

Land Rights at the Time of Global Production: Leveraging Multi-Spatiality and ‘Legal Chokeholds’

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ANNEX

A chronology of the main legal events within and without the Cambodian sugar chain: 2006-2014

- I. March 20, 2006: the Cambodian Council of Ministers agrees in principle to award ELCs to two companies to develop sugar plantations and refinery operations in Botum Sakor and Sre Ambel Districts, in Koh Kong Province, Cambodia. According to the civil society organizations, these were Koh Kong Sugar Industries Co Ltd (KSI) and Koh Kong Plantation Co Ltd (KPT), both owned by Khon Kaen Sugar Industry Public Company Ltd (Taiwan). According to the latter, the concession were granted to two Cambodian companies, Koh Kong International and Duty Free Shop.
- II. May 19, 2006: agents, including armed military police allegedly acting on behalf of the Government of Cambodia and/or of the two future concessionaries, without prior warning, cleared the Land of three villages (Chikhor, Chhouk and Trapaing) for the purpose of complying with the ELCs.
- III. May 29, 2006: Koh Kong Plantation Co Ltd (KPT) and Koh Kong Sugar Industries Co (KSI) Ltd are incorporated in Cambodia. They are the domestic representation of FDI. Original shareholders of both KSI and KPT were the Kohn Kaen Sugar Industry Public Co Limited (a publicly traded Taiwanese company - 50%), Ve Wong (a Taiwanese company – 30%) and Senator Ly Yong Phat (a Cambodian Senator – 20%). According to the defense’s docuemnts filed before the UK Court, KSI is owned 80% by Kohn Kaen Sugar Industry and Ve Wong (20%). KPT is owned 80% by Wynn In Trading Co and 20% by the Best Foundation.
- IV. July 18, 2006: The Royal Government of Cambodia grants the Economic Land Concessions to Koh Kong Sugar Industry Co. Ltd and Koh Kong Sugar Plantation Co., Ltd.

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- V. August 2, 2006: two identical concession agreements for the production of sugar cane and/or other crops and/or energy production are signed by the Ministry of Agriculture, Forestry and Fisheries (MAFF). The first one with Koh Kong Sugar Industry Company Limited over 9,400 ha and for ninety years. The second one with Koh Kong Sugar Industry Company Limited for 9,700 ha and for ninety years. The two concessions are adjacent. If the two concessions were recognized as a unitary project (by means of common ownership or common exploitation) this would probably violate the limit of 10,000 ha for individual concessionaires introduced by the 2001 Land Law, the 2005 Sub-Decree 146 on State Land Management, the Circular of Instruction No. 05 on the Grant of Economic Land Concessions for Investments, and the Law on Environmental Protection and Natural Resources Management.
- VI. November 12, 2006: after several protests, KPT and KSI agree to stop clearing land where villagers had clear evidence of possession. However, they would resume the same practice shortly thereafter.
- VII. May 2, 2007: KSI enters into a contract with Tate & Lyle whereby KSI agrees to nominate between 51% and 100% of its production of sugar (from sugar cane grown in Cambodia) to Tate & Lyle from 2008 to 2014. The price payable for the sugar was to be based on the price defined by the EU or the Free On Board (FOB) price for raw sugar (at KSI's opinion).
- VIII. February 2007: 220 families from the villages of Chikor, Chhuk and Trapeng Kendal - represented by the Community Legal Education Center of Cambodia (CLEC) - file a civil and criminal complaint against Koh Kong Plantation and Koh Kong Sugar Industry in the Koh Kong Provincial Court claiming that 1,490 ha of their land has been affected by the two concessions. In their complaints, they underline the illegal extension of the concessions according to the existing legal framework, and the lack of consultation and compensation as required by law. Citing point 3 of Regulation No. 01 of May 7, 2012 by the Royal Government of Cambodia, villagers asked for the cancellation of the ELCs because of the violation of the due legal processes and of the agreement, and because of the infringement of the residents' or communities' land.
- IX. March 2007: in order to increase the political and social legitimacy of their legal cases, representatives of the villagers travel to Phnom Penh to submit complaints to the National Assembly, the Ministry of

the Interior, the Council of Ministers, and other government bodies.

