



## COMPLAINT UNDER THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

October 2012

### I. INTRODUCTION

#### i. Identity and Interest of the Complainants

The Community Legal Education Center of Cambodia (CLEC), on behalf of members of the communities of Chikor, Chhuk, and Trapeng Kendal, in Chi Kha Leu Commune, Sre Ambel District, Koh Kong Province, Cambodia,<sup>1</sup> in conjunction with EarthRights International (ERI), and with the assistance of Matthew Stannard and Felicia Resor for the University of Wyoming Law School International Human Rights Law and Advocacy Practicum, bring this complaint alleging that American Sugar Refining Inc. (ASR), Florida Crystals, the Sugar Cane Growers Cooperative of Florida, and Fanjul Corporation (collectively “the Respondents”), have breached and will continue to breach a number of provisions of the OECD Guidelines for Multinational Enterprises (the “Guidelines”) related to their and their suppliers’ activities in Cambodia.

Four hundred and fifty-six families from the three villages listed above have lost approximately 5,000 hectares of land as a result of the forced evictions to make way for a sugar plantation in Sre Ambel. Today, two hundred and seven families that held legal possessory rights to 1,397.6 hectares remain either under-compensated or uncompensated. The Sre Ambel plantation supplies its *entire* product to the Respondents and their subsidiaries. Respondents have, through their actions and omissions, detracted from sustainable development in Sre Ambel; have contributed to human rights abuses through their own activities; and have failed to take reasonable measures to prevent or mitigate human rights abuses by other entities connected to them through business relationships. Specifically, they have contributed to the illegal confiscation of land without due process or adequate compensation and caused economic instability and food insecurity for households in the three villages.

CLEC is registered in Cambodia as a legal resource non-governmental organization (NGO) that specializes in land and natural resources, public interest legal advocacy, labor and good governance.

---

<sup>1</sup> For a list of the names of the individual complainants, see Annex A.

ERI is registered in the United States as a not-for-profit NGO specializing in protecting human rights and the environment, and corporate and government accountability.

## ii. Identity of the Corporations Involved

American Sugar Refining, Inc. (ASR), best known by its most famous brand, Domino, claims to be the world's largest sugar refiner, with a 6 million ton annual capacity.<sup>2</sup> ASR is a privately held company incorporated in Delaware and headquartered in New York.<sup>3</sup> On September 30, 2010, ASR acquired the European sugar operations of Tate & Lyle PLC.<sup>4</sup> Prior to this sale, in January 2010, Tate & Lyle signed a five-year contract with a Thai sugar company, Khon Kaen Sugar Industry Public Company Ltd. (KSL).<sup>5</sup> Under the terms of this agreement, KSL agreed to supply Tate & Lyle all of its output from Cambodia and Laos.<sup>6</sup>

Under this contract, ASR now purchases 100% of the sugar produced from the Sre Ambel plantation, built on economic land concessions in Cambodia granted to two companies: Koh Kong Plantation Co. Ltd. (KKPT) and Koh Kong Sugar Industry Co. Ltd. (KKSI). KSL currently holds a controlling 70% ownership stake in both KKPT and KKSI.<sup>7</sup> While the concessions were made to two separate companies with different corporate purposes (KKPT is a plantation company, while KKSI is supposed to process the sugar), the land is in fact a single contiguous plantation whose combined size is nearly twice the limit allowed for Economic Land Concessions under Cambodia's 2001 Land Law.<sup>8</sup> The two companies associated with the respective concession contracts occupy

---

<sup>2</sup> Press Release, American Sugar Refining, Inc., American Sugar Refining Completes Purchase of Tate & Lyle Sugars (Sept. 30, 2010), at <http://www.bloomberg.com/apps/news?pid=conewsstory&tkr=TLY:GR&sid=amV1hlIVNubg>.

<sup>3</sup> New York Dept. of State, Division of Corporations, Entity Information: American Sugar Refining, Inc., available at [http://appext9.dos.ny.gov/corp\\_public/CORPSEARCH.ENTITY\\_INFORMATION?p\\_nameid=1312003&p\\_corpid=1197896&p\\_entity\\_name=%41%6D%65%72%69%63%61%6E%20%53%75%67%61%72%20%52%65%66%69%6E%69%6E%67%20&p\\_name\\_type=%41&p\\_search\\_type=%42%45%47%49%4E%53&p\\_srch\\_results\\_page=0](http://appext9.dos.ny.gov/corp_public/CORPSEARCH.ENTITY_INFORMATION?p_nameid=1312003&p_corpid=1197896&p_entity_name=%41%6D%65%72%69%63%61%6E%20%53%75%67%61%72%20%52%65%66%69%6E%69%6E%67%20&p_name_type=%41&p_search_type=%42%45%47%49%4E%53&p_srch_results_page=0) (last accessed July 27, 2012).

<sup>4</sup> Julia Finch & Richard Wray, *Tate & Lyle's sugar division to be sold for £200m*, THE GUARDIAN, June 30 2010, available at <http://www.guardian.co.uk/business/2010/jun/30/tate-lyle-sugar-business-sale>; see also Tate & Lyle, *History*, <http://www.tateandlyle.com/aboutus/history/pages/history.aspx>.

<sup>5</sup> Jennifer Wells, *KSL set to double sugarcane output*, BANGKOK POST, Jan. 27, 2010, reprinted at <http://khmernz.blogspot.com/2010/01/ksl-set-to-double-sugarcane-output.html>.

<sup>6</sup> *Id.*

<sup>7</sup> KSL, *Annual Report 2011*, at 16, available at <http://www.kslsugar.com/contents/files/annualreport/annualreport-en-30042012-130902-686498.pdf>. Both KKPT and KKSI originally had more complicated ownership structures in which KSL or its executives were the largest shareholders and Ly Yong Phat, a powerful local Senator who has intervened on multiple occasions in the disputes described in this complaint, held a significant share. See Aranee Jasmin, *KSL Joins Partners in Cambodia Venture*, Bangkok Post, Aug. 7, 2006.

<sup>8</sup> Bridges Across Borders Cambodia, *Bittersweet: A Briefing Paper on Industrial Sugar Production, Trade and Human Rights in Cambodia* at 2 (Sept. 2010), available at <http://babcbodia.org/developmentwatch/cleansugarcampaign/bittersweet.pdf>. It is common in Cambodia for the government to circumvent the size limits on Economic Land Concessions by granting more than one concession to companies controlled by the same person. See Cambodian League for the Promotion and Defense of Human Rights

the same office and applied for the concession, received approval, and signed the concession contracts on the same days.<sup>9</sup>

Florida Crystals Corp. owns 64% of ASR;<sup>10</sup> it is also privately held, and incorporated in Delaware.<sup>11</sup> Florida Crystals has a production capacity of 7 million tons of sugar per year and operations in Florida, California, Louisiana, New York, Maryland, Canada, Mexico, England, and Portugal. It sells sugar under the brand names of Domino, C&H, Florida Crystals, Redpath, Jack Frost, and Tate & Lyle.<sup>12</sup>

The Sugar Cane Growers Cooperative of Florida owns 36% of ASR.<sup>13</sup> It is a cooperative composed of 54 grower-members and provides a number of crucial services that otherwise might not be available to individual growers, such as marketing, harvesting, transportation, technical advice, processing, and power generation.<sup>14</sup>

Fanjul Corporation, previously Flo-Sun, is the parent company of Florida Crystals and the ultimate parent company of ASR; it is privately held and incorporated in Florida. The company was founded in 1987. It produces and markets sugar, and owns hotels and resorts through its subsidiaries. The company's holdings include over 400,000 acres of land, hotels and resorts, an airport in the Dominican Republic and the largest renewable energy power plant in North America. In 2011, it was estimated that Fanjul's annual revenue was \$2.5 billion.<sup>15</sup>

## II. FACTUAL ALLEGATIONS

### A. Background on forced evictions in the Cambodian context

The World Bank, representatives of foreign governments, the United Nations, the Asian Development Bank and other international development partners confirmed in 2009 that forced evictions are a significant development issue in Cambodia. In a joint statement, these entities took

---

(LICADHO), *Land Grabbing in Cambodia: The Myth of Development* at 17 (May 2009), available at <http://www.licadho-cambodia.org/reports/files/134LICADHOREportMythofDevelopment2009Eng.pdf>.

<sup>9</sup> Agreement for Plantation of Sugar Cane and Processing Factory of Sugar Cane Between the Ministry of Agriculture, Forestry and Fisheries and Koh Kong Sugar Industry Company Limited, 2 August 2006, attached as Annex B; Agreement for Plantation of Sugar Cane and Processing Factory of Sugar Cane Between the Ministry of Agriculture, Forestry and Fisheries and Koh Kong Sugar Industry Company Limited, 2 August 2006, attached as Annex C.

<sup>10</sup> See Press Release, Florida Crystals, American Sugar Refining Acquires Tate & Lyle Canada – Redpath Sugar (Feb. 14, 2007), at <http://www.floridacrystals.com/mm/files/2-14-07%20Redpath.pdf>.

<sup>11</sup> See Florida Department of State, Division of Corporations, Detail by Entity Name: Florida Crystals Corp., at [http://www.sunbiz.org/scripts/cordet.exe?action=DETFIL&inq\\_doc\\_number=F98000003003&inq\\_came\\_from=NA\\_MFWD&cor\\_web\\_names\\_seq\\_number=0000&names\\_name\\_ind=&names\\_cor\\_number=&names\\_name\\_seq=&names\\_name\\_ind=&names\\_comp\\_name=FLORIDACRYSTALS&names\\_filing\\_type=](http://www.sunbiz.org/scripts/cordet.exe?action=DETFIL&inq_doc_number=F98000003003&inq_came_from=NA_MFWD&cor_web_names_seq_number=0000&names_name_ind=&names_cor_number=&names_name_seq=&names_name_ind=&names_comp_name=FLORIDACRYSTALS&names_filing_type=) (last accessed July 27, 2012).

<sup>12</sup> Florida Crystals, *Our Story*, <http://www.floridacrystals.com/content/131/our-story.aspx>.

<sup>13</sup> Florida Crystals Press Release, *supra* note .

<sup>14</sup> Sugar Cane Growers Cooperative of Florida, *Who We Are*, at <http://www.scgc.org/xwho.html>; Sugar Cane Growers Cooperative of Florida, *What We Do*, at [http://www.scgc.org/xwho\\_what.html](http://www.scgc.org/xwho_what.html).

<sup>15</sup> See Kyle Daly, *The Fanjuls: The Koch brothers of South Florida?*, *THE FLORIDA INDEPENDENT*, Mar. 31, 2011, at <http://floridaindependent.com/25447/the-fanjuls-the-koch-brothers-of-south-florida>.

note of “policies and practices that do not reflect good international practice in dispute resolution and resettlement and do not make effective use of the procedures and institutions allowed for in Cambodian law.”<sup>16</sup> As international and Cambodian non-governmental organizations have confirmed through numerous investigative reports in recent years, Cambodians – both rural and urban – face an epidemic of forced evictions by rich and powerful economic and political actors, often in the name of “development.”<sup>17</sup> This is a problem acknowledged by Prime Minister Hun Sen himself, as he recently imposed a moratorium on granting economic land concessions (ELCs) and called for the cancellation of ELCs that did not abide by law or contractual agreements.<sup>18</sup>

Cambodia’s internal turmoil during the 1970s and 80s led to large-scale displacement and insecurity of land tenure. Then, in the 1990s, with the adoption of a market economy, land became a commodity for speculators and a lucrative opportunity for corrupt officials at the local and national level.<sup>19</sup> LICADHO, a Cambodian NGO, estimates that more than one-tenth the population of Phnom Penh, Cambodia’s capital, has been evicted since 1990, and that over 250,000 people have been dispossessed due to land grabs and evictions in the provinces where LICADHO has offices.<sup>20</sup>

In August 2011, the World Bank announced that it would suspend all future lending to Cambodia due to the government’s handling of a project that would turn the Boeung Kak Lake in Phnom Penh into a high-end real estate development. The World Bank, which had been involved in a nation-wide land titling initiative that started to map the land in lawful possession of the Boeung Kak residents, acknowledged that the government had granted the lease to a company with ties to Senator Lao Meng Khin, who is close to Prime Minister Hun Sen. The grant of the lease effectively meant the eviction of four thousand families. The World Bank Inspection Panel found that the Bank had violated many of its own safeguards meant to prevent the loss of land and called for the provision of on-site upgrades for affected communities at the site.<sup>21</sup>

---

<sup>16</sup> See World Bank Group, *Development Partners Call for Halt to Evictions of Cambodia's Urban Poor*, July 16, 2009, at <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/EASTASIAPACIFICEXT/CAMBODIAEXTN/0,,contentMDK:22318611~pagePK:1497618~piPK:217854~theSitePK:293856,00.html>.

<sup>17</sup> See, e.g., DanChurchAid, *Stolen Land Stolen Future: a Report on Land Grabbing in Cambodia and Honduras* (Oct. 2011); LICADHO 2009, *supra* note ; Land and Housing Working Group, Cambodia, *Land and Housing Rights in Cambodia – A Parallel Report* (April 2009), available at <http://babcbodia.org/reports/docs/CESCR%20Land%20and%20Housing%20Parallel%20Report.pdf>; Amnesty International, *Rights Razed – Forced Evictions in Cambodia* (Feb. 2008), available at <http://www.amnesty.org/en/library/info/ASA%2023/002/2008>.

<sup>18</sup> Royal Gov’t of Cambodia, Order No. 01 BB, Measures to Strengthen and Increase the Effectiveness of the Management of Economic Land Concessions (May 7, 2012), informal translation attached as Annex D.

<sup>19</sup> See DanChurchAid 2011, *supra* note , at 8-9.

<sup>20</sup> LICADHO 2009, *supra* note , at 1.

<sup>21</sup> Guy De Launey, *Cambodia lake battle: How Boeung Kak became a puddle*, BBC, Aug. 14, 2011, available at <http://www.bbc.co.uk/news/business-14488100>; See also Mark Tran, *World bank suspends new lending to Cambodia over eviction of landowners*, The Guardian, Aug. 10, 2011, available at <http://www.guardian.co.uk/global-development/2011/aug/10/world-bank-suspends-cambodia-lending>, citing World Bank, *World Bank Board of Executive Directors Considers Inspection Panel Report on Cambodia Land Management and Administration Project*, March 8, 2011, available at <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/EASTASIAPACIFICEXT/CAMBODIAEXTN/0,,contentMDK:22851984~menuPK:293861~pagePK:2865066~piPK:2865079~theSitePK:293856,00.html>.

## B. Economic Land Concessions

In the countryside, a principal vehicle for land grabbing has been the economic land concession (ELC), a form of concession in which local residents are displaced in order to give land to private companies for agricultural and industrial development.<sup>22</sup> However, Article 4 of the Sub-decree on Economic Land Concession stipulates that an ELC is permissible only if the following requirements are met: the land has been registered and classified as state private land; a land use plan has been adopted by the Provincial State Land Management Committee; environmental and social impact assessments have been completed; there is no involuntary resettlement of lawful landholders; and there has been a public consultation between territorial authorities and residents of the land.<sup>23</sup>

In addition to the legal prerequisites for eligibility of land for an ELC, regulations constrain the size of concessions. Although ELCs are not supposed to exceed 10,000 hectares in area,<sup>24</sup> ELC grantees often circumvent this limit either by registering oversized concessions or by registering multiple (and often contiguous) concessions in favor of the same person or related persons. The Koh Kong sugar plantation ELC, for example, consists of two contiguous concessions granted to two different companies, which are both controlled by KSL and function as a single business entity.<sup>25</sup>

In a 2007 report on land concessions in Cambodia, the United Nations Special Representative of the Secretary-General for Human Rights in Cambodia concluded: “Instead of promoting rural development and poverty reduction, economic land concessions have compromised the rights and livelihoods of rural communities in Cambodia.”<sup>26</sup> The report was able to conclude, despite the lack of precise data on smaller concessions, that at least 14% of all arable land in Cambodia was subject to ELCs as of the end of 2006.<sup>27</sup>

The U.N. Special Rapporteur on the Situation of Human Rights in Cambodia, Professor Surya Subedi, recently concluded a mission focused on the assessment of the human rights impact of ELCs. In an initial statement published on May 11, 2012, the Special Rapporteur recognized that

---

<sup>22</sup> *Id.* at 16.

<sup>23</sup> Royal Gov't of Cambodia, Sub-Decree #146 on Economic Land Concessions, art. 4 (Dec. 27, 2005), *informal translation available at* [http://www.cambodiainvestment.gov.kh/sub-decree-146-on-economic-land-concessions\\_051227.html](http://www.cambodiainvestment.gov.kh/sub-decree-146-on-economic-land-concessions_051227.html).

<sup>24</sup> Royal Gov't of Cambodia, Land Law of 2001, art. 59, *translation available at* <http://www.gocambodia.com/laws/data%20pdf/Law%20on%20Land/Law%20on%20Land,%202001%28EN%29.pdf>

<sup>25</sup> Other examples include a 60,000 hectare concession to a Korean company in 2008, and the concessions owned by Senator Lao Meng Khim totaling over 300,000 hectares, which were granted prior to the enactment of the 2001 Land Law but are supposed to be reviewed and reduced pursuant to its provisions. *See* DanChurchAid, *supra* note 17, at 17.

<sup>26</sup> United Nations Special Representative of the Secretary-General for human rights in Cambodia (“SRSG”), *Economic land concessions in Cambodia: A human rights perspective*, at 20 (June 2007), *available at* <http://cambodia.ohchr.org/EN/PagesFiles/Reports/Thematic-Reports.htm>. For a recent analysis of the human rights impacts of ELCs, see Surya P. Subedi, United Nations Special Rapporteur on the situation of human rights in Cambodia, *A human rights analysis of economic and other land concessions in Cambodia*, U.N. Doc. A/HRC/21/63/Add.1 (Sept. 24, 2012).

<sup>27</sup> *Id.* at 6-7.

while a legal framework governing the granting and management of land concessions exists, it is not being applied properly in some cases. He also called attention to the role of local and foreign companies operating in Cambodia in relation to the Guiding Principles on Business and Human Rights, and highlighted the misconduct by concession companies or their subcontractors.<sup>28</sup>

ELCs lead to a wide range of negative impacts on communities, including food insecurity,<sup>29</sup> loss of access to means of livelihoods such as timber and other forest products,<sup>30</sup> environmental destruction,<sup>31</sup> and loss of areas of cultural significance for indigenous tribes.<sup>32</sup> Community members who protest their displacement may find themselves the subject of criminal charges or even violence by military forces assisting in the eviction.<sup>33</sup>

As of June 2012, the Ministry of Agriculture, Forestry and Fisheries (MAFF) had listed 117 companies as having signed ELCs with the Ministry over a total land surface of 1,181,522 hectares – or almost 44% of all reasonably productive arable land in the country. This list does not include agricultural concessions that have been known to exist for several years, but that were granted by authorities other than the MAFF.<sup>34</sup>

### C. *The Koh Kong Sugar Plantation*

In March 2006, the Cambodian Council of Ministers agreed in principle to award ELCs to two companies, KCSI and KKPT, to develop sugar plantations and refinery operations in Botumsakor and Sre Ambel Districts, in Koh Kong Province.<sup>35</sup> KCSI and KKPT received contiguous concessions of nearly 10,000 hectares each.<sup>36</sup> These two economic land concessions were granted in August 2006 on land legally in possession of communities, without any public consultation.<sup>37</sup>

#### 1. *Illegal Forced and Violent Evictions*

Although the Cambodian government is authorized to grant state-owned land to private developers for ELCs, the villagers' whose land was granted to the Koh Kong sugar plantation have well-documented possession rights to the land pursuant to the Cambodian Land Law of 2001.<sup>38</sup>

---

<sup>28</sup> Prof. Surya P. Subedi, United Nations Special Rapporteur on the situation of human rights in Cambodia, Public Statement (May 11, 2012), *available at* <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12144&LangID=E>.

<sup>29</sup> SRSG 2007, *supra* note , at 12-13.

<sup>30</sup> *Id.* at 13-14.

<sup>31</sup> *Id.* at 15.

<sup>32</sup> *Id.* at 14-15, 17.

<sup>33</sup> LICADHO 2009, *supra* note , at 20-21.

<sup>34</sup> Subedi 2012, *supra* note 26, ¶ 82.

<sup>35</sup> SRSG 2007, *supra* note 26, at 9.

<sup>36</sup> BABC 2010, *supra* note , at 2.

<sup>37</sup> SRSG 2007, *supra* note , at 12.

<sup>38</sup> Land Law of 2001, *supra* note , art. 30. (“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.”)

Residence booklets prove that the villagers inhabited the land for more than five years prior to their forced removal. Moreover, maps produced in the course of a land-use mapping project in the area clearly show the land was being used as farmland at the time of the forced eviction.<sup>39</sup> Although the villagers had not yet obtained definitive title, the Land Law prohibits interference with possession rights pending conversion into legal title. Although the law requires a public consultation, an environmental impact assessment, and a resettlement plan prior to the granting of an ELC,<sup>40</sup> according to the villagers, none of these steps took place at Koh Kong.<sup>41</sup>

Even before the concession contracts were signed, the companies arrived in Sre Ambel and began forcibly evicting villagers, in many cases destroying their rice fields, orchards, and grazing lands.<sup>42</sup> Four hundred and fifty-six families from three villages – Chikor, Chhuk and Trapeng Kendal in Chi Kha Leu Commune, Sre Ambel District, Koh Kong Province – lost approximately 5,000 hectares of land. Currently, two hundred and seven families that held legal possessory rights to 1,397.6 hectares remain either under-compensated or uncompensated as a result of the economic land concessions and forced evictions. The evictions were accompanied by police violence that resulted in assaults on five villagers, including beatings with rifle butts, and the shooting of at least two individuals.<sup>43</sup>

## 2. *Livelihoods Impacts*

The forced evictions have had lasting and severe effects on the livelihoods and economic opportunities of the displaced people of Sre Ambel. The ongoing impacts to the lives of Sre Ambel community members, which include food insecurity, loss of land, loss of housing, health impacts, and loss of livelihood and educational opportunities, are set forth in detail below.

At the time of the forced evictions, beginning in 2006, no settlement plan, nor any consultation, was offered to the landowners at Sre Ambel. The impacts of both evictions and sugar operations on the land contravene the principles of sustainable development. They include a loss of land for agriculture and livestock, leading to food insecurity. One dispossessed farmer explains, “I do not have enough to eat just farming rice on a little bit of land.”<sup>44</sup> In another example, prior to being evicted, one farmer’s land produced adequate cashew nuts and jackfruit to support him and his family; subsequently, he has been reduced to making and selling small coconut cakes. “It is difficult now and we are scared,” he reports.<sup>45</sup> Left without grazing land, families’ livestock – which are

---

<sup>39</sup> See Annex E for concession map.

<sup>40</sup> Royal Gov’t of Cambodia, Sub-decree No. 146 on Economic Land Concessions, arts. 4(3) - (5) (Dec. 27, 2005), *informal translation available at* [http://www.cambodiainvestment.gov.kh/sub-decree-146-on-economic-land-concessions\\_051227.html](http://www.cambodiainvestment.gov.kh/sub-decree-146-on-economic-land-concessions_051227.html); *see also*.

<sup>41</sup> *See* SRSG 2007, *supra* note , at 12

<sup>42</sup> *Id.* at 9; Asian Human Rights Commission (AHRG), *CAMBODIA: Two villagers shot and several injured during the illegal forced eviction in Koh Kong* (June 2006), *available at* <http://www.ahrchk.net/ua/mainfile.php/2006/1998/>; Cambodian Human Rights Action Committee (“CHRAC”), *Losing Ground: Forced Evictions and Intimidation in Cambodia* at 15 (Sept. 2009), *available at* <http://www.scribd.com/doc/25917279/Losing-Ground-FINAL-compressed>.

<sup>43</sup> AHRG 2006, *supra* note 42.

<sup>44</sup> *Id.* at 15.

<sup>45</sup> CHRAC 2009, *supra* note 42, at 17.

often important sources of wealth – grow thin and weak, forcing their owners to sell them at a loss.<sup>46</sup> Even the livestock that families manage to keep have become sources of loss. When cows stray onto land that has been seized by the companies; personnel from the companies have held livestock for ransom until the owners pay onerous fines.<sup>47</sup> In a number of cases, company personnel have shot stray livestock and have refused to pay compensation.<sup>48</sup>

A further consequence of company personnel taking livestock has been the loss of education opportunities. Families in the three villagers report being forced to withdraw their children from school to watch the cows and prevent them from straying onto land that has been taken over by the companies.<sup>49</sup>

Finally, as land confiscation has precluded their formerly sustainable livelihoods, villagers have had to turn to less stable and often inadequate alternatives. A study of the livelihoods impacts of the Koh Kong plantations found that many – if not most – households had lost their original means of livelihood and now survived at least in part by working for the plantation; work that is seasonal and may pay less than their previous livelihood strategies.<sup>50</sup> Others, like the farmer described above who now sells coconut cakes, have even fewer sustainable livelihood options.

Villagers report that much of the land claimed for the plantation has not yet been planted. It is difficult to verify this claim, because the Koh Kong companies do not allow access to the land. However, if it is true, this is important on two levels. First, it appears the companies cleared and planted on the lands possessed by villagers *before* clearing and planting the fallow land of the ELCs that was uncultivated. Second, this fact indicates that there may still be available land to grant to villagers as part of settlement negotiations.

The Thai National Human Rights Commission (TNHRC) recently confirmed the occurrence of violations and resulting impacts described above. In its investigation of the Thai company KSL, with which Tate & Lyle contracted to purchase sugar from Koh Kong, the TNHRC made initial findings of breaches of human rights principles and instruments. The TNHRC identified “a failure to uphold the people’s right to development, which includes their right to participate in, contribute to and enjoy economic, social, cultural and political development.”<sup>51</sup>

---

<sup>46</sup> *Id.* at 15, 18.

<sup>47</sup> *Id.* at 15.

<sup>48</sup> *Id.*; BABC 2010, *supra* note , at 3.

<sup>49</sup> BABC 2010, *supra* note , at 3. The UN Special Rapporteur on the situation of human rights in Cambodia, Surya P. Subedi, also noted that children have been withdrawn from school to work in order to help their families cope with reduced livelihoods due to the impacts of the Koh Kong land concession in a recent report. *See* Subedi 2012, *supra* note 26, ¶ 175 & n.251.

<sup>50</sup> Ngo Sothath & Chan Sophal, *Does Large Scale Agricultural Investment Benefit the Poor?* 28-34, Cambodian Economic Association Research Report 2 (July 2010), *available at* [http://www.cea.org.kh/index.php?option=com\\_docman&task=doc\\_details&gid=11&Itemid=4](http://www.cea.org.kh/index.php?option=com_docman&task=doc_details&gid=11&Itemid=4).

<sup>51</sup> National Human Rights Commission of Thailand, 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, July

#### *D. Involvement of Respondents*

ASR and its parent companies are under an obligation to avoid contributing to conduct inconsistent with the Guidelines and to use their leverage to mitigate such conduct arising out of their business relationships. ASR took on this obligation when it acquired Tate & Lyle's European sugar operations in 2010. Respondents had a responsibility to exercise due diligence prior to their acquisition of a business supplied by Cambodian sugar, an industry which, by the time of the sale, was the subject of public criticism for illegal land concessions and forced evictions. Prior to the sale of the European sugar operations to ASR, the CLEC made Tate & Lyle directly aware of the allegations of violations of the rights of the complainants. ASR was thus on notice and therefore had a duty to investigate human rights complaints surrounding the purchase, particularly given the extensive international media coverage and statements by the United Nations Office of the High Commissioner on Human Rights on forced evictions in Cambodia associated with economic land concessions.<sup>52</sup>

ASR's actions in failing to supervise its supply chain and perform due diligence in its acquisition of Tate & Lyle's sugar operations are inconsistent with General Policy A.1 (Contribute to economic, environmental and social progress with a view to achieving sustainable development); General Policy A.2 (Respect the internationally recognized human rights of those affected by their activities); General Policy A.10 and Principle IV.5 (Carry out risk-based due diligence); General Policy A.11 (Avoid causing or contributing to adverse impacts); General Policy A.12 and Principle IV.3 (Seek to prevent or mitigate an adverse impact where they have contributed to that impact through their business relationships); and Principle IV.6 (provide for or cooperate with legitimate grievance mechanism). Moreover, ASR ignores the Guidelines' exhortations under General Policies B, which "encourage" enterprises to support multi-stakeholder initiatives, seek to mitigate human rights abuses regardless of whether the enterprise directly contributed to those abuses, and maintain a contextually appropriate policy of due diligence and remediation to address adverse human rights impacts.

#### *E. Previous Community Efforts to Resolve the Dispute*

The inhabitants of the three villages and those working on their behalf have taken various measures in order to resolve the dispute and seek redress and fair compensation. After several protests, on November 12, 2006, KKPT and KCSI agreed to stop clearing land where villagers had clear evidence of possession, but resumed clearing land shortly thereafter. In February 2007, community members represented by the Community Legal Education Center of Cambodia (CLEC) filed civil and criminal complaints against KKPT and KCSI in the Koh Kong Provincial Court, seeking cancellation of the ELC contract. In March 2007, villagers filed a motion requesting an injunction to bar the companies from continued clearance of the land. The criminal cases were dismissed, and the civil case has been stalled for over five years, with the first court hearing set more than three years after the case was filed. On July 26, 2012, a long-delayed hearing at the Koh Kong Provincial Court

---

25, 2012, attached as Annex F. *See also* Subedi 2012, *supra* note 26 (TNHRC's investigation of KSL's responsibility for human rights abuses at Koh Kong represents "a landmark case for international advocacy in Cambodia").

<sup>52</sup> SRSG 2007, *supra* note .

was again delayed indefinitely; the reason given was that plantation companies' attorneys had failed to appear and that a small percentage of the complainants had decided to accept compensation (at below-market rates) and withdraw their complaints.<sup>53</sup> In September 2012, the judge overseeing the case transferred it *sua sponte* to the Cadastral Committee, reasoning that the court did not have competence over land claims. The plaintiffs are currently seeking intervention from the Ministry of Justice to have the case remanded to the court, as the case primarily concerns the legality of the ELC contract rather than the ownership of land. See Annex G for a Court Timeline. In March 2007, villagers traveled to Phnom Penh to submit complaints to the National Assembly, the Ministry of the Interior, the Council of Ministers, and other government bodies. Ensuing discussions with various government bodies continued over the next two years without resolution.

Cambodia's development partners have publicly stated that a fair and transparent mechanism for resolving land disputes does not currently exist in the country.<sup>54</sup> The United Nations and World Bank, among other development organizations, have stated that prevailing policies and practices do not reflect good international practice in dispute resolution and resettlement and do not make effective use of the procedures and institutions provided for in Cambodian law.<sup>55</sup> A USAID corruption assessment describes Cambodian court proceedings as overly complex and dilatory, causing a general distrust in the legal system among the public.<sup>56</sup>

Therefore, having encountered little success engaging domestic judicial and political dispute resolution mechanisms, the villagers of Sre Ambel and those working on their behalf have turned to various foreign and international bodies in their efforts to resolve the ongoing dispute:

1. In January 6, 2010, the communities filed a complaint against KSL<sup>57</sup> with the Thai National Human Rights Commission (TNHRC). The TNHRC has recognized its authority to investigate the operations of KSL, a Thai company, and released a preliminary finding in July 2012 that found enough evidence to support "a reasonable belief that human rights principles and instruments were breached in this case."<sup>58</sup> Investigation of the complaint against KSL is ongoing but does not reach Tate & Lyle or the Respondents.
2. In October 19, 2010, the communities brought their dispute to the attention of the Chairperson of the Thai Working Group for ASEAN Human Rights Mechanism to request for an investigation on the activities of KSL in Koh Kong.<sup>59</sup> No response was received on the matter.

---

<sup>53</sup> See Kuch Neren & Dene-Hern Chen, *Koh Kong Land Dispute Case Delayed Again*, CAMBODIA DAILY, July 26, 2012.

<sup>54</sup> See World Bank Group 2009, *supra* note .

<sup>55</sup> *Id.*

<sup>56</sup> Michael M. Calvan et al., *Cambodian Corruption Assessment 3* (May-June 2004) (prepared for USAID/Cambodia), available at <http://www.globalsecurity.org/military/library/report/2004/cambodian-corruption-assessment.pdf>.

<sup>57</sup> This action was brought prior to ASR's acquisition of Tate & Lyle European Sugar.

<sup>58</sup> TNHRC Findings, *supra* note 51.

<sup>59</sup> Letter to the Chairperson of the Thai Working Group for ASEAN Human Rights Mechanism, October 19, 2010, attached as Annex H.

3. In 2010, the CLEC sent a series of letters to various units of the European Commission to ask for an investigation of Tate & Lyle's contract with KSL under the EU's Everything But Arms initiative. Other than making contact with the Cambodian government about the issue, no resolution has been reached through this channel.<sup>60</sup>
4. In January 20, 2011, the communities filed a complaint with the Grievance and Complaints Committee of Bonsucro (then called Better Sugarcane Initiative) against Bonsucro member Tate & Lyle. This process is still ongoing, but Tate & Lyle has thus far refused to engage in dialogue.<sup>61</sup>

In addition to engaging international dispute resolution bodies, the communities have sought to engage the KSL and its purchasers directly. CLEC sent two letters directly to KSL in 2008; the latter contained documentary evidence of evictions in Sre Ambel. KSL never replied to the second letter.<sup>62</sup> On July 13, 2010, CLEC sent a letter to the Board of Directors of Tate & Lyle reporting human rights abuses in Koh Kong. This was followed by a letter dated July 28, 2010, from CLEC and other Cambodian NGOs to the Tate & Lyle Board of Directors requesting information on the company's involvement with KSL. In its September 5, 2010, response to the July 28 NGO letter, Tate & Lyle stated that it had sold its sugar business to ASR and that it will make the correspondence known to the new owner. The sale to ASR was again mentioned in Tate & Lyle's October 4, 2010, response to CLEC. On December 6, 2010, CLEC and other Cambodian NGOs wrote to ASR asking about its involvement in Koh Kong. More letters were sent by CLEC to ASR executives in June 2012, again asking for information on the purchase of sugar from the Cambodian plantations. No responses have been received from ASR.<sup>63</sup>

None of the above-mentioned efforts has resulted in resolution of the communities' dispute with KSL and its purchasers. However, a minority of families has accepted compensation at below-market rates out of desperation resulting from their deteriorating economic condition and their losing hope that an adequate resolution will be found more than six years after their land was taken.<sup>64</sup>

### III. SPECIFIC BREACHES OF THE GUIDELINES BY ASR, FLORIDA CRYSTALS, SUGAR CANE GROWERS COOPERATIVE OF FLORIDA, AND FANJUL CORPORATION

#### General Policies A

---

<sup>60</sup> Letter to Vivienne Reding, European Commission Vice-President in charge of Justice, Fundamental Rights and Citizenship, July 13, 2010, attached as Annex I; Letter to Rafael Dochao Moreno, Delegation of the European Commission to the Kingdom of Cambodia, September 29, 2010, attached as Annex J; Letter to the European Commission, September 29, 2010, attached as Annex K.

<sup>61</sup> Letter to Better Sugar Cane Initiative, January 20, 2011, attached as Annex L.

<sup>62</sup> Copies of all correspondence between the communities and KSL are attached as Annex M.

<sup>63</sup> Copies of all correspondence between the communities, and Tate & Lyle and ASR are attached as Annex N.

<sup>64</sup> Sothath & Sophal 2010, *supra* note 50, at 2. Approximate 36% of households had received compensation as of July 2010, but the level of compensation was inconsistent and rejected as inadequate by a majority of villagers. *Id.*

- **General Policy A.1: Enterprises should contribute to economic, environmental and social progress with a view to achieving sustainable development.**

Informed by the foundational value of “mutual confidence between enterprises and the societies in which they operate,”<sup>65</sup> General Policy A.1 encourages enterprises to further the goal of achieving sustainable development. The Commentary to the Guidelines explains that “[t]here should not be any contradiction between the activity of multinational enterprises (MNEs) and sustainable development.” The Commentary further stresses the necessary link between “economic, social, and environmental progress.”

Commonly accepted definitions of sustainable development are contained in the 1987 Brundtland Report, the Rio Declaration, and United Nations Agenda 21. The Brundtland Report defines “sustainable development” as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”<sup>66</sup> The Report further describes that “[s]ustainable development requires meeting the basic needs of all and extending to all the opportunity to satisfy their aspirations for a better life.”<sup>67</sup> This definition is enshrined in Rio Declaration Principle 3, and further elaborated throughout the Declaration.<sup>68</sup> The Rio Declaration sets forth essential principles of sustainable development, including: 1) the “integral” role of environmental protection in the development process (Principle 4); 2) the “eradicat[ion] [of] poverty as an indispensable requirement” (Principle 5); 3) the “effective participation” of indigenous peoples (Principle 22); and 4) that human beings be “at the centre of concerns for sustainable development” (Principle 1).<sup>69</sup>

These principles are further defined in UN Agenda 21, which sets forth a comprehensive action plan for achieving worldwide sustainable development.<sup>70</sup> This includes: 1) “combating poverty” and “enabling the poor to achieve sustainable livelihoods” (Ch. 3); 2) “protecting and promoting human health” (Ch. 6); 3) “integrating environment and development in decision-making” (Ch. 8); and “recognizing and strengthening the role of indigenous people and their communities” (Ch. 26).<sup>71</sup>

Far from contributing to sustainable development, the activities of ASR’s suppliers and the exclusive supply contract from which the Respondents benefit has allowed powerful economic actors to displace residents from land that supported a flourishing, diverse rural economy. The companies have replaced that economy with a monoculture plantation that provides limited, low-paying

---

<sup>65</sup> Organization for Economic Cooperation and Development, *OECD Guidelines for Multinational Enterprises*, Preface ¶ 1 (2011 ed.).

<sup>66</sup> United Nations, *Report of the World Commission on Environment and Development: Our Common Future* (“Brundtland Report”), ch. 2, ¶ 1 (1987), available at [http://conspect.nl/pdf/Our\\_Common\\_Future-Brundtland\\_Report\\_1987.pdf](http://conspect.nl/pdf/Our_Common_Future-Brundtland_Report_1987.pdf).

<sup>67</sup> *Id.* ch. 2, ¶ 4.

<sup>68</sup> Report of the United Nations Conference on Environment and Development, June 3-14, 1992, Rio Declaration on Environment and Development, Annex I princ. 4, U.N. Doc A/CONF.151/26 (Vol. I) (1992).

<sup>69</sup> *Id.*

<sup>70</sup> *Agenda 21*, adopted by the United Nations Conference on Environment and Development, June 3-14, 1992, U.N. Dept. Econ. & Soc. Affairs, available at <http://www.un.org/esa/sustdev/documents/agenda21/english/agenda21toc.htm#sec1>.

<sup>71</sup> *Id.*

employment and have left much previously farmed land fallow, where it remains unused by anyone. Livelihoods strategies that were largely self-sustaining and allowed for both small-scale agriculture and livestock have become impossible, relegating villagers to reliance on seasonal, often poorly-paid labor and sale of prepared foods. Farmers who previously made an ample living now worry about eking out enough to feed their families. This new economic reality is neither environmentally nor socially sustainable for the Sre Ambel communities.

**General Policy A.2- Enterprises should respect the internationally recognized human rights of those affected by their activities.**

Enterprises are expected to know human rights violations when they see them.<sup>72</sup> General Policy A.2 states that enterprises should “respect the human rights of those affected by their activities consistent with the host government’s international obligations and commitments.” Cambodia ratified the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1992. Article 17<sup>73</sup> of the ICCPR essentially states that no one should be subject to arbitrary interference in their home and should be protected by law against such interference. Article 11<sup>74</sup> of the ICESCR requires States to recognize the right to an adequate standard of living, including housing and the continuous improvement of living conditions.

Protection against forced relocation, also commonly referred to as forced displacement, is not explicitly guaranteed in these treaties, but the protection against arbitrary displacement or relocation without adequate legal protection or compensation is accepted as a norm of customary international law through the expression of other derivative basic human rights, such as the freedom of movement, freedom from interference with one’s home, and the right to housing.<sup>75</sup> The United Nations Committee on Economic, Social, and Cultural Rights has explicitly recognized the

---

<sup>72</sup> 2011 OECD Guidelines, *supra* note 65, Commentary ¶ 12.

<sup>73</sup> International Covenant on Civil and Political Rights art. 17, opened for signature Dec. 16, 1966, art. 13, S. Exec. Doc. E, 95-2, at 27 (1978), 999 U.N.T.S. 171, 176 (entered into force Mar. 23, 1976) (“No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation . . . Everyone has the right to the protection of the law against such interference or attacks”).

<sup>74</sup> *Id.* art. 11 (“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, clothing and housing, and to the continuous improvement of 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”).

<sup>75</sup> See Marco Simons, *The Emergence of a Norm Against Arbitrary Forced Displacement*, 34 COLUM. HUMAN RIGHTS L. REV. 95 (2002). Universal Declaration of Human Rights art. 12, 13(1), 17, & 25(1), G.A. Res. 217A, U.N. GAOR, 3d Sess., pmbll., U.N. Doc. A/810 (1948); ICCPR, *supra* note 73, arts. 12(3) and 17; International Covenant on Economic, Social and Cultural Rights (ICESCR) art.11, opened for signature Dec. 16, 1966, S. Treaty Doc. No. 95-2, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976); Convention on the Rights of the Child (CRC) art. 27, Nov. 20, 1989, 1577 U.N.T.S. 3; Convention on the Elimination of All Forms of Discrimination against Women art. 14 ¶ 2(h), Dec. 18, 1979, 1249 U.N.T.S. 13; International Convention on the Elimination of All Forms of Racial Discrimination art. 5(e)(iii), Mar. 12, 1963, 660 U.N.T.S. 13; International Labour Organisation [ILO], Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries art. 16, June 27, 1989, 28 I.L.M. 1382 (entered into force Sept. 5, 1990).

connection between forced eviction and the violation of the basic human rights to housing and other economic and social rights.<sup>76</sup>

Additionally, Cambodia is a signatory to the Convention on the Rights of the Child (CRC), which protects the right of every minor to be free from “arbitrary or unlawful interference with his or her privacy, family, or correspondence,”<sup>77</sup> a right that prohibits the arbitrary forcible relocation of families and their dwellings. It also requires states to take appropriate measures to assist families with providing children “a standard of living adequate for the child’s physical, mental, spiritual, moral and social development,” especially with regard to “nutrition, clothing and housing.”<sup>78</sup> This would forbid actions that deprive families of the ability to earn a livelihood to provide for their children, or that deprives them of housing. The CRC also requires the protection of children “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...development.”<sup>79</sup> Finally, the CRC recognizes the fundamental right of all children to education.<sup>80</sup>

The Guiding Principles on Internal Displacement are the internationally recognized normative framework used to identify the rights and guarantees relevant to the internally displaced in all phases of displacement.<sup>81</sup> This includes protection against arbitrary displacement, a basis for protection and assistance during displacement, and guarantees for safe return, resettlement and reintegration.<sup>82</sup> Displacement is arbitrary and therefore prohibited “in cases of large-scale development projects that are not justified by compelling and overriding public interests.”<sup>83</sup>

Principle 9 of the Guiding Principles states:

---

<sup>76</sup> U.N. Comm. on Econ., Soc. & Cultural Rights [CESCR], General Comment 7, The Right to Adequate Housing: Forced Evictions, 16th Session, 1997, U.N. Doc. E/1998/22 at ¶ 7, Annex IV (May 20, 1997) (noting connection between forced eviction and “clearing of land for agricultural purposes”). *See also* CESCR, General Comment 2, International Technical Assistance Measures, U.N. Doc. E/1990/23 at ¶ 6 (Feb. 2, 1990) (international agencies should avoid financing projects that cause large-scale forced eviction without “appropriate protection and compensation”).

<sup>77</sup> CRC, *supra* note 75, art. 16(a).

<sup>78</sup> *Id.* art. 27(1) &(3).

<sup>79</sup> *Id.* art. 32(1).

<sup>80</sup> *Id.* art. 28.

<sup>81</sup> Francis Deng & et al., *Guiding Principles on Internal Displacement presented to the United Nations Office for the Coordination of Humanitarian Affairs, Geneva, Switzerland*, (“Guiding Principles”) (Aug. 2, 1998), available at <http://www.idpguidingprinciples.org/>. The Guiding Principles were officially approved and adopted by the U.N. Human Rights Council in 1998. E.S.C. Res. 1998/50, U.N. ESCOR, 54th Sess., Supp. No. 3, at 164-67, U.N. Doc. E/CN.4/1998/50 (1998).

<sup>82</sup> *See* Francis Deng, *Introductory Note by the Representative of the Secretary-General on Internally Displaced Persons, to Guiding Principles on Internal Displacement*, presented to United Nations Office for the Coordination of Humanitarian Affairs, Geneva, Switzerland (Aug. 2, 1998), available at <http://www.idpguidingprinciples.org/>.

<sup>83</sup> Guiding Principles, *supra* note 81, Principle 6, Part 2(c).

States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists, and other groups with a special dependency on and attachment to the land.<sup>84</sup>

Similarly, Performance Standard 5 of the International Finance Corporation (IFC) addresses involuntary resettlement and land acquisition in the context of development projects. The IFC requires development partners to:

- avoid displacement when possible and to minimize it when avoidance is not possible;
- avoid forced eviction;
- mitigate negative social and economic impacts by providing adequate compensation and ensuring the informed consultation and participation of the displaced;
- improve and restore the livelihoods of the displaced; and
- provide adequate housing and security of tenure to the displaced.<sup>85</sup>

ASR's supplier, KSL, violated internationally-recognized human rights when, on behalf of its majority-owned and closely-controlled subsidiaries KKPT and KSSI, company personnel and members of the military and national police forcibly evicted villagers in Sre Ambel from their land. The villagers of Sre Ambel were arbitrarily deprived of their property when they were forcibly removed from the land they legally possessed in accordance with Cambodian law, inadequately compensated, and rendered unable to provide adequately for their livelihoods or, in a number of cases, to send their children to school.

The activities of the armed personnel that carried out the eviction were conducted on behalf of and to the benefit of KSSI and KKPT, as well as its parent KSL. Through its exclusive sugar supply contract with KSL, Tate & Lyle agreed to purchase all the sugar that has been produced through KSL's abusive practices. As the sole owners of Tate & Lyle European sugar operations, ASR and its parents are beneficiaries of this contract and of the illegal and arbitrary confiscation and ongoing deprivation of the Sre Ambel villagers' land.

Enterprises acquiring suppliers should exercise due diligence, and where enterprises have a number of suppliers, they should “identify general areas where the risk of adverse impacts is most significant and, based on this risk assessment, prioritize suppliers for due diligence.”<sup>86</sup> The Guidelines define the “supply chain” context broadly, including but not limited to franchising, licensing, and subcontracting.<sup>87</sup> A supplier of goods is clearly part of the supply chain.<sup>88</sup> When ASR acquired Tate

---

<sup>84</sup> *Id.*

<sup>85</sup> International Finance Corporation, Performance Standard 5 (Jan. 1, 2012), *available at* [http://www1.ifc.org/wps/wcm/connect/3d82c70049a79073b82cfaa8c6a8312a/PS5\\_English\\_2012.pdf?MOD=AJPERES](http://www1.ifc.org/wps/wcm/connect/3d82c70049a79073b82cfaa8c6a8312a/PS5_English_2012.pdf?MOD=AJPERES).

<sup>86</sup> 2011 OECD Guidelines, *supra* note 65, Commentary ¶¶ 14, 15, 16.

<sup>87</sup> *Id.*, Commentary ¶ 17.

<sup>88</sup> *See, e.g.*, UK National Contact Point for the OECD Guidelines for Multinational Enterprises, *Complaint from the European Center for Constitutional and Human Rights against ICT Cotton Limited (in Uzbekistan)*, Initial Assessment at ¶ 12 (Mar.

& Lyle's sugar operations, which had already contracted with KSL for the totality of KSL's Cambodian and Laotian sugar output, Tate & Lyle was on notice of the illegal land concessions and evictions. Independently, Respondents had a responsibility to investigate ASR's acquisition of a business supplied by Cambodian sugar production, an industry, which by the time of the sale, was the subject of public criticism for illegal land concessions and forced evictions.<sup>89</sup>

Moreover, the Fanjuls had prior institutional experience with the risk of abuses in large-scale sugar cane production in lesser-developed countries. At La Romana, a sugar factory in the Dominican Republic owned by the Fanjul-affiliated company, Central Romana, allegations of human trafficking, slavery, and child labor have put the Fanjuls on the defensive.<sup>90</sup> In fact, the Fanjul entity that owns La Romana was expelled from Bonsucro – the voluntary initiative that has unsuccessfully sought to foster dialogue between the Sre Ambel villagers and Tate & Lyle – due to its failure to take steps to end these practices.<sup>91</sup> Respondents should have proactively sought information on potential human rights violations in Cambodia, particularly with the widespread media coverage of forced evictions facilitated by abuses of the process of economic concessions in Cambodia generally, and related to Sre Ambel in particular.

- **General Policy A.10 - Enterprises should carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts as described in paragraphs 11 and 12, and account for how these impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation.**

The Preface to the Guidelines notes, “many enterprises have responded to [human rights] concerns by developing internal programmes, guidance and management systems,” including employment of

---

8, 2011) (declining to reject specific instance complaint against purchaser of cotton allegedly produced in Uzbekistan with child labor).

<sup>89</sup> In addition to reports cited *supra* notes 8, 17, 21, 26, 28, 42, & 50, see, e.g., *Dozens families evicted in Cambodia*, RADIO AUSTRALIA, Oct. 11, 2009, available at <http://www.radioaustralia.net.au/international/2009-10-11/dozens-of-families-reportedly-evicted-in-cambodia/145442>; Will Baxter, *Cambodia's Lawless Leaders and Landless Poor*, TOWARD FREEDOM, Feb. 7, 2008, available at <http://towardfreedom.com/home/content/view/1227/65/>; UN Investigator Calls for Halt to Forcible Evictions in Cambodia, Iran, VOA News, June 29, 2006, available at <http://www.voanews.com/content/a-13-2006-06-29-voa26/312899.html>.

<sup>90</sup> See, e.g., U.S. Dept. of Labor, Bureau of Int'l Labor Affairs, *The Department of Labor's List of Goods Produced by Child Labor or Forced Labor* 27, Sep. 10, 2009, available at <http://www.dol.gov/ilab/programs/ocft/PDF/2009TVPRA.pdf> (listing violations of child labor law in sugarcane production in Dominican Republic); Kimberly Miller, *Fanjuls Disturbed by Film's Portrayal of Sugar "Slavery"*, PALM BEACH POST, June 29, 2007, available at [http://www.sugarbabiesfilm.com/media/palm\\_beach\\_post.pdf](http://www.sugarbabiesfilm.com/media/palm_beach_post.pdf); Father Christopher Hartley, *New Forms of Human Rights Abuses on Vicini Company Sugar Cane Plantations, Current Harvest (2008-2009): Dominican Republic*, Aug. 31, 2009, available at <http://www.ereleases.com/pr/2009-Hartley.pdf>.

<sup>91</sup> See Alejandra Rojas, *La epopeya del padre Christopher*, TELVA 228 (May 2011), available at <http://www.misionestoledo.org/attachments/article/64/TELVA%20-%20SOLIDARIDAD%20-%20pag%20228.pdf> (original in Spanish).

consultants to facilitate due diligence.<sup>92</sup> This suggests that there are myriad resources available to companies seeking to comply with the OECD Guidelines by conducting appropriate due diligence.<sup>93</sup>

The requirement to exercise due diligence is a means of identifying, preventing, and mitigating adverse human rights impacts throughout the supply chain.<sup>94</sup> Respondents appear to have completely failed to conduct risk-based due diligence upon purchasing Tate & Lyle's sugar operations. They were on notice of the urgency of due diligence based on the above-cited publicity about development projects in Cambodia, the problems with sugar plantations including Koh Kong, and the Fanjuls' own experience in the Dominican Republic. The Respondents could have satisfied this requirement of the Guidelines by identifying the key risks of plantation agriculture model by which sugar cane is grown in Cambodia and elsewhere, researching the record of the Cambodian government and companies in Cambodia in relation to large-scale agriculture and land acquisition, seeking information about the specific concessions implicated in Tate & Lyle's contract, and developing plans to mitigate past and ongoing harms and prevent future harms.

- **General Policy A. 11 - Enterprises should avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur.**

The Commentary to the Guidelines provides a general rule for a company assessing its possible involvement in human rights violations in the supply chain. "In the context of its supply chain, if the enterprise identifies a risk of causing an adverse impact, then it should take the necessary steps to cease or prevent that impact."<sup>95</sup> Moreover, a company should "use its leverage to mitigate *any remaining impacts* to the greatest extent possible."<sup>96</sup>

Respondents are contributing to and benefiting from adverse impacts on matters covered by the Guidelines. The Commentary explicitly states that an enterprise's "own activities" includes activities within its supply chain.<sup>97</sup>

As noted above, the Respondents appear to have failed to undertake reasonable due diligence prior to acquiring Tate & Lyle's European sugar operations. Since that time, CLEC has informed ASR of the human rights violations taking place due to their suppliers' actions, and Tate & Lyle also claims to have informed ASR of the issues surrounding the land concessions in Sre Ambel. Upon receiving the necessary information from Tate & Lyle and CLEC, ASR should have tried to investigate and mitigate the harm by using its leverage to have its supplier, KSL, and KSL's controlled subsidiaries KKPT and KKSI, resolve the problem. If it could not do so, it should have considered its legal options to avoid receiving Koh Kong sugar that is produced through KSL's abusive practices.

---

<sup>92</sup> 2011 OECD Guidelines, *supra* note 65, Preface ¶ 7.

<sup>93</sup> One prominent example is the International Finance Corporations' Human Rights Impact Assessment and Management tool, *available at* <http://www.guidetohriam.org/welcome>.

<sup>94</sup> 2011 OECD Guidelines, *supra* note 65, Commentary on General Policies ¶ 14.

<sup>95</sup> *Id.*, Commentary ¶ 18.

<sup>96</sup> *Id.*, Commentary ¶ 19 (emphasis added).

<sup>97</sup> *Id.*, Commentary ¶ 11.

However, far from taking the necessary steps to address the negative impacts of their suppliers' actions, Respondents have not even acknowledged CLEC's attempts to engage in dialogue with them.

- **General Policy A.12 - Enterprises should seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship.**

The Guidelines clearly consider that companies bear some responsibility to use their leverage with business partners and suppliers to prevent and mitigate those companies' adverse impacts that are related to their own activities. Based on this provision of the Guidelines, the French NCP recently issued recommendations in a specific instance concerning the child labor and forced labor practices of the Uzbek suppliers of a French cotton trading company, calling on the respondent to "apply the OECD Guidelines to its business partners so as 'to attempt to prevent or mitigate negative impacts directly linked to its activities, products, and services by a business relationship'."<sup>98</sup> ASR is the sole purchaser of the sugar grown at the Koh Kong plantation. Thus, regardless of whether Respondents directly contributed to the original forcible removals and destruction of crops and property, ASR is still required to mitigate the harm because the impact is directly linked to its operations through its supply chain. Because ASR continues to purchase sugar from stolen land, Respondents bear responsibility for the ongoing spiral into poverty that many villagers of Sre Ambel are now experiencing.<sup>99</sup>

The Commentary to the Guidelines acknowledges that in some cases there may be "practical limitations on the ability to effect change in the behavior of [companies'] suppliers," which may be "related to product characteristics, the number of suppliers, the structure and complexity of the supply chain, the market position of the enterprise vis-à-vis its suppliers or other entities in the supply chain."<sup>100</sup> These limitations do not appear to apply here. Nothing about the product characteristics of sugar constitutes a practical limitation on Respondents' ability to remedy ongoing human rights violations. The "structure and complexity" of the sugar supply chain does not overwhelm the monitoring abilities of companies or NGOs. Respondents' market position vis-à-vis their suppliers puts them in a very strong position to effect change, because ASR (through Tate & Lyle) is the sole purchaser of 100% of the output from the Koh Kong plantation.

Arguments that a parent company is too far removed from on-the-ground operations, or that its purchase of goods through a subcontractor renders it too far away from human rights violations, have been rejected by other NCPs. Relying on the predecessor to General Policy A.13, section II.10 of the 2000 edition of the Guidelines, the German NCP rejected similar arguments in a complaint brought by Germanwatch against Bayer. An Indian subsidiary of Bayer was accused of violating a

---

<sup>98</sup> French National Contact Point for the OECD Guidelines for Multinational Enterprises, *Communiqué – DEVCOT*, at 2 (Sept. 21, 2012), available at <http://www.tresor.economie.gouv.fr/File/375194> (original in French).

<sup>99</sup> The duty to mitigate is also found in General Policy A.13, which states that enterprises should "encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of corporate conduct compatible with the *Guidelines*." 2011 OECD Guidelines, *supra* note 65, General Policy A.13.

<sup>100</sup> *See Id.*, Commentary ¶ 21.

provision that requires enterprises to contribute to the abolition of child labor.<sup>101</sup> Bayer had contracts with its subcontractors, dictating various factors relevant to sale of cottonseed, and, through a series of intermediaries, the subcontractors in turn made deals with local farmers who employed child labor. As with the provision of sugar to ASR, the cottonseed farmers agreed to supply their entire crop to only one company. Even though a large companies like Bayer may not have direct contact with the producers themselves, the NCP found that the Guidelines applied to the issues raised in the specific instance.<sup>102</sup>

The Respondents have failed in their responsibility to exercise leverage over ASR's business partners and suppliers – a responsibility that they could have honored in a number of ways. For example, ASR could have declined to acquire Tate & Lyle's sugar operations until KSL resolved its disputes with the villagers. After the acquisition, Respondents could have developed plans to use their leverage as the parent company of the sole buyer of KSL's Cambodian sugar to influence the practices of KSL, including by meeting with KSL management and making their expectations clear, conditioning contract renewal on resolution of the conflict, or by seeking the intervention of the European Union authorities administering the tariff-waiver scheme under which the sugar is imported to the U.K. They also could have required Tate & Lyle to engage in the Bonsucro mediation process in good faith. If all else failed, they could have directly offered compensation or livelihoods assistance to affected members of the three villages. ASR itself, or through Tate & Lyle, could have met with the impacted community in Cambodia as part of their assessment of the direct and indirect impacts of their corporate activity.

## General Policies B

- **B.2: Enterprises are encouraged to engage in or support, where appropriate, private or multi-stakeholder initiatives and social dialogue on responsible supply chain management while ensuring that these initiatives take due account of their social and economic effects on developing countries and of existing internationally recognized standards.**

Multi-stakeholder initiatives (MSIs) are deliberative processes involving stakeholders as broadly conceived, including civil society, governments, and the private sector.<sup>103</sup> The goal of MSIs is to engage in deliberation in order to adopt and implement new norms of corporate behavior.<sup>104</sup> This includes MSIs designed to deal with the “responsibilities of suppliers in commodity chains controlled by TNCs . . .”<sup>105</sup> Respondents have never engaged in or supported a multi-stakeholder

---

<sup>101</sup> German National Contact Point for the OECD Guidelines for Multinational Enterprises, *Complaint Filed against Bayer CropScience by German Watch, Global March, and Coordination gegen Bayer-Gefahren*, Final Statement at 2 (Aug. 30, 2007), available at <http://www.oecd.org/dataoecd/60/45/39311489.pdf>.

<sup>102</sup> *Id.*

<sup>103</sup> Johanna Martinsson, *Multistakeholder Initiatives: Are They Effective?* PEOPLE, SPACES, DELIBERATION, Jan. 5, 2011, at <http://blogs.worldbank.org/publicsphere/node/5620>.

<sup>104</sup> *Id.*

<sup>105</sup> Peter Utting, *Regulating Business via Multistakeholder Initiatives: A Preliminary Assessment*, in UNITED NATIONS RESEARCH INSTITUTE FOR SOCIAL DEVELOPMENT, VOLUNTARY APPROACHES TO CORPORATE RESPONSIBILITY 62 (2002).

initiative on responsible supply chain management with those they conduct business with in Cambodia. Tate & Lyle is a member of Bonsucro, which is currently attempting to mediate the Koh Kong dispute. However, that process has already dragged on for over a year, and Tate & Lyle has not taken any concrete steps to assist with the resolution of the issue through Bonsucro. Another Fanjul-affiliated company, Central Romana, was also a member of Bonsucro (then known as the Better Sugarcane Initiative), but lost its membership over allegations of forced labor in its operations in the Dominican Republic.<sup>106</sup>

#### IV. Human Rights Policies

- **Human Rights IV.3: Enterprises should seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business relationship, even if they do not contribute to those impacts.**

Respondents have failed to mitigate human right abuse caused by ASR's suppliers in Cambodia. The Koh Kong operations are directly linked to Respondents, which (through Tate & Lyle) purchase all of their output. The ongoing displacement of villagers and destruction of their property, the reduction of their formerly sustainable livelihoods, and the resulting loss of educational opportunities of their children are the result of violations of recognized rights. As noted above, the Respondents had a number of options available to them to mitigate the adverse impacts of the Koh Kong plantations.

Moreover, the Respondents' obligation to help remediate adverse impacts is not limited solely to the impacts experienced by the villagers after ASR acquired Tate & Lyle's assets. This is because by acquiring Tate & Lyle operations – without first conducting due diligence to understand Tate & Lyle's human rights impacts – the Respondents obtained leverage over KSL. The Guidelines' Commentary on Human Rights emphasizes that enterprises are expected to use leverage to mitigate “any remaining impact.”<sup>107</sup>

- **Human Rights IV.5: Enterprises should carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.**

The risk of adverse human rights impacts in Cambodia is very high. As noted above, Cambodia is widely recognized as having weak governance and high levels of corruption. Moreover, Cambodia is notorious for the precise abuses at issue in this complaint – the arbitrary displacement and deprivation of agricultural communities from their farmland in favor of commercial operations; specifically abusive practices associated with Economic Land Concessions. For this reason, Respondents were on notice that they should conduct a comprehensive due diligence process directed at identifying and mitigating precisely the human rights impacts described in this complaint.

---

<sup>106</sup> Rojas, *supra* note 91.

<sup>107</sup> 2011 OECD Guidelines, *supra* note 65, Commentary on Human Rights ¶ 42.

The due diligence “process entails assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses as well as communicating how impacts are addressed.”<sup>108</sup> Knowing that purchasing Tate & Lyle’s operations would bring a host of new supplier relationships on a very large scale, ASR and the other Respondents should have engaged in a due diligence process, beginning with assessing the actual and potential impacts. Such a process would have revealed the actual human rights impacts discussed herein; even if Respondents were unaware of all the facts, simply knowing that sugar was being sourced from Cambodia should have raised questions about potential adverse impacts. Because the assessment phase would have revealed actual and potential adverse impacts, Respondents should have acted upon these findings, taking steps to ensure that the adverse impacts were remedied and that similar impacts do not happen in the future.

- **Human Rights IV.6: Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.**

Respondents have failed to provide for or cooperate with local NGOs to provide a remedy for the villagers in Sre Ambel. CLEC has informed ASR of the negative human rights impacts of its suppliers in Cambodia, yet the Respondents have not offered to provide a remedy directly or cooperate with the appropriate institutions in Cambodia to provide a remedy. Moreover, Respondents have not ensured that Tate & Lyle engage constructively in the ongoing Bonsucro mediation, which is designed to promote responsible behavior and provide a forum for the resolution of stakeholder concerns in the sugar industry.

To implement this provision of the Guidelines, Respondents should cooperate with non-judicial mechanisms – such as the NCP specific instance process – and provide for an operational-level grievance mechanism. In anticipation of the many situations enterprises will face, the Commentary states that, “operational-level grievance mechanisms for those potentially impacted by the enterprises’ activities can be an effective means of providing for such processes [legitimate processes in the remediation of adverse human rights impacts].”<sup>109</sup> The Cambodian judicial system and government have proven to be unable or unwilling to provide a remedy for the abuses committed on behalf of Koh Kong operations. In the case of the villagers of Sre Ambel, the adverse human rights impact is actual, not merely potential. Thus, ASR has a responsibility to remedy the situation to which it had contributed.

#### IV. REQUEST FOR NCP ASSISTANCE

On behalf of 207 residents of the communities of Chikor, Chhuk, and Trapeng Kendal whose families have lost their land, CLEC and ERI request the NCP to offer its good offices to resolve their dispute with the Respondents over the failure of the latter to comply with OECD Guidelines.

---

<sup>108</sup> *Id.*, Commentary on Human Rights ¶ 45.

<sup>109</sup> *Id.*, Commentary on Human Rights ¶ 46.

At this time, all attempts by the villagers and their representatives to engage Respondents and KSL – both voluntary and judicial – have stalled or ended without success. ERI and CLEC therefore ask the NCP to assist them to engage the Respondents in a dialogue with them and members of the three communities, with the aim of working with the Respondents to:

- Establish a transparent, legitimate, and credible corporate-level grievance mechanism to resolve disputes arising out of the sugar supply chain
- Investigate and assess the impacts of the Koh Kong plantation on community members' lives, property, and livelihoods
- Develop a menu of options for Respondents to use their leverage with KSL so that Respondents' activities and relationship with KSL and its subsidiary corporations are consistent with the OECD Guidelines
- Institute a process to ensure the mitigation of the human rights impacts of the plantation, including, where possible, the return of illegally taken land and the full compensation of all injured parties
- Develop corporate group-level policies on arbitrary land confiscation and other relevant human rights violations and due diligence procedures to ensure that Respondents do not purchase or otherwise transact in sugar that was produced by means of such violations.

## V. CONCLUSION

This complaint details violations of the OECD Guidelines for Multinational Enterprises by Respondents through their purchase of sugar produced by KSL in Sre Ambel, in Cambodia. Respondents are in violation of the following Guidelines:

- General Policy A.1: Contribute to economic, environmental and social progress with a view to achieving sustainable development.
- General Policy A.2: Respect the internationally recognized human rights of those affected by their activities
- General Policy A.10: Carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts as described in paragraphs 11 and 12, and account for how these impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation.
- General Policy A. 11: Avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur.
- General Policy A.12: Seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations,

products or services by a business relationship. This is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship.

- General Policy B.2: Engage in or support, where appropriate, private or multi-stakeholder initiatives and social dialogue on responsible supply chain management while ensuring that these initiatives take due account of their social and economic effects on developing countries and of existing internationally recognized standards.
- Human Rights IV.3: Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business relationship, even if they do not contribute to those impacts.
- Human Rights IV.5: Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.
- Human Rights IV.6: Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.

In matters of correspondence regarding this complaint and with the complainants, please contact:

Jonathan Kaufman  
EarthRights International (ERI)  
Email: [jonathan@earthrights.org](mailto:jonathan@earthrights.org)  
Phone: +1-202-466-5188  
Address: 1612 K Street NW, Suite 401, Washington, D.C. 20006

Sorphonneary Ny  
Community Legal Education Center of Cambodia (CLEC)  
Email: [sorphonneary@clec.org.kh](mailto:sorphonneary@clec.org.kh)  
Phone: +855-23-215-590  
Address: #237 Group 16, Plov Lom, Sangkat, Khan/Dangkor, Phnom Penh, Cambodia