Cambodia in March 2014. See: note on “EU Trade Commissioner’s visit to Cambodia on 18 march 2014”.

53 See: CLEC, Labour Behind the Label (2013) Shop ‘till they drop. Fainting and Malnutrition in Garment Workers in Cambodia.

54 Phnom Penh Post (19th March 2014).

55 Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security.

56 See for example: FIAN (2006) Access to land and productive resources: [http://www.fian.org/en/library/publication/detail/access\\_to\\_land\\_and\\_productive\\_resources-1/](http://www.fian.org/en/library/publication/detail/access_to_land_and_productive_resources-1/).

57 The preceding extensive consultations were actively accompanied by the Government of Cambodia through the participation in the regional consultation of the TGs in 2009 in Hanoi, Vietnam.



in 2011 by members of the human rights treaty bodies, UN special rapporteurs and other human rights experts<sup>58</sup> and drawing on existing jurisprudence and cases.<sup>59</sup>

This approach seeks to peer beyond procedural standards of large-scale land investments. It tries to identify human rights-based starting points, approaches, actions and policies that prioritize marginalized rural groups, especially small-scale food producers, by protecting and improving their access to, use of and control over land and natural resources.

#### 4.1 | A right to food approach on land governance

*“The right to food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement.” (General Comment 12, the Right to Adequate Food)*

General Comment 12 further highlights that “**feeding oneself directly from productive land or other natural resources**” is a key element of the right to food.<sup>60</sup> Access to land and natural resources also provides the basis for economic activities. Farming families sell products at the local or regional markets. This constitutes a key source of their “**economic accessibility**”<sup>61</sup> for the acquisition of food. Finally access to land and natural resources is also entailed in the “**physical accessibility**” of the right to food. This holds true for the case where the gathering of fruits, nuts, tubers and hunting forms a pillar of food security strategies. Through all three aspects, access to land is part of the core content of the right to adequate food. This holds especially true for individuals and groups in rural areas as in Koh Kong, Kampong Speu and Oddar Meanchey provinces.

The Cambodian State has ratified the following international human rights treaties which recognize the human right to food: the International Covenant on Economic, Social and Cultural Rights (ICESCR, Art.11-(1) & (2)), the Convention on the Rights of the Child (CRC, Art. 24-(2)-(c) & (e) and Art. 27 (3)) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, Art. 12(2)).

The Cambodian Constitution provides that the Kingdom shall recognize and respect the human rights guaranteed under the UN Charter and relevant human rights treaties, including the International Covenant on Economic, Social and Cultural Rights recognizing the right to food:

*“The Kingdom of Cambodia recognizes and respects human rights as stipulated in the United Nations Charter, the Universal Declaration of Human rights and the covenants and conventions related to human rights, women’s rights and children’s rights.” (Constitution of Cambodia, Article 31)*

A 2007 judgment by the Constitutional Council confirmed that international human rights treaties that the government ratified are directly applicable in national law and should be used by courts.<sup>62</sup> This follows that the Cambodian State has binding obligations under the right to food: it has to **respect, protect and fulfil existing access to land and natural resources** that form the basis for the realization of the right to food for rural communities:

- The obligation to *respect* requires the State to refrain from any measure that results in preventing of such access.
- The obligation to *protect* requires measures by the State to ensure that enterprises or individuals do not deprive individuals of this access.
- The obligation to *fulfil* requires the State to 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.<sup>63</sup>

Thus all impacts that reduce existing access such as destruction of rice fields or forests, evictions, degradation of livelihood patterns, etc. detailed in the section 2 are infringements to the right to food. In all three cases described peasant communities are relying dominantly on family farming, livestock keeping and gathering activities for their basic needs and means of livelihoods. Loss of access to land, forests and water puts these communities in a critical situation of food insecurity. Their ability to produce food to feed themselves and to generate income has been devastated. The Cambodian government has clearly violated its obligations under the right to food. The *Tenure Guidelines* provide guidance on the obligations outlined above in the context of land and natural resources. As such they clarify that States should “recognize and respect all legitimate tenure rights holders and their rights” (TG 3.1.1) and “safeguard legitimate tenure rights against threats and infringements” (TG 3.1.2). This is detailed further in TG 7:

58 See: <http://www.etoconsortium.org/en/library/maastricht-principles/>.

59 Commentary to the Maastricht Principles: [http://www.etoconsortium.org/nc/en/library/maastricht-principles/?tx\\_drblob\\_pi1\[downloadUid\]=63](http://www.etoconsortium.org/nc/en/library/maastricht-principles/?tx_drblob_pi1[downloadUid]=63).

60 In GC 12 the wording “access to land” is mainly related to availability of food rather than accessibility. Nevertheless, GC 12 also refers to access to land as an aspect of accessibility in the context of ancestral lands of indigenous population groups.

61 CESCR (1999): “Economic accessibility implies that personal or household financial costs associated with the acquisition of food for an adequate diet should be at a level such that the attainment and satisfaction of other basic needs are not threatened or compromised. Economic accessibility applies to any acquisition pattern or entitlement through which people procure their food and is a measure of the extent to which it is satisfactory for the enjoyment of the right to adequate food.”.

62 Decision N° 092/003/2007 CC.D of July 10, 2007: Royal Message of His Majesty Preah Bath Samdech Preah Boromneath Norodom Sihamoni, King of Cambodia, requesting the Constitutional Council to review the constitutionality of the Article 8 of the Law on the Aggravating Circumstances of Felonies.

63 CESCR (1999).

*“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.” (TG 7.1)*

Thus the Tenure Guidelines set a standard for a broader understanding of tenure rights including customary land use or subsidiary rights such as gathering rights. To a certain degree the Cambodian Law on Land of 2001 also recognises customary rights. Its Article 30 defines possession rights.<sup>64</sup>

*“Any person who, for no less than five years prior to the promulgation of this law, enjoyed peaceful, uncontested possession of immovable property that can lawfully be privately possessed, has the right to request a definitive title of ownership.” (Law on Land 2001, Art. 30)*

In the three cases above, affected communities demanded the formal recognition of their legitimate tenure rights. Many tried to get formal recognition of their possession rights as defined under the Cambodian Land Law. But this has been denied or ignored.<sup>65</sup> While the Tenure Guidelines also clarify that “States should provide prompt, accessible and non-discriminatory services to protect tenure rights” (TG 6.3), they call for mechanisms that allow to verify such cases.

*“States should provide for the administrative and/ or juridical review of decisions of implementing agencies.” (TG 6.9)*

Evicting and displacing people from their land is a serious human rights matter (for a detailed human rights assessment, especially based on the right to housing, see the report *Bittersweet Harvest*, esp. chapters 3 to 5 ) and the Cambodian State should authorize them only in last resort (TG 16.8), explore feasible alternatives in consultation with affected people (TG 16.8) and provide they do not impede communities’ right to food (TG 16.7). Further, the only legitimate grounds for expropriations are in the context of public interest (TG 16.1). It remains largely unclear to what extent the three agro-industrial projects, at the expense of villagers and thousands of peasants would be in the public interest.

Against the backdrop of large-scale transfer of land, the *Tenure Guidelines* provide for independent evaluations to be carried out prior to the investment, in order to identify the impact these transfers would have, including impacts on the right to food of the local people (TG 12.10). This implies the identification of all legitimate tenure rights including “customary and informal tenure” (TG 12.10). It should be noted that the Tenure Guidelines clarify that business enterprises “have a responsibility to respect human rights and legitimate tenure rights” (TG 3.2).

## 4.2 | The need for policies supporting the obligation to fulfil the right to food

In 2005 the Special Representative of the Secretary-General (SRSG) for Human Rights in Cambodia recommended that “alternative forms of agricultural development for the benefit of Cambodia’s rural populations should be pursued. The system of land concessions for economic purposes needs to be reconsidered.”<sup>66</sup> This recommendation was underscored by the SRSG Ghai in 2007 and highlighted again by the SRSG Subedi in 2012.<sup>67</sup>

Indeed, the obligation to *fulfill* the right to food requires the Cambodian State “to 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.”<sup>68</sup> Cambodia should adopt effective measures to facilitate access to land for individuals and groups who have little or no access to it, ensure land restitutions to groups that have lost access to and/or control over it in illegal or arbitrary manner, prioritize the allocation of public lands for marginalized groups, support groups whom livelihoods depend on access to land, facilitate peoples’ participation in decision-making on policies and agricultural development and ensure that land rights are recognized and protected by national laws, including customary tenure systems.

Such a human rights based approach is also stressed by the *Tenure Guidelines*. They clarify in the overall objective that especially “vulnerable and marginalized people” – the majority of the 2.2 million undernourished Cambodians consists of rural households – should benefit from land tenure policies and practices (TG 1.1). It is important to stress that all provisions of the *Tenure Guidelines* should be understood in the context of this overall objective. In this regard, and in relation with the three cases presented here, the Tenure Guidelines also call upon States to “consider promoting a range of production and investment models that do not result in the large-scale transfer of tenure rights to investors” (Article 12.6). It further specifies, “investments should not contribute to food insecurity and environmental degradation” (Article 12.12). This negating guidance is complemented by a standard setting for alternatives to these investments:

64 The Land Law also recognizes land rights of indigenous communities (Art. 23-28).

65 Equitable Cambodia & Inclusive Development International (2013), p.36.

66 Report of the SRSG Peter Leuprecht to the Commission on Human Rights, 61st Session, 2005 (E/CN.4/2005/116), p.22.

67 Report of the SRSG Suray P. Subedi to the Human Rights Council, 21st Session, 2012 (A/HRC/21/63/Add.1), p.8,9.

68 ICESCR General Comment 12.

*“Considering that smallholder producers and their organizations in developing countries provide a major share of agricultural investments that contribute significantly to food security, nutrition, poverty eradication and environmental resilience, States should support investments by smallholders as well as public and private smallholder-sensitive investments.” (TG 12.2)*

It is obvious that a massive granting of large ELCs contradicts the TG 1.1, 12.2, 12.6 and 12.12 and implies a rapid increase of land concentration.<sup>69</sup> Land concentration is another issue addressed by the tenure guidelines. While TG 3B3 adheres to the need for equitable access to land, TG 11.2 further details:

*“States should take measures to prevent undesirable impacts on local communities, indigenous people and vulnerable groups that may arise from [...] land concentration...” (TG 11.2)*

Thus, providing access to land for landless and land poor peasants is another relevant human rights issue in Cambodia. (Re-) Distribution of land for poor rural groups reduces land concentration. While under the 2001 Land Law (Art. 17) and related Sub-Decree #19 the State can grant Social Land Concessions SLCs, this interesting instrument is by far less and less effectively implemented than the granting of ELCs. Until 2013 roughly 100,000 hectares have been granted as SLCs, compared to 2,600,000 hectares as ELCs.<sup>70</sup> This conduct of allocating tenure rights clearly discriminates landless and land poor people vis-à-vis powerful investors. The Tenure Guidelines explain:

*“States should remove and prohibit all forms of discrimination related to tenure rights, including those resulting from [...] a lack of access to economic resources” (TG 4.7)*

As illustrated above, the *Tenure Guidelines* do not only stress procedural safeguards related to single cases of land tenure. They also address policy, legal and organisational frameworks and the relevance of inclusive and participatory processes – not only on a “case basis” but also in the shaping of the frameworks themselves. The *Tenure Guidelines* explain that policy, legal and organizational frameworks should be consistent with their existing obligations under international law, including obligations under the right to food (TG 5.2). Under TG 26.2 (and supported by TG 5.8) States are demanded to launch multi-stakeholder platforms at local, regional and national level based on the principles of inclusion, participation and gender equity. Such platforms should discuss, monitor and evaluate the impact of existing policies and practices related to the tenure of land, fisheries and forests on improving food security and the progressive realization of the right to adequate food. In Cambodia this could include relevant Sub-Decrees or the “Rectangular Strategy for Growth, Employment, Equity and Efficiency”, that includes the government strategy on for agriculture and land for 2013-2018. Defining the “public interest” (see previous section 4.1) related to land tenure could also be a task for such platforms. Such platforms should also be used to ensure an inclusive and participatory process for future laws and policies. This is especially relevant for plans to formulate a comprehensive land policy for Cambodia entitled “White Paper on Land”. This is also stipulated in TG 5.5:

*“States should develop relevant policies, laws and procedures through participatory processes involving all affected parties, ensuring that both men and women are included from the outset.”*

### 4.3 | Human rights obligations of foreign States

General Comment 12 on the Right to Adequate Food ascertains human rights obligations of foreign States:

*“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.” (General Comment 12, the Right to Adequate Food)*

The *Maastricht Principles* also affirm and detail that States have an obligation to respect, protect and fulfill economic, social and cultural rights within national borders but also extraterritorially. This means that the human rights-based standards and norms as outlined in sections 4.1 and 4.2 are of relevance for foreign States. In relation with the three cases, the EU member states, Thailand and Australia – among others – have concrete human rights obligations, so called extraterritorial human rights obligations (ETO). To make it explicit: Acts and omissions of the states above have an effect on the enjoyment of the human right to food of the people affected by the sugar concessions in Cambodia (MP 8). Under the obligation to avoid causing harm (MP 13) States must desist from acts or omissions that create a real risk of nullifying or impairing the right to food extraterritorially.

*“The responsibility of States is engaged where such nullification or impairment is a foreseeable result of their conduct. Uncertainty about potential impact does not constitute justification of such conduct.” (MP 13)*

<sup>69</sup> The related measurement is done with the Gini coefficient. While the coefficient was 0.56 in the late 1990ties, it exploded to 0.72 in 2012. See: Herre (2012) Structural Effects of the Global Land Grab - Implications from a Right to Food Perspective

<sup>70</sup> See: Adhoc (2013) A Turning Point?, p.27 and Neef et al (2013) The Politics and Ethics of Land Concessions in Rural Cambodia, p.1088f. Apart from the apparent and extreme difference of the size, there is reasonable believe that the implementation of many SLC is flawed and reports indicate that evictions take place in the context of SLC. See for example: LICADHO (2009) The Myth of Development, pp.11, 25. See also: <http://www.phnompenhpost.com/national/social-land-concessions-climb>.



Given the clear link between land grabs in Cambodia and the EU initiative EBA, the EU has the obligation to act diligently with its duties under international law, and re-examine the scheme. This ETO is also enshrined in the Treaty on European Union, article 3(5), 21 and 207. A recent resolution from the European Parliament (EP) called upon the European Commission “to act, as a matter of urgency, on the findings of the recent human rights impact assessment of the functioning of the EU’s Everything But Arms (EBA) initiative in Cambodia and to consider including, in the criteria for exporters from least developed countries seeking to take advantage of EBA privileges, an obligation to testify that they have not evicted people from their land and homes without adequate compensation.”<sup>71</sup> The EU Trade Commissioner, however, indicated to have no intentions of undertaking such an action, despite mounting evidences and years of battle between the Directorate-General for trade and civil society organisations representing the affected communities.

In the context of the EBA initiative it is important to mention that its policy does not only fuel violations of the right to food and ignores related human rights standards and norms; the EBA policy also clearly discriminates vulnerable and marginalised rural people and violate the norms set by the *Tenure Guidelines* (see section 4.2) by its biased approach in de facto rewarding land tenure policies and production models that are capital rather than labour intensive. Under their obligation to protect, States must ensure that non-state actors which they are in a position to regulate – especially the transnational corporations – do not impair the enjoyment of human rights, including the right to food (MP 24). This is also reflected in the *Tenure Guidelines* (TG 3.2 and 12.5) regarding the obligations of the home states of transnational corporations.

These TG articles, along with the MP 37, call, among others, for EU member states, Australia and Thailand to monitor the operations of companies abroad and ensure effective remediation. Thailand hosts sugar corporations actively taking part in the operations. Mitr Phol Sugar Corporation, a Thai group, is involved in the Oddar Meanchey concession. The National Human Rights Commission of Thailand for example identifies a clear responsibility of Thai parent company KSL Sugar in the context of breaches of human rights principles and instruments in Koh Kong.<sup>72</sup> Australia is home state of the ANZ Bank that invested significant capital in the Kampong Speu project. Companies in EU member states are importing the sugar from Cambodia. The 2014 resolution of the EP highlights possible steps to regulate companies trading Cambodian sugar (importers and exporters). Besides the demanded investigation and a possible temporary withdrawal of trade preferences for sugar, such a regulatory measure would be an important step for the EU and its member states towards complying with their respective human rights obligations. Finally States have an obligation to create an enabling international environment, conducive to the fulfilment of the right to food (MP 29). This explicitly includes matters related to bilateral and multilateral trade and investment.

71 “Resolution on the situation of rights defenders and opposition activists in Cambodia and Laos” (2014/2515(RSP)), adopted by the European Parliament 16th January 2014.

72 National Human Rights Commission of Thailand (July 25th 2012) Findings of the Subcommittee on Civil and Political Rights of the National Human Rights Commission of Thailand on the Koh Kong Sugar Cane Plantation case in Cambodia.