- X. June 2007: the UN High Commissioner for Human Rights releases a report on the human rights implications on the economic land concessions in Cambodia. In the report, the SR recognizes that KPT and KSI concessions may violate the 10,000 ha limits, that they were granted before the official agreement was concluded, that they encroach on agricultural and grazing land, and that protests that occurred in 2006 were met with violence by the police and private security guards.
- XI. August 2008: CLEC directly addresses the Thai mother company, KSL, to underline the illegality of the land concessions and expose the position of the villagers.
- XII. September 12, 2008: KSL responds to the letter sent by CLEC in August claiming ignorance of many of the problems raised.
- XIII. January 6, 2010: CLEC files a complaint in the name of the affected communities with the National Human Rights Commission of Thailand (NHRC) for human rights violations committed by the Thai mother-company KSL. The NHRC recognized jurisdiction over violations committed by the subsidiaries of a Thai stakeholder outside the territory of Thailand and accepted to investigate the complaint. This moment represents the first act of multiterritorialization of the controversy and will be analyzed later for its relevance concerning the regionalization of human rights struggles and the multiplication of sources of legitimation of the political conflict.
- XIV. June 2010: Tate & Lyle takes delivery of a consignment of 9,989 tons of raw sugar produced by KSI.
- XV. July 1, 2010: Tate & Lyle agrees to sale its sugar branch to American Sugar Refining.
- XVI. July 13, 2010: the dispute loses its regional character when CLEC decides to explore a new space of confrontation by sending a series of letter to various units of the European Commission to ask for investigation of Tate & Lyle's contract with KSL. The target is the Everything But Arms initiative and the negative implications of the EU trade policy on the life of Cambodian farmers.
- XVII. September 30, 2010: the sale of Tate & Lyle's sugar refining business to T&L Sugars (TLS) is concluded. TLS is an indirect subsidiary of American Sugar Holding Inc (ASH) the largest refining company in the US. Since 2010, TLS has carried on business including the importation and refining

of sugar in England. The contract concluded on May 2007 between KSI and T&L is allegedly novated or transferred to TLS.

XXVIII. October 19, 2010: the villagers, with the support of CLEC, bring their dispute to the attention of the Chairperson of the Thai Working Group for an ASEAN Human Rights Mechanism, which is currently known as the ASEAN Intergovernmental Commission on Human Rights after. However, despite article 5 of the Declaration requires an effective and enforceable remedy, AICHR meetings are still restricted to AICHR and ASEAN officials. AICHR has held some consultations with non-government organizations but only with those organizations agreed to by the AICHR representatives. Engagement with Civil Society Organizations continues to be ad hoc, a choice that has led to several critiques of the ASEAN HR system.

XIX. October 2010: Equitable Cambodia and its German partner FIAN International air a piece on Cambodian sugar on TV in Germany. The target is represented by the shares of KLS owned by Deutsche Asset & Wealth Management Investment (DWS), the retail asset management arm of Deutsche Bank.

XX. January 20, 2011: affected villagers assisted by CLEC and Equitable Cambodia file a complaint through the grievance mechanism of Bonsucro for violations committed by its member Tate & Lyle. Bonsucro is an industry initiative that aims to reduce the negative impacts of sugar production and that was funded by Tate & Lyle together with other actors operating at different levels of the sugar value chain. At the moment, the Tate & Lyle complaint represents the only complaint received by Bonsucro.

XXI. 2011: DWS divests its Vietnam Fund from KLS. It previously held 2.15% of the company, equal to US 14 million dollars. According to DWS spokesman, the “human rights perspective has also affected how we assess the future of the company.”

XXII. May 2011: TLS acquires 22,497 tons of raw sugar from KSI.

XXIII. August 3, 2011: TLS enters into a contract with KSI whereby KSI agrees to supply to TLS with 100% of its raw sugar production for the crop years 2011-2012 and 2012-2013.

XXIV. November 16, 2011: CLEC and EarthRights International submit a memorandum to the

Norwegian Council on Ethics to bring to its attention the activities of KSL, in which the Norwegian Global Pension Fund is an investor. According to the complaint, whose content has been kept confidential, the financial stake in KSL would violate the Norwegian Global Pension Fund's Ethical Guidelines.

XXV. May 7, 2012: the Cambodian Government imposes a moratorium on granting new Economic Land Concessions.

XXVI. May 11, 2012: the United Nations Special Rapporteur on the situation of human rights in Cambodia releases a public statement recognizing that the legal framework governing the granting and management of land concessions in Cambodia is existing, but not properly applied.

XXVII. June 26, 2012: a coalition of ten domestic and international CSOs addresses a letter to the attention of Karel de Gucht, EU Commissioner for Trade. In the document, the signatories "call on the European Commission to investigate the escalating human rights abuses in Cambodia resulting from the granting of economic land concessions for agro-industrial development, in connection with agricultural goods being exported to the European Union under the Everything But Arms initiative (EBA)." The focus is the contrariety to the existing legal architecture of a trade policy that is indirectly related to human rights violations.

XXVIII. July 2012: TLS acquires 15,385 tons of raw sugar from KSI.

XXIX. July 25, 2012: The National Human Rights Commission of Thailand releases its findings on the violations of civil and political rights in the Koh Kong Cane Plantation. According to the Commissioner, the evidence gathered "allows for a reasonable belief that human rights principles and instruments were breached in this case, and that the Thai parent company is involved in the operations of its subsidiaries in Koh Kong."

XXX. July 26, 2012: the hearing at the Koh Kong Provincial Court on the cases filed in 2007 is delayed indefinitely.

XXXI. August 14, 2012: letter of the EU Trade Commissioner in response to the June 26 letter. The Commissioner writes that "[t]he European Commission is fully aware of legitimate concerns which have been expressed" but at the same time affirms that there have been some progress, like the decision

of the Cambodian Prime Minister to issue a moratorium on new economic land concessions and a to review of existing ones. Finally, he concludes by pledging that if “international monitoring bodies unequivocally conclude that serious and systematic violations are taking place, the European Commission will not hesitate to launch the EBA investigation.”

XXXII. August 30, 2012: the court of first instance of the Koh Kong Provincial Court transfers *sua sponte* the case to the Cadastral Committee, reasoning that the court did not have competence over land claims because “many of the letters and documents which had been submitted to it by the Cambodian party had not been submitted to the Cadastral Commission” and therefore required a previous investigation by that authority.

XXXIII. September 24, 2012: the Report of the Special Rapporteur on human rights analysis of economic and other land concessions in Cambodia is presented before the 21st session of the UN Human Rights Council. The SR stresses the multiple human rights violations linked to Economic Land Concessions under analysis. More precisely, he identifies access to land, police violence and water shortages as the main concerns.

XXXIV. October 21, 2012: CLEC, in conjunction with EarthRights International and with the assistance of the University of Wyoming Law School International Human Rights Law and Advocacy Practicum, brings a complain under the OECD guidelines for multinational enterprises against American Sugar Refining (ASR) - the US based owner of Tate & Lyle Sugars -, against the two shareholders behind ASR, and against the parent company of the majority shareholder. The case is filed before the U.S. National Contact Point on behalf of the members of the communities of Chikor, Chhuk and Trapeng Kendal, the same that filed the 2007 cases in the Provincial Court of Koh Kong.

XXXV. October 26, 2012: The European Parliament (EP) issues a resolution where it urges the Cambodian government to stop forced evictions and calls the European Commission to “investigate the escalation of human rights abuses in Cambodia as a result of economic land concessions [...] and to temporarily suspend preferences on agricultural products from Cambodia in cases where human rights abuses are identified.” In the joint motion, the EP makes reference to European and international treaties, but also to the latest reports by the UN Special Rapporteur on the condition of human rights in Cambodia, the

21st session of the UN Human Rights Council and to the joint letter sent by the coalition of NGOs on October 1, 2012 from. Starting from this moment, the link between trade policy, land grabbing and unequal allocation of land value is institutionalized.

XXXVI. March 18, 2013: the US National Contact Point (NCP) recognizes that the claims of human rights abuses advanced against ASR and the other three US-based companies are in bona fide and relevant, and therefore merited further consideration under the Guidelines.

XXXVII. March 28, 2013: 200 villagers and farmers residents of the Chikhor, Chhouk and Trapaing Villages in the province of Koh Kong in Cambodia file a case for conversion against Tate & Lyle plc and Tate & Lyle Sugars in the UK High Court. According to them, Koh Kong Companies (KPT and KSI) utilized land that was fully owned by the Villagers for the cultivation of sugar cane that was then processed in Cambodia at the Sre Ambel Mill (owned by KSI) and sold to T&L and TLS in 2009 and 2010. To the extent that T&L and TLS have acquired raw sugar processed from the sugar cane cultivated on land illegally subtracted to the villagers, they claim, they have “wrongfully deprived the villagers of the ownership, use and possession of the said sugar cane and has converted the same to its own use.

XXXVIII. April 11, 2013: ASR informs the US National Contact Point that it remains interested in pursuing a mediated dialogue with CLEC and ERI through the specific instance process, but that it would not participate in that process unless and until CLEC withdrew its UK civil suit.

XXXIX. May 17, 2013: CLEC and ERI refuse to accept ASR’s condition and state that they are seeking different remedies for different issues in each forum. The unity of the multiterritorial strategy of contestation structured by Cambodian and international civil society – mainly by CLEC – is protected against an attempt to separate it into its different branches.

XL. June 3-4, 2013: American Sugar Refining (ASR) and the other three US-based companies decide to withdraw from the OECD process because the communities refused to withdraw the lawsuit against T&L in the UK High Court. The NCP concludes that the conditions do not exist for the parties to advance to mediation and recommends ASR evaluate the issues raised by the NGOs and consider how to address them.

- XLII. July 8, 2013: Bonsucro suspends Tate & Lyle Sugars and demands the compliance with at least one of two conditions: a) Carrying out the third party review of compensation and additionally carrying out an independent third Party review of their supplier's compliance with TLS' own Code of Conduct OR b) Reaching a resolution of the dispute to both parties' satisfaction. TLS refused to cooperate.
- XLIII. August 5, 2013: the Special Rapporteur on the situation of human rights in Cambodia releases his latest report during the 24th session of the Human Rights Council. The Special rapporteur underlines that the Government of Cambodia is not adopting adequate measures to protect villagers' land rights, especially in the case of sugar plantations that benefit from the Everything But Arms initiative.
- XLIV. November 6, 2013: an enlarged coalition of sixteen domestic and international CSOs sends a new request to the Commissioner for Trade of the European Union to launch an investigation regarding the EBA scheme in Cambodia. Interestingly, the content of the letter rotates around the definition of the mandate and legal relevance of the Special Rapporteur on the condition of human rights in Cambodia. According to the coalition, the Paris Peace Accords of 1991 that established the institution of the Special Rapporteur identified it as a monitoring body. Therefore, the European Commission should consider the institution an 'international monitoring body' and therefore launch an investigation of the EBA as pledged in the response sent by the Trade Commissioner on August 14, 2012. As I will discuss in the next sections, the legal and political conflict between civil society and institutions reveals the strategic relevance of the UN bodies despite the lack of binding authority.
- XLV. January 16, 2014: the European Parliament issues a new resolution calling on the European Commission to urgently act on an EU preferential trade scheme found to have carried high risks of human rights violations in Cambodia through land evictions for industrial sugar development. In order to improve the EBA scheme and reduce the risk of trade-related human rights violations, the Parliament also proposes to consider obligating exporters seeking to take advantage of EBA privileges "to testify that they have not evicted people from their land and homes without adequate compensation." In its resolution, the EP reveals the role of civil society and UN bodies when it legitimizes its intervention by making reference to the report of the UN Special Rapporteur on the

situation of human rights in Cambodia of 5 August 2013 and to the report ‘Bittersweet harvest – A human rights impact assessment of the European Union’s Everything But Arms initiative in Cambodia’ released by Equitable Cambodia and Inclusive Development International in 2013.

XLV. June 2014: Tate & Lyle Sugars resigns from Bonsucro claiming not to be “able to play an active role in Bonsucro” until the conclusion of the court proceedings in the UK court.

XLVI. October 7, 2014: ten anonymous Cambodian represented by Richard Rogers, an international lawyer with a long experience in Cambodia and a past as Principal Defender at the UN’s Extraordinary Chambers in the Courts of Cambodia (ECCC) that trialed the Khmer Rouge leadership, file a criminal complaint is filed by at the International Criminal Court’s Office of the Prosecutor for crimes against humanity committed by the Cambodian ruling elite. The communication is structured around the idea that systemic land grabbing and forced evictions represent crimes against the humanity and that the ruling elite of the country (whose members are not individually identified) should be prosecuted for them because of their role and the economic and political benefit that they extracted from them. The communication does not exclusively concern the two cases of evictions occurred in the Koh Kong province, but the two Economic Land Concessions are listed among the various examples of well-documented forcible transfer.

XLVII. December 7, 2014: the European Commission decides to cooperate with the Cambodian government to “ensure redress” and restore “pre-project living standards and income levels” for those affected by evictions related to the EBA initiative. In particular, the EU will “fund technical expertise to develop a mechanism to audit claims in relation to sugarcane plantations in Cambodia, and ensure the implementation of any remedial that are found necessary.”

XLVIII. December 12, 2014: Forty NGOs—none of which is based in Cambodia— send a letter to the International Criminal Court (ICC) asking it to open a preliminary investigation into an October filing that accused the Cambodian “ruling elite” of crimes against humanity. This moment can be interpreted as the globalization of the struggle against ‘blood sugar’ and the creation of a transnational network of solidarity.

