

**National Human Rights Commission of Thailand**

March 10, 2015 (B.E. 2558)

Findings Report No. 115/2558

Re: Allegation that Khon Kaen Sugar Industry Public Company Limited, recipient of a land concession to grow sugarcane and establish a sugar factory in Cambodia, has caused human rights violations against Cambodian citizens

Complainants: Foundation for Ecological Recovery and Community Legal Education Center Cambodia [Later referred to as Towards Ecological Recovery and Regional Alliances (TERRA) ]

Defendant: Khon Kaen Sugar Industry Public Company Limited

## **1. Background**

The National Human Rights Commission of Thailand received a complaint letter from the Community Legal Education Center (CLEC) dated January 6, 2010 filed under Complaint No. 58/2553. The complainant alleged that a Thai company, Khon Kaen Sugar Industry Public Company Limited, received through a Cambodian subsidiary company an economic land concession in Sre Ambel district, Koh Kong province, Cambodia. This action has led to the violation of Cambodia's Land Law on economic land concessions and violations of human rights laws and standards, resulting in illegal possession of local people's land, loss of their livelihood and work opportunities, loss of food security, lack of educational opportunities, worsening poverty and even threats of violence. The complainant requested for an investigation by the National Human Rights Commission into this Thai company's actions which are relevant to human rights violations in Cambodia, to ensure justice for the complainant and Cambodia citizens in distress.

## **2. Complaint Review**

### **2.1 Substance of Complaint and Investigative Jurisdiction of the National Human Rights Commission**

The National Human Rights Commission reviewed this complaint and found that the issue may involve actions by a private Thai company in violation of international human rights agreements of which Thailand is a party, namely: the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and possibly the 2011 Guiding Principles on Business and Human Rights and the ASEAN Human Rights Declaration. The alleged actions may also be human rights violations against Cambodian citizens. According to the 2007 Constitution of Thailand under Article 82 and Article 257 Paragraph 1 (in effect at the time of this investigation) and the 1999 National Human Rights Commission Act under Article 15(2), the National

Human Rights Commission has the authority to “investigate and report on actions or acts of negligence which violate human rights or international human rights commitments of which Thailand is a party.” Therefore, it was found that this complaint is relevant to human rights violations and lies within the investigative jurisdiction of the National Human Rights Commission of Thailand according to Article 15(2) of the 1999 National Human Rights Commission Act. The National Human Rights Commission assigned the Subcommittee on Civil and Political Rights to review this matter. Later, the Subcommittee on Civil and Political Rights transferred this complaint to the Subcommittee on Community Rights for investigation.

## **2.2 Issue under Investigation**

This investigation reviewed the complaint filed along with relevant documents, statements of the parties involved and relevant agencies, as well as a review of the duties and authority according to the 2007 Constitution of Thailand Article 257 Paragraph 1 and the 1999 National Human Rights Commission Act Article 15 (1), (2) and (3). The issue under investigation was whether the actions of Khon Kaen Sugar Industry Public Company Limited in Sre Ambel district, Koh Kong province, Cambodia cause human rights violations against the citizens of Cambodia.

## **3. Investigation**

For this investigation, statements were requested of the complainants, Khon Kaen Sugar Industry Public Company Limited, the Stock Exchange of Thailand, the Thai Ministry of Commerce, and the Thai Office of Cane and Sugar Board. The statements are summarized as follows:

### **3.1 Statement of the Complainants**

The complainants, as non-governmental organizations in Thailand who monitor and advocate for human rights protection and resolution of human rights violations in Cambodia, gave verbal statements together with representatives of Cambodian citizens and submitted accompanying documents. According to their statement, Khon Kaen Sugar Industry Public Company Limited (KSL) entered into a joint venture with Cambodia and Taiwanese investors to receive an economic land concession that violated the laws of Cambodia, with the purpose of manufacturing sugar in the land concession located in Sre Ambel district, Koh Kong province, Cambodia. This land concession is the cause of illegal confiscation of land from local citizens, killing of livestock belonging to local residents, violent threats and harassment against residents who do not submit or agree, and worsening of poverty for local residents due to the loss of food security from these actions. A timeline and details of these actions are as follows:

#### **1. Timeline**

In March 2006, the Cambodian Cabinet approved in principle the granting of a land concession for an economic project to Koh Kong Sugar Industry Co. Ltd. (KSI) and Koh Kong Plantation Co. Ltd. (KPT). Both of these companies are subsidiaries of Khon Kaen Sugar Industry Pcl. According to the Complainants, Khon Kaen Sugar Industry Pcl split its investments into two companies to avoid restrictions under the 2001 Land Law of Cambodia which limits the maximum economic land concession to each concession request of no more than 10,000 hectares (2001 Land Law of Cambodia, Article 59) or 62,500 rai of land (1 hectare = 6.25 rai). In addition, the 2001 Land Law also restricted

economic land concessions to include only government property. The government cannot consent to the use of private property possessed by citizens for economic land concessions. However, the Cambodian government has the authority to expropriate land under private possession to grant concessions, but only after the government expropriation provides fair and equitable reparations. (2001 Land Law of Cambodia, Article 38 and Article 42)

In this case, affected Cambodian citizens affirmed their rightful possession of land according to Article 30 of the Land Law of Cambodia, which states that: "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. Any person who possessed the immovable property for less than five years may request a definitive title of ownership after five years of possession." (2001 Land Law of Cambodia, Article 30). In addition, Article 31 states that any person who had been enjoying possession before the 2001 Land Law of Cambodia entered into force and fulfills all requirements to become an owner of the property may be authorized by the competent Cambodian authority to extend the land possession until the legally prescribed period of five years to attain permanent title of ownership. Moreover, Cambodian authorities cannot deny this right to attain the title of land ownership if the possession is peaceful and uncontested. (Land Law of Cambodia 2001, Article 31) The residents of Chikhor, Chhouk and Trapeng Kendal villages have lived on their land uncontested for more than 5 years and have possessed the land peacefully, uncontested, and in a publically evident and continuous act in good faith. Therefore, these residents are without question entitled to the right of possession and fulfill the requirements to request and attain land documents or land titles and receive market value for their land in the case of expropriation. Furthermore, all 3 villages have been assigned as Participatory Land Use Planning Policy (PLUP) implementation areas, following the Cambodian government's initiative according to the land use policy (May 2001) and the Strategic Framework on Land Policy (September 2002). In addition, there was a collaborative working process between non-government organizations and government agencies in Koh Kong province, including joint field surveys, deliberations and mapping, with the purpose of supporting sustainable land use. This confirms that allegation that the land concession was located in areas which villagers originally relied for livelihood. In addition to this statement, the complainants submitted maps showing that the 3 villages are located in the Participatory Land Use Planning Policy implementation areas.

In August 2006, Koh Kong Plantation Co. Ltd., which was owned by Senator of the Cambodia People's Party (CPP) Ouknka Ly Yong Phat, received a land concession of 57,340 rai (9,174.4 hectares). Koh Kong Sugar Industry Co. Ltd., which was owned by a Thai citizen named Mr. Chamroon Chinthammit, received a land concession of 59,170 rai (9,467.2 hectares). In total, the land concessions consisted of 116,510 rai (18,641.6 hectares).

According to the complainants, forced eviction of local villagers occurred before the signing of this land concession agreement in August 2006. The destruction of homes, farmland, livestock grazing areas, and other valuable possessions causing residents to flee from their villages in Chhouk, Chikhor and Trapheng Kandal villages in Sre Ambel district. As a result of the use of violence by government officials during eviction, five residents were injured and at least two residents were shot.

In addition to the violence used in the forced eviction, the land concessions were granted without prior public hearings. Villagers learned that the land they possess for residence and livelihood

has been granted concessions to private companies only when bulldozers already entered and destroyed their land and possessions. No environmental impact assessment was conducted, and no plan for relocation was issued according to the stipulations of Cambodian law on economic land concessions.

In September 2006, villagers organized several protest marches due to worsening effects of company actions on villagers land. Confrontations occurred and villagers were injured. However, local officials prevented non-governmental organizations and the Cambodian Human Rights Action Committee (CHRAC) to monitor and investigate the situation.

On November 12, 2006, company representatives and community leaders met and agreed to delay any decision. The companies would temporarily cease razing and eviction of villagers. However, the companies violated this agreement and continued to raze land and evict villagers from these areas.

On March 5, 2007, more than 120 citizens travelled to Phnom Penh to submit demands to several government agencies. Officials at the Cambodian Ministry of Interior reassured villagers that their problem would be resolved.

In May 2007, the Cambodian Ministry of Interior's Secretary of State organized a meeting between company representatives, community resident representatives and the Community Legal Education Center (CLEC). Government recommendations as a result of this meeting included recommendations that the companies should cease razing and eviction of residents and the companies should work with civil society to resolve the situation. Nonetheless, for more than 1 year following this meeting, the recommendations were ignored by local government officials and company representatives. This caused some residents to accept money from the companies at a rate of almost 1,000 US dollars per hectare (6.25 rai). Even though these residents agreed to compensation from the companies, another problem arose due to the fact that company measurements of the land area were less than the actual land area lost by villagers.

In the complaints' view, human rights violation occurred were tied to Khon Kaen Sugar Industry Public Company Limited, a public company registered in Thailand in the business of exporting sugar. Khon Kaen Sugar Industry Pcl entered a joint venture with Koh Kong Sugar Industry Co. Ltd. and Koh Kong Plantation Co. Ltd.. In the past, Khon Kaen Sugar Industry Pcl held 50 percent shares in both Koh Kong Sugar Industry Co. Ltd. and Koh Kong Plantation Co. Ltd.. In addition, 30 percent of the company shares were owned by a Taiwanese company and the remaining 20 percent of company shares were owned by Mr. Ly Yong Phat, Senator of the Cambodian People's Party. Later, Khon Kaen Sugar Industry Pcl purchased additional shares and as of 2014 owned 70 percent shares in both Koh Kong Sugar Industry Co. Ltd. and Koh Kong Plantation Co. Ltd.. In addition, representatives of Khon Kaen Sugar Industry Pcl hold management positions in both companies, as reflected in page 17 of the KSL Group Annual Report 2010, Thailand and the letter issued by the Thai Ministry of Commerce to the Board of Directors at Koh Kong Sugar Industry Co. Ltd. dated January 4, 2010 about the change in shares belonging to Koh Kong Sugar Industry Co. Ltd. which indicated a new shareholding structure of 70 percent shares held by Khon Kaen Sugar Industry Pcl and 30 percent shares held by Ve Wong Corporation.

The complainants insisted that Khon Kaen Sugar Industry Pcl was well aware of the allegations that company actions violated the law on land concessions and human rights standards, as reflected in the letter issued by Khon Kaen Sugar Industry Pcl addressed to the Community Legal Education Center dated August 26, 2008. The letter requested additional information on these allegations, which the Community Legal Education Center provided to the company. However, there was no further correspondence from Khon Kaen Sugar Industry Pcl. In the complainants' view, it would be impossible for Khon Kaen Sugar Industry Pcl to be unaware of the villagers' sufferings. In addition to the information that the complainants sent directly to Khon Kaen Sugar Industry Pcl, complaints were also filed to the company regarding incidents that occurred both in and outside Cambodia since 2006, and several of these incidents involved Khon Kaen Sugar Industry Pcl directly.

## 2. Types of Human Rights Violations and Resulting Damage

According to the complainants, human rights violations that occurred in Sre Ambel district, Koh Kong province consisted of the following:

### (1) Forced Eviction and Destruction of Villagers' Property

According to the complainants, forced evictions, destruction of homes, farmland, livestock and other valuable property occurred before the land concession agreement was signed. More than 456 households from 3 villages - Chhouk, Chikhor and Trapheng Kandal – in Sre Ambel district lost a total of approximately 5,000 hectares of land. Violent police force was used during land expropriation, resulting in 5 villagers injured and at least 2 villagers were shot. Furthermore, prior to granting of land concessions, no public hearing was held, no environmental impact assessment was conducted and no relocation plan was issued according to Cambodian law (Sub-Decree No. 146 on Economic Land Concessions 2005, Article 4(3)-(5)).

### (2) Loss of Land

The Land Law of Cambodia states that any person who had been enjoying possession before the Land Law entered into force and fulfills all requirements to become an owner of the property may be authorized by the competent Cambodian authority to extend the land possession until the legally prescribed period of five years to attain permanent title of ownership. (2001 Land Law of Cambodia, Article 30). Such possession must be uncontested, peaceful, publicly evident and an act in good faith. (2001 Land Law of Cambodia, Article 38). In addition, any person who had been enjoying possession before the Land Law entered into force and fulfills all requirements to become an owner of the property may be authorized by the competent Cambodian authority to extend the land possession until the legally prescribed period of five years to attain permanent title of ownership. Cambodian authorities cannot deny this right to attain the title of land ownership if the possession is peaceful and uncontested. (Land Law of Cambodia 2001, Article 31)

According to the complainant, villagers of Chhouk, Chikhor and Trapheng Kandal villages in Sre Ambel district have lived on their land uncontested for over 5 years. Their possession of the land has been uncontested, peaceful, publicly evident and an act in good faith. Therefore, villagers rightfully possessed their land and were entitled to attain permanent title of ownership, in addition to market value for their land in the case of expropriation. Prior to the land concessions, villagers relied on agriculture as their main source of income. After the land concessions and the use of land

concessions to grow sugarcane, land fertility was lost. In addition, agricultural crops grown by villagers were razed, causing villagers to rely on previously harvested crops to survive. In addition, villagers homes were destroyed. The razing of these areas occurred even before the Cambodian government notified the approval of the land concessions.

The loss of land and the loss of the ability to enter nearby forests caused villagers to struggle in raising livestock. This used to be a major source of supplemental income. Ever since the land concessions of 2006, the number of households raising livestock decreased from 82 percent to 69 percent, and the average number the livestock per household decreased from 10 to only 3-4. The proportion of households raising 5 or fewer animals as livestock increased from 38 percent to 80 percent.

Villagers were also compelled to sell their livestock at a low price, due to the lack of land for grazing. Due to the lack of land, animals began grazing in nearby areas or in land concession areas used for growing sugarcane. As a result, security officials of Koh Kong Sugar Industry Co. Ltd. and Koh Kong Plantation Co. Ltd. as well as local officials detained these animals and demanded ransom from villagers. In some cases, many livestock animals were shot dead, causing the livestock owners to become even poorer.

Land expropriation also violated Cambodia's Sub-Decree on Economic Land Concession (No. 146 NK/BK). No public hearing was held, no announcement was made and no environmental impact assessment was conducted (Sub-Decree on Economic Land Concession, Article 4). On this issue of alleged illegal land concession agreement between the companies and the Cambodian government, 220 households filed a lawsuit at Koh Kong Court in 2007, claiming that citizens were not informed and had no opportunity to participate in the land concession process. Afterwards, the companies attempted to negotiate and compensate citizens who filed the lawsuit. In 2009, 12 plaintiffs agreed to withdraw from the lawsuit, leaving 203 households still in litigation. In 2013, Koh Kong Court ended the litigation process and transferred the case for review by the Cadastral Commission. This agency has a mechanism for managing certain types of land dispute, as part of the state mechanism for land management. According to Koh Kong Court, this case is beyond the jurisdiction of the court because villagers had no land titles. The Cambodia Legal Education Center (CLEC) has since submitted a letter to this Commission, requesting that the lawsuit be returned to Koh Kong Court for consideration and, if the case were to be transferred, the responsible authority should be the National Authority of Land Dispute Resolution instead.

The company's offer to compensate villagers were determined according to the company's discretion alone. In addition, the offer was ambiguous, inequitable, and in most cases not sufficient to compensate for the actual damage. Most villagers indicated that they had not received any compensation. This may be due to declining compensation rates that were too low, or because they never received any offer of compensation from the companies.

The loss of land prevented many villagers from producing sufficient food to sustain their households. In addition, villagers were prevented from entering nearby forests to gather bamboo, nipah palm leaves, and wood for home construction, which they had access to prior to the land concessions. After the land concession, entrance to these lands and forested areas were closed and those who wished to enter were required to pay a fee, which was too high for the villagers to afford.

### (3) Loss in Livelihood and Employment Opportunities

The loss of land for agriculture and livestock raising occurred to the point that villagers could no longer farm or raise livestock for subsistence as they used to do. Thus, villagers lost the ability of self-reliance. According to villagers, their ability to sustain themselves was greatly reduced. One villager used to earn 1,000 US dollars per year, with plenty of food for subsistence. After his land was expropriated for the land concession, this villager had to bake coconut bread to sell for subsistence and his income was reduced to just 1 US dollar per day. Another villager also lost income significantly. He used to raise as many as 20 livestock animals but that number reduced to only 8 animals. Some of his animals were shot dead by company security officials, and some other animals had to be sold in exchange for money to purchase food.

Because villagers could no longer rely on agricultural and livestock for income, many villagers had no choice but to become company employees, despite the company's stipulation that anyone who wanted to become employees must revoke their claim to land ownership in dispute with the company. A survey found 66 percent of all households in the 3 villagers work as employees in sugarcane plantations. Most work as daily laborers for seasonal jobs, such as planting and harvest from November to May. During this period, most villagers earn 2.50 US dollars per day and work 5-20 days per month. Even though the companies provide higher remuneration for office jobs, most villagers in the area have difficulty competing for these positions because they lack the relevant knowledge and skills. Therefore, most villagers have access to only low-paying and unstable jobs. This is particularly the case for poor villagers with low capital. As a result, most villagers decline the companies' offer to pay compensation for land loss because villagers believe that land ownership is more important to their livelihood.

### (4) Loss of Educational Opportunities

The loss of former means of subsistence causes a loss of educational opportunities for two reasons. Firstly, many households must tend to their livestock and prevent their animals from entering the company's sugarcane plantations. This compels many young people to leave school to tend to the animals. Secondly, many households are compelled to send their children to work and earn additional income to compensate for the loss in household income.

### (5) Physical Injury

Police force was first used to evict villagers from their land in 2006. At that time, 5 villagers were injured by the police, 2 villagers were shot and many more were hit with the ends of the rifle. One villager recorded images during the bulldozers' razing of villagers' home. One year later, this villager was assassinated by being axed to death. Lawyers and human rights advocates who enter the area are also followed and harassed by private security officials and law enforcement officials.

According to the complainants, the companies falsely claimed that the land under concession was deteriorated land. In fact, the land concessions consisted of fertile land suitable for agriculture. In addition, the land was assigned as Participatory Land Use Planning (PLUP) policy implementation areas. Koh Kong is not an area lacking in development, and villagers have lived and relied on this land for livelihood for a long time. According to the complainants, the companies also falsely claimed that the land concessions were uncontested. The complainants had described these contestations in

letters by the complainants and official reports by various agencies, including Licadho, the Cambodian Human Rights Action Committee and the Asian Human Rights Commission, among others.

### **3.2 Statement of the Defendant**

#### **Khon Kaen Sugar Industry Public Company Limited**

The statement by Khon Kaen Sugar Industry Pcl can be summarized as follows:

##### **(1) Statement to the Subcommittee on Civil and Political Rights**

(1.1) Written statement, dated July 20, 2010. Khon Kaen Sugar Industry Pcl is a shareholder in a company that invests in Cambodia, which is a legal person registered under Cambodian law. The claim of human rights violation occurred in Cambodia, and the complainant who allegedly suffered from human rights violations are Cambodian citizens. As for the question of whether the human rights violations occurred, Khon Kaen Sugar Industry Pcl had no knowledge. It is a company policy of Khon Kaen Sugar Industry Pcl to conserve nature and conduct an environmentally-friendly business, in addition to valuing local communities, towards a secure and sustainable business.

(1.2) Verbal statement on September 5, 2011. Khon Kaen Sugar Industry Pcl invested in sugarcane plantations and the construction of a sugar manufacturing plant in Cambodia. These investments required land concessions from the Cambodian government. Most of the land concessions granted consisted of deteriorated forests and the company needed to improve the land areas before any sugarcane could be planted. Local residents knew best where the appropriate areas were for planting. Therefore, prior to the receiving the land concession, company employees entered the area with local officials to inspect the land to find out how many people lived in the area. The Cambodian government were planning to relocate villagers from the land concession area and find new homes for them. The company contributed to the funds for transporting residents who had to be relocated according to recommendations by the Cambodian government and has evidence of how much each household was paid.

During the company's business operations in sugarcane plantation and sugar manufacturing in Koh Kong, there were 2 shareholders: a Cambodian national who was a local politician and a Taiwanese national. The land which Khon Kaen Sugar Industry Pcl developed was under the jurisdiction of an opposing political party in Cambodia. There were differing opinions regarding investments by Khon Kaen Sugar Industry Pcl. Some villagers agreed that this investment would bring development to the area, creating jobs and income for people. Some villagers disagreed, saying that after receiving compensation from the company for relocation, they would still move back to the area. The company pled for assistance from local government agencies in negotiating with these villagers to relocate. This is the extent of political involvement in this problem.

As for the roughly 100 households of villagers who are former residents of the area, compensation would be paid to only those who had proof of residence, and compensation would be paid only to those who agreed to relocate. The process of relocation is the responsibility of local government agencies. The amount of compensation varied according to the living conditions and land area of each villager's household. The company insisted that every villager who agreed to relocate received compensation.



The company did not have any information about the new area of residence for relocated villagers. The Cambodian government assigned new residences, which include land for agriculture. The land that Khon Kaen Sugar Industry Pcl received as concession was deteriorated forest land, not appropriate for farming. The area was also elevated and rain would wash all the minerals from the topsoil. In addition, this area was located far from development and inaccessible for motor vehicles. Even if villagers could grow crop, they would not be able to bring their crop out for sale.

The company sent representatives from Thailand to inspect the area on average once per month. Each time, the company did not receive villagers' complaints or witness any sign of protest. In addition, the European Union has a condition that it will not purchase sugar from any company with human rights violations. According to the investigation report issued by the European Union in January 2011, Khon Kaen Sugar Industry could still sell its products to the European Union because the company has not acted in violation of the European Union rules. The sugar produced in Koh Kong is a raw sugar used as starting material in the manufacturing process for white sugar, which is widely consumed. A British company is in charge for refining this raw sugar into white sugar. In the company's opinion, these allegations were political, with the intention of turning the company's investments into a vehicle for political conflict.

Regarding the company's shareholder in Koh Kong, the Cambodian shareholder has now withdrawn all of his investments and has set up his own sugar manufacturing plant and sugarcane plantation, located approximately 180 kilometers from the company's operations in Koh Kong. As a result, Khon Kaen Sugar Industry Pcl owns 70 percent of all shares, and the remaining 30 percent of shares are owned by the Taiwanese investor.

Regarding Cambodian investment laws, foreign nationals are allowed to own all shares in sugar manufacturing operations without any limitations. In addition, the companies in Koh Kong currently receive investment subsidy from the Cambodian government.

International investment by Khon Kaen Sugar Industry Pcl was conducted through a unit under the Thai Embassy responsible for promoting international investments, with no assistance from the Thai national government. The Thai government has not agency directly responsible for supporting Thai investments abroad. Khon Kaen Sugar Industry Pcl would like the Thai government to improve this situation. In some countries, laws are changed often and these changes cause the company's profit earnings to fluctuate.

The company had no knowledge of the report by the Cambodia representative of the United Nations High Commissioner for Human Rights that the company's business operations caused human rights violations. The company also had no knowledge of the shooting of villagers and villagers' livestock animals, or the use of villagers' farmland as land concessions. The company negotiated for the relocation of most villagers prior to taking action. The only exception is when villagers refused to enter negotiations. The company suspected that some villagers remain in the concession area. In the company's opinion, the company's business operations are not likely to cause any damage to villagers' farmland because villagers never had access to sell their farm produce due to the lack of vehicle access.

Regarding the amount of land concession granted, the company explained that Cambodian law allows for each company to receive only 10,000 hectares of land. Therefore, Khon

Kaen Sugar Industry Pcl set up 2 companies to increase the land that would be available for sugarcane plantation and the sugar manufacturing plant. Koh Kong Plantation Co. Ltd. signed the lease from Koh Kong Sugar Industry Co. Ltd. to set up sugarcane plantations, under the condition that Koh Kong Plantation Co. Ltd. must sell sugarcane to Koh Kong Sugar Industry Co. Ltd. as its sole buyer. These 2 companies are 2 distinct business entities and pay taxes separately.

The land survey conducted in 2005-2006 required travel by helicopter, because vehicles still could not enter the area. The company insisted that any villagers living in the area would have been visible to the surveyors because the entire area was deteriorated forest, approximately 30 kilometers wide and 40 kilometers long. Villagers also would not be able to travel the area without cars. However, the company could not provide any photographs from that time period to confirm this statement, because the Cambodian government prohibited taking photographs from helicopters.

The company has set up a conflict resolution working group to resolve the conflict with villagers. A meeting was attended by local officials and village groups and resulted in several agreements. For instance, if villagers call on the company to cease operations in an area, the company must cease its operations otherwise officials have the right to confiscate company machinery. However, the company has received no report from the working group of any conflict of such severity. As for security maintenance of the area, the company hires private security employees in Cambodia to protect the safety of company employees and company property.

The company explained that it employs approximate 600 people, of which 150 people are Thai nationals receiving monthly wages. The rest are Cambodian laborers from local areas either within in Koh Kong province or Sre Ambel district, hired through a broker. These laborers either plant or maintain the sugarcane plantations and harvest sugarcane during harvest season. Their wages are paid daily or according to each job. Hiring foreign laborers must abide by regulations. Namely, beyond the business preparation period, local labor must make up 90 percent of all employed labor. This is why the company must develop Cambodians into beginning and intermediate production controllers within 5 years. In addition, the number of Cambodian employees is already quite high because the company cannot employ Thai nationals to work in Koh Kong at the wages appropriate for Thai nationals and also because Thai nationals cannot endure the living conditions in Koh Kong.

## (2) Statement to the Subcommittee on Community Rights

Khon Kaen Sugar Industry Pcl provided an additional verbal statement to the Subcommittee on Community Rights on February 18, 2013 which can be summarized as follows:

A history of the company's operations:

1. On March 20, 2006, the Cambodian Cabinet approved land concessions of 10,000 hectares each to Duty Free Shop and Koh Kong International Resort Club.
2. On May 19, 2006, bulldozers and armed guards began clearing land.
3. On May 29, 2006, Koh Kong Plantation Co. Ltd. (KPT) and Koh Kong Sugar Industry Co. Ltd. (KSI) registered as companies.
4. On June 20, 2006, Duty Free Shop and Koh Kong International Resort Club submitted a written request to the Cambodian government to change the name of concession grantees.

5. On July 18, 2006, the Cabinet approved the transfer of land concession from Duty Free Shop to Koh Kong Plantation Co. Ltd. (KPT) and the transfer of land concession from Koh Kong International Resort Club to Koh Kong Sugar Industry Co. Ltd. (KSI).

6. On August 2, 2006, the Ministry of Agriculture, Forestry and Fisheries signed a concession agreement with Koh Kong Plantation Co. Ltd. (KPT) and Koh Kong Sugar Industry Co. Ltd. (KSI).

The company received total land concessions of approximately 125,000 rai. However, the company has used only 65,511 rai or 52 percent for sugarcane plantations. The remaining land is still forest land which the company refrained from using because it would like to maintain the forest.

The company has also encouraged nearby villagers to grow sugarcane to sell to the company. The company's goal is to support farmers to grow sugarcane sustainably, at lower cost and higher productivity, and most importantly to reduce the use of chemicals or pesticides. In addition, the company has encouraged villagers to work in the company's factory.

Koh Kong Sugar Industry Pcl is a public company and operates in the stock exchange. Therefore, the company highly values good governance and human rights. The company has wanted to negotiate with villagers who filed complaints, but villagers refused to negotiate. There are only 9 villagers left who refuse compensation. The company has always tried to contact these villagers, but there is still no negotiation with these 9 villagers.

The company is aware that villagers have no titles or documents verifying land ownership. The company has not used villagers' residences for business operations, because villagers' residences are located along the roadside. As for land that villagers claimed to be their farmland, the company inspected the areas and found them to be deteriorated forest.

The company has consisted paid compensation. To date, compensation has been paid for 500 households. However, the actual implementation is by local government agencies on behalf of the company. The company allocated a budget of 60 million Thai baht for compensation.

### (3) Written Statement, dated November 20, 2013

Koh Kong Sugar Industry Pcl submitted a written statement in response to the report by the Subcommittee on Civil and Political Rights entitled "Findings Report by the National Human Rights Commission, Subcommittee on Civil and Political Rights on the Participation of Khon Kaen Sugar Industry Public Company Limited on Sugarcane Plantations in Koh Kong Province, Kingdom of Cambodia." Dated July 25, 2012, this report alleged that Koh Kong Sugar Industry Pcl committed violations against land used for subsistence and fundamental human rights of villagers in Koh Kong province, Cambodia. The company submitted the following response:

#### 1. Illegal Possession of Villagers' Land

1.1 Koh Kong Sugar Industry Co. Ltd. and Koh Kong Plantation Co. Ltd. (henceforth referred to as "the company") were granted rightful land concessions by the Cambodian government on August 2, 2006. The land concessions were transferred from two Cambodian companies, Koh Kong International Resort Club and Duty Free Shop, which were originally granted concessions on March 20, 2006.

1.2 Following the company's concessions, the company conducted a field survey and land inspection jointly with Khon Kaen University. The survey found that most of the concession areas consisted of deteriorated and abandoned forest, and the soil was in poor condition, not appropriate for agriculture. The travel to the land concession areas at that time required crossing by raft as many as three times before reaching the concession area. It was found that most villagers lived along the main road outside the concession area. Only a minority of villagers lived inside the concession area without any road access.

1.3 The project conducted a survey jointly with community leaders and government officials. Compensation was negotiated for affected villagers, according to proof of land possession. At the time, compensation agreements were signed individually, with clear evidence of payment through receipts and photographs with fingerprints.

1.4 The company began receiving additional complaints from villagers regarding farmland, and investigated the situation. Whenever it was found that villagers could show proof of rightful land ownership, the company paid additional compensation to villagers.

1.5 Approximately 200 households still claim that they have rights over the land concession area (only about 7 percent of the total land concession area) without any proof of land ownership or any relevant documents supporting their claims. As a result, the company cannot issue compensation and/or return the land. These villagers filed a lawsuit at Koh Kong Provincial Court.

1.6 After deliberations, Koh Kong Provincial Court ruled that villagers had no proof of rightful land ownership and returned this case to the Land Department of Koh Kong Provincial Office on August 30, 2012. Nevertheless, the company continue to negotiate and compensate most villagers. There remains only about 9 households who refuse to negotiate with the company. The company does not know the reason behind this decision. Meanwhile, these villagers still cannot show any proof for the Land Department to issue their land titles.

1.7 For more than 60 years, Khon Kaen Sugar Industry Public Company Limited has operated its business by valuing the principles of international human rights and respect for people's rights and liberties, within Thailand and abroad. The company has no policy to possess land without legal rights. The company will gladly pay compensation or reparations, or even return the land, if villagers can provide rightful proof of land rights (this proof is necessary for the company to show to the Cambodian government). To date, these villagers still cannot provide such proof, but have submitted complaints to many organizations as evident in the news. As a foreign investor, the company has the duty to respect and abide by the laws of Cambodia. All land concessions are still owned by Cambodia. The company is merely leasing the land according to the concession agreement. When the concession agreement expires, the company will have to return all land concessions back to the Cambodian government. Therefore, the company cannot return or hand over any land to anyone rightfully, without the approval of the Cambodian government.

## 2. Use of Violence in Forced Eviction and Trespassing Villagers' Land

2.1 The Cambodian government assigned the land concession areas to the company and oversaw the assignment of relocation for villagers living in concession areas.

2.2 The land concession granted to the company was transferred from two Cambodian companies who first received the concession. The use of violence occurred before the company received a transfer of land concession. Therefore, Koh Kong Sugar Industry Co. Ltd. and Koh Kong Plantation Co. Ltd. did not take part in any use of violence in forced eviction and trespassing of villagers' land.

2.3 Koh Kong Sugar Industry Co. Ltd. and Koh Kong Plantation Co. Ltd. do not support any actions that violate human rights.

2.4 Koh Kong Sugar Industry Co. Ltd. and Koh Kong Plantation Co. Ltd. has never supported or ordered the use of violence in evicting villagers.

### 3. Killing and Confiscation of Livestock Animals in Exchange for Ransom

3.1 Koh Kong Sugar Industry Co. Ltd. and Koh Kong Plantation Co. Ltd. has never killed or confiscated any livestock animals in exchange for ransom.

3.2 If livestock animals belonging to villagers are found wandering in the land concession area, the company returns these animals to their owners without demanding any money

### 4. Harassment or Threat against Villagers in Land Concession Area

The company has never committed such actions. Throughout the time of KSL's business operations, the company has always emphasized building positive relationships with the community.

### 5. Use of Child Labor

5.1 The allegations by Equitable Cambodia and Inclusive Development International against Koh Kong Plantation Co. Ltd. relied only on photographs and videos which were produced from staging and false information, causing extreme damage to the company's reputation.

5.2 The company has evidence and reliable information to refute these allegations. The videos released on the use of child labor contained hired actors.

5.3 The company has never employed workers below the age of 18.

5.4 Company policy strictly prohibits hiring of subcontract workers below the age of 18. If we find subcontract workers below the age of 18, the company immediately terminates the subcontract employment agreement.

5.5 The company is inspected by Cambodia' Department of Labor and Pro Terra Foundation, which confirm that the company does not employ children below the age of 18.

5.6 Images of children living with their families on sugarcane plantations reflects normal life and typical Asian culture to bring children and grandchildren to live in the workplace. This reflects close caring for one's offspring. The company has a policy to promote access to education for these children, giving emphasis to the construction of schools and temples to promote children's access to education in the future.

### Actions by the Company

On the use of land concession and compensation for villagers:

1. The company has paid additional compensation to affected villagers, with proof of payment in photographs and documents with fingerprints of villagers who received compensation.

2. Many villagers have become company employees, all of whom are happy to be employed and earn a good income. In addition, the company has encouraged villagers to grow sugarcane and provided the necessary knowledge to encourage additional income for villagers and the community.

3. The company has constructed schools, roads and bridges.

4. The company has donated funds for the construction and maintenance of temples in the villages.

5. The company has collaborated with Wild Aid, an international organization dedicated to nature and wildlife conservation, to preserve watershed areas and large trees and to maintain forest areas within the land concession to ensure fertility into the future.

6. The company operates every sugar manufacturing process to be as environmentally-friendly as possible. Organic matter is used to maintain sugarcane plantations to reduce the use of chemicals and to benefit the soil, waterways, forest and the livelihood of villagers.

7. In the case of accidents or emergencies that may affect the environment and villagers nearby, the company policy is to prevent and resolve the problem immediately.

8. Over the past seven years of operation, the company has generated a great deal of development to the local community.

### **3.3 Statements by Relevant Parties**

#### **3.3.1 Stock Exchange of Thailand**

The Stock Exchange of Thailand submitted a statement in writing that Khon Kaen Sugar Industry Public Company Limited or KSL is a company registered in the Stock Exchange, with duties to disclose information and act in accordance with the responsibilities of a registered company. Khon Kaen Sugar Industry Pcl has disclosed information on the investment in construction of a sugar manufacturing plant in Koh Kong, Cambodia through the Stock Exchange information system, as follows:

1. On April 21, 2006, on behalf of Khon Kaen Sugar Industry Pcl, Chief Executive Officer and Board President Mr. Chamroon Chinthammit submitted a letter to Board Members and Manager of the Stock Exchange of Thailand. The letter indicated a request to explain about the investment in sugarcane plantation and the establishment of a sugar factory in Cambodia. Khon Kaen Sugar Industry Pcl and subsidiary companies wanted to inform that Khon Kaen Sugar Industry Pcl planned to set up a joint venture in Cambodia in order to request the permit to open a sugar factory and obtain a land concession of 20,000 hectares (125,000 rai) in Koh Kong, Cambodia. According to company estimates, total investment for this project would be approximately 2 billion baht. Investment will be incremental from 2006 to 2009. The company expected to hold no less than 50 percent shares of registered capital in the joint venture.

2. On August 2, 2006, on behalf of Khon Kaen Sugar Industry Pcl, Chief Executive Officer and Board President Mr. Chamroon Chinthammit submitted a letter to Board Members and Manager of the Stock Exchange of Thailand to inform about investment in the sugarcane plantation and the establishment of a sugar factory in Cambodia. On August 2, 2006, Khon Kaen Sugar Industry Pcl and foreign partners in the joint venture entered into a Memorandum of Understanding (MoU) with the Cambodian government to lease a 90-year concession of 20,000 hectares of land to be used for planting sugarcane and establishing a sugar factory in Cambodia. Two new companies were established with 50 percent shares of registered capital held by Khon Kaen Sugar Industry Pcl., 30 percent shares held by a Taiwanese shareholder and 20 percent shares held by a Cambodian shareholder. The two companies are Koh Kong Plantation Company Limited (KPT) and Koh Kong Sugar Industry Company Limited (KSI).

Koh Kong Plantation Company Limited (KPT) will operate the business of sugarcane plantation in Cambodia, and Koh Kong Sugar Industry Company Limited (KSI) will operate the business of sugarcane plantation and establishment of a sugar factory in Cambodia.

3. On June 25, 2007, on behalf of Khon Kaen Sugar Industry Pcl, Chief Executive Officer and Board President Mr. Chamroon Chinthammit submitted a letter to Board Members and Manager of the Stock Exchange of Thailand, notifying the capital increase in Koh Kong Plantation Co. Ltd. (KPT). On June 8, 2007 (Meeting No. 2/2550), the Board of Koh Kong Plantation Company Limited (KPT) approved the capital increase for Koh Kong Plantation Co. Ltd. (KPT) to plant sugarcane plantations in Cambodia according to land concession rights. On June 22, 2007 (Meeting No. 3/2550), the Board of Khon Kaen Sugar Industry Pcl approved this capital increase.

4. On December 4, 2007, on behalf of Khon Kaen Sugar Industry Pcl, Chief Executive Officer and Board President Mr. Chamroon Chinthammit submitted a letter to Board Members and Manager of the Stock Exchange of Thailand about the investment in a sugar factory in Koh Kong with a daily capacity of 6,000 tons of sugarcane. Khon Kaen Sugar Industry Pcl wanted to inform that Khon Kaen Sugar Industry Pcl has invested 50 percent shares in Koh Kong Plantation Co. Ltd. (KPT) since 2006 toward a sugarcane plantation project in the land concession area of 20,000 hectares (125,000 rai). Sugarcane productivity has been according to projections. Therefore, to meet plans for production of raw sugar by early 2009, Koh Kong Sugar Industry Co. Ltd., a subsidiary of Khon Kaen Sugar Industry Pcl which holds 50 percent shares, has decided to invest in construction of a sugar factory with the daily capacity of 6,000 tons of sugarcane in Koh Kong, Cambodia.

### **3.3.2 Ministry of Commerce**

The Ministry of Commerce submitted a verbal statement on February 18, 2013 which can be summarized as follows: There is currently no Thai government agency or relevant regulation with the explicit mandate to oversee foreign investment by private Thai companies. Thai agencies with duties related to commerce generally only oversee foreign investment by foreign companies in Thailand. In addition, it is normal for every country in the world to encourage private investors to invest in other countries. Therefore, if laws or principles were to exist to control business operations in foreign countries, it would only be about the good governance principles which businesses already follow.

### **3.3.3 Office of the Cane and Sugar Board**

The Office of the Cane and Sugar Board submitted a written statement which can be summarized as follows:

Khon Kaen Sugar Industry Pcl operates a business in sugar and related businesses under the name KSL Group. The company policy is to produce the highest quality of sugar. The company has to abide by duties according to Article 44 of the 1984 Cane and Sugar Act. For instance, the duty to act in accordance with regulations and announcements of the Cane and Sugar Board, the duty to accept cane from cane growers and heads of cane grower groups in accordance with stipulations by the Cane and Sugar Board, the duty to produce sugar according to characteristics, quality and quantity as indicated by the Cane and Sugar Board, etc. Moreover, the Cane and Sugar Board has the legal duties according to Article 61 of the same legislation. Its duties include performing secretarial duties of the Board and other Boards according to the Cane and Sugar Act, compiling and analyzing data on cane

and sugar production, sugar consumption and sales, promoting and distributing information on sugar production and information on both domestic and international sugar market, among others.

Furthermore, the Office of Cane and Sugar Board is a government agency which serves as an intermediary organization, coordinating collaboration between cane growers and sugar factories, in order to promote, support and operate the cane and sugar industry in accordance with the 1984 Cane and Sugar Act. The joint venture between Khon Kaen Sugar Industry Pcl and Cambodian and Taiwanese business partners in Cambodia is beyond the legal mandate of the Office of Cane and Sugar Board according to the 1984 Cane and Sugar Act.

### **3.3.4 Collaborative Working Group on “The Changing Livelihoods, Natural Resources and Economy after Economic Land Concessions to Koh Kong Plantation Co. Ltd. and Koh Kong Sugar Industry Co. Ltd. in Cambodia”**

Towards Ecological Recovery and Regional Alliances (TERRA) and the Community Legal Education Center (CLEC), as members of the working group, submitted information in the form of a report entitled “Livelihood, Natural Resources and Household Economy in Sre Ambel District, Koh Kong Province: Before and after economic land concessions to Koh Kong Plantation Co. Ltd. and Koh Kong Sugar Industry Co. Ltd.” The report was based on 2 types of information gathering: 1) Focus group interviews, once in each village. Approximately 5-7 villagers from various groups joined each focus group and answered questions. 2) Questionnaire, completed by 188 households out of 200 households total who together filed a lawsuit on rights violations and land loss, demanding land return. The 188 households consist of 70 households in Chhouk village, 105 households in Chikhor village and 13 households in Trapeng Kendal village. Findings can be summarized as follows:

#### (1) Village history, tribal history, beliefs and traditions of the 3 villages

The 3 villages in Sre Ambel district, Koh Kong province affected by sugarcane plantation and sugar industry following the economic land concessions to Khon Kaen Sugar Industry Pcl (KSL) are Chhouk, Chikhor and Trapeng Kendal villages. Villagers of all three villages are of Khmer ethnicity, which is the majority ethnic group in Cambodia. According to villagers, their ancestors settled in distant and nearby villages a long time ago. The timeframe claimed by villagers is prior to the reign of King Norodom Sihanouk, which means that settlement began before 1941 (B.E. 2484). The current generation of village residents were all born and raised in these villages.

Because most villagers are Buddhists, their Buddhist beliefs have quite a heavy influence on their way of life. They believe and respect the spirits of ancestors. There is an annual ceremony to pay respects to ancestral spirits after every harvest season. This ceremony is to ensure posterity, peace and prosperity. Another ceremony related to ancestral spirits is called “Neak Ta,” to prevent disease in livestock, which holds particular importance in Trapeng Kendal village. In addition, there are other ceremonies organized according to slightly different traditions for each household.

#### (2) Land Use and Characteristics of Agricultural Production in the Villages

Villagers categorize the land into 4 main types of land and land uses: 1) Highland, which has quite high levels of fertility and can grow many types of crop such as corn, cassava, watermelon and cashew nut, among others. However, this land has already been granted to the company’s land concession; 2) Floodplain, which villagers tend to use for growing rice and as grassland for raising



livestock; 3) Forest, which is usually located on mountain slopes. This type of land is for public uses, with no individual ownership. Everyone can collectively use this land for collecting forest goods.; 4) Residential area, which villagers consider as separate from farmland, rice fields and forests. Residential area is strictly limited for building homes and residences.

According to interviews, this land was first settled by villagers and turned into farmland a long time ago. There is evidence of continued use and evidence of birth in this area. The timeframe can be for as old as 70 years ago or as recent as the 30-40 years ago. For example, settlement since the 1970s. Regardless, most residents confirm land use prior to 2000, which is the year indicated in Cambodian law regarding the right to land for those who possess it for no less than five years. Villagers in the community have common knowledge and agreement as to which plot of land belongs to whom, and recognize that agricultural crops such as rice, pineapple, fruit and other trees such as mango and durian are a form of personal possession. In addition, trees indicate the length of time in land use and are considered a part of family inheritance, passed on from generation to generation.

### (3) Use of Other Natural Resources

Forest land is a very important area for the community. Villagers benefit from natural resources from the forest, which used to be found easily and within proximity the villages. These natural resources include various vines, rattan, rubber oil, honey, various fruit and herbs. Villagers collect plants in the forest and transform them for household uses. For instance, weaving rattan baskets, burning charcoal, and making traditional medicine. Villagers can sell these products in Sre Ambel district, Koh Kong province, as well as keep the products for household use. In addition, the forest is used as grazing land for livestock. However, even though villagers can still enter some of the remaining forests, there is a lack of access to resources. In the past, villagers used only half a day to gather forest goods. But because the forest has been razed and fenced off, people cannot reach the forested areas as easily on food. They must spend the entire day walking just to get in and out of the forested areas.

### (4) Company Entry

The company entered into the three villages in 2006, just one year after the 2005 Sub-Decree on Economic Land Concessions was announced. In the beginning, company representatives and village chiefs entered the villages and used land surveying equipment to dig samples and test for land fertility. These actions were without any declaration of intent to the villagers. Later, company representatives returned with much equipment including tractors and bulldozers. They began razing and taking possession of villagers' land without any prior notice. When villagers contested and tried to stop them, they simply claimed that villagers had no right to the land because all the land belonged to the government. Villagers insisted that they did not wish to give the land to the company, but some villagers believed that they had no land rights and had to acquiesce to the company's possession of their land.

Villagers who accepted the company's compensation received only compensation for the loss of land used for crops. However, there were several hundred hectares of land belonging to villagers that had been destroyed by the bulldozers. This land included paddy fields, crops such as watermelon and cashews and land used for grazing by livestock. Additionally, some parts of sacred forests and spiritual forests in Chhouk village were destroyed. Villagers believe that the remaining area was not

destroyed due to the area's sacredness. In general, the land exempted from destruction consisted of only land used for villagers' homes.

## (5) Change in Village Livelihood and Natural Resources after the Economic Land Concession

### 5.1 Loss of land and crop yield

According to information gathered from 180 households (based on a total of 188 questionnaires), the total land area for growing rice and other crops consisted of 1,401.84 hectares (8,761.5 rai), divided into 457.83 hectares (2,861.45 rai) of land for growing rice (both highland rice and paddy rice) with an average of 2.55 hectares (15.89 rai) per household, 944.01 hectares (5,900 rai) of land for other crops (orchards) with an average of 5.24 hectares (32.77 rai) per household. Together, each village household possessed an average of 7.78 hectares or 48.66 rai for rice and orchards. However, all 180 households lost the land and were left with only 200.83 hectares (1,255.18 rai) of land, consisting of 191.33 hectares (1,195.8 rai) of rice-growing land and 9.5 hectares (59.37 rai) of orchard land. The total land remaining for each household is only an average of 1.11 hectare or 6.33 rai. Of the 180 households, 34 households loss rice-growing land and 163 households lost orchard land.

The loss of land for agricultural production has a direct effect on income from agricultural production. Based on information gathered from 159 households, the economic value of rice production by villagers prior to the land concession totaled 466,680,200 riel (3,482,688 baht), or an average of 2,935,096 riel (21,904 baht) for each household. After the land concession, the economic value of rice production decreased to only 177,309,300 riel (1,323,204 baht), or an average of 1,115,152 riel (8,322 baht) for each household. This is an immediate decrease of 62 percent.

### 5.2 Reduced income from orchard crops before and after the economic land concession

Based on data analysis as gathered from 160 households, the income in these three villages from the sale of orchard crops was significantly reduced. Before the land concession, the value of household consumption and sale of orchard crops totaled 2,087,291 baht (279,697,000 rai). After the concession, the value was reduced to 45,522 baht (6,100,000 rai). This value was eliminated entirely in Chikhor village.

### 5.3 Reduction and reduced value of livestock animals, before and after the land concession

A comparison of the number and value of livestock animals before and after the concession also revealed a significant decrease. For large animals such as cows and buffaloes, the reduced number was directly related to the reduced land area for grazing. Based on the information gathered, it was also found that the total value of livestock in the 3 villages was reduced as much as 28 percent after the land concession. This reduced value may include factors of the different valuation of animals among different individuals.

### 5.4 Reduction of forest goods

Another clear change is the drastic reduction of forest goods, due to the razing of large areas of forest land. Villagers also have limited access to the forest, in contrast to free and open access in the past. Villagers who wish to enter the forest must walk through the company's sugarcane

plantations and are required to pay entrance and exit fees to the company's security officers. If villagers do not pay, the goods they gather may be confiscated and they have to return home empty-handed. Some forest areas do not require walking through the company's sugarcane plantations, but these forests are located much further away and are thus not conveniently accessible by foot because they require all day to reach the forest.

#### 5.5 Higher cost of living

Villagers in the three villages have to bear the burden of a higher cost of living. In the past, villagers could grow food for consumption and sale. For example, villagers were able to demonstrate that a crop of watermelon used only 75 days and could generate several million riel of income. Moreover, villagers could gather fish from the waterways, collect various goods from the forests. Now, villagers must use money to buy almost everything. They must sell livestock animals to rent farming equipment during the planting season. Villagers are more often ill due to deteriorating environmental conditions. Many villagers must borrow money to survive. Taking into account all of the above factors, each household has a higher cost of living at approximately 5,000-40,000 riel per day (37.42-299.27 baht), depending on the number of dependents in each household.

#### 5.6 Debt

The rapid and severe loss of land has caused citizens to suffer in many ways, including being denied by various sectors which they might rely on in times of distress. Villagers have had to borrow money from banks, financial institutions within the community or local businessmen who charge interest. Some families who still have land are compelled to sell the land to repay their debt. In some cases, villagers suffer from the effect of the project and try to borrow money from banks to make ends meet in times of need. However, their request for loans are rejected because banks believe that villagers borrow money to organize protests.

#### 5.7 Lack of education for children

Based on information gathered from 219 children in all three villages, there have been 86 children who had to quit school after the land concession (27 children in Chhouk village, 44 children in Chikhor village and 15 children in Trapeng Kendal village).

#### 5.8 Divisiveness within the communities

On the issue of changing community circumstances, villagers indicated that the company's entry into the area has caused a change in the communal living situation. In the past, villagers conducted natural exchanges with others within the community during farming and agricultural production. After the forced eviction and loss of land, many residents have had to leave their village permanently. Many other villagers must look for work outside the village, which are usually demanding on their time. Workers have little opportunity to return home to visit the communities, resulting in increasing community divisiveness and the lack of time for communal gathering and interactions. In addition, the company's entry and actions in the area has created some mistrust among villagers because "community residents are beginning to be afraid to speak the truth to one another, due to influences or fear of harassment from powerful figures."

According to the information gathered, it was found that 10-20 percent of residents in Chhouk, 20 residents in Chikhor and some residents of Trapeng Kendal have had to find work by migrating to other provinces and or even other countries such as Malaysia and Thailand. Most work as construction workers, drivers, cleaners or seamstresses.

#### 5.9 Villagers' employment in the company

It was found that a considerable number of villagers from all three villages have had to work for the company – 30 percent of households in Chhouk village and 50 percent of the entire population of Chikhor village. Most villagers say they have no choice. The work is not full-time and is mostly labor-intensive, such as planting sugarcane, cutting sugarcane, fertilizing fields, driving employee shuttles, loading sugarcane onto trucks, etc. Villagers also say the wages are not reflective of the labor-intensiveness of their tasks and are not always paid on time. Their income fluctuates according to the amount of work they can get. Most villagers who cut sugarcane will earn approximately a daily wage of 10,000-15,000 riel (74.82-112.23 baht). Their wages will be calculated based on the number of sugarcane bundles they can harvest. Approximately 20-25 stalks of sugarcane make 1 bundle, and 1 bundle is paid 100 riel (0.75 baht). Work as a tractor driver earns more and is calculated by land area. For example, 70,000 riel (523.75 baht) per 1 hectare.

Wages from these jobs are unstable, due to the limited availability of only 3-7 work days per month. More work is available during the harvest season, which total only 1-3 months per year, from December to March. In addition, many people suffer illnesses from the labor-intensive work and the use of chemicals. Villagers indicate that their wages are insufficient to treat their illnesses.

## 4. Relevant Laws, International Covenants and Guiding Principles

The Subcommittee on Community Rights reviewed this complaint in accordance with the 2014 Interim Constitution of Thailand, the 2007 Constitution of Thailand (in force during the time of this investigation), the 1999 National Human Rights Commission Act, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the ASEAN Human Rights Declaration, and the United Nations Guiding Principles on Business and Human Rights: Implementing the Protect, Respect, Remedy Framework.

### **(1) Interim Constitution of Thailand, 2014**

Article 4: Subject to the provisions of this Constitution, all human dignity, rights, liberties and equality of the people as protected by the constitutional convention under a democratic regime of government with the King as Head of State and by international obligations bound by Thailand, shall be protected and upheld by this Constitution.

### **(2) Constitution of Thailand, 2007**

Article 82 Paragraph 1: The State shall promote friendly relations and cooperation with other countries, adopt the principle of non-discrimination, and comply with treaties on human rights to

which Thailand is a party. It shall also follow the obligations committed to other countries and international organizations.

Article 257: The National Human Rights Commission has the powers and duties as follows:

(1) Investigate and report on the commission or omission of acts which violate human rights or which do not comply with obligations under international treaties to which Thailand is a party, and propose appropriate remedial measures to the person or agency committing or omitting such acts to take action. In the case where it appears that no action has been taken as proposed, the Commission shall report to the National Assembly for further action.

### **(3) National Human Rights Commission Act, 1999**

Article 3: In this Act, "human rights" means human dignity, rights, liberties and equality of people which are guaranteed or protected under the Constitution of the Kingdom of Thailand or under Thai laws or under treaties which Thailand has obligations to comply

Article 15: The Commission has the powers and duties as follows:

(1) To promote the respect for and the practice in compliance with human rights principles at domestic and international levels;

(2) To investigate and report the commission or omission of acts which violate human rights or which do not comply with obligations under international treaties relating to human rights to which Thailand is a party, and propose appropriate remedial measures to the person or agency committing or omitting such acts to take action. In the case where it appears that no action has been taken as proposed, the Commission shall report to the National Assembly for further proceeding;

(3) To propose to the National Assembly and the Council of Ministers policies and recommendations with regard to the revision of laws, rules or regulations for the purpose of promoting and protecting human rights

### **(4) International Covenant on Civil and Political Rights, to which Thailand became a party on October 29, 1996**

Article 1. 1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

Article 47: Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

**(5) International Covenant on Economic, Social and Cultural Rights**, to which Thailand became a party on December 5, 1999

Article 1. 1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based on the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

Article 25: Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

**(6) ASEAN Human Rights Declaration**, to which Thailand became a signatory on November 18, 2012.

Right to Development

Article 35. The right to development is an inalienable human right by virtue of which every human person and the peoples of ASEAN are entitled to participate in, contribute to, enjoy and benefit equitably and sustainably from economic, social, cultural and political development. The right to development should be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations. While development facilitates and is necessary for the enjoyment of all human rights, the lack of development may not be invoked to justify the violations of internationally recognized human rights.

Article 36. ASEAN Member States should adopt meaningful people-oriented and gender responsive development programs aimed at poverty alleviation, the creation of conditions including the protection and sustainability of the environment for the peoples of ASEAN to enjoy all human rights recognized in this Declaration on an equitable basis, and the progressive narrowing of the development gap within ASEAN.

Cooperation in the Promotion and Protection of Human Rights

Article 39. ASEAN Member States share a common interest in and commitment to the promotion and protection of human rights and fundamental freedoms which shall be achieved through, *inter alia*, cooperation with one another as well as with relevant national, regional and international institutions/organizations, in accordance with the ASEAN Charter.

Article 40. Nothing in this Declaration may be interpreted as implying for any State, group or person any right to perform any act aimed at undermining the purposes and principles of ASEAN, or

at the destruction of any of the rights and fundamental freedoms set forth in this Declaration and international human rights instruments to which ASEAN Member States are parties.

**(7) United Nations Guiding Principles on Business and Human Rights: Implementing the Protect, Respect, Remedy Framework 2011**, upheld as an international standard as endorsed by the 17<sup>th</sup> United Nations Human Rights Council (A/HRC/17/31) and distributed on March 21, 2011

I. The State Duty to Protect Human Rights

A. Foundational Principles

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

2. States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.

B. Operational Principles

General State Regulatory and Policy Functions

3. In meeting their duty to protect, States should:

(a) Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps;

(b) Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights;

(c) Provide effective guidance to business enterprises on how to respect human rights throughout their operations;

(d) Encourage, and where appropriate require, business enterprises to communicate how they address their human right impacts.

Ensuring Policy Coherence

9. States should ensure that governmental departments, agencies and other State-based institutions that shape business practices are aware of and observe the State's human rights obligations when fulfilling their respective mandates, including by providing them with relevant information, training and support.

II. The Corporate Responsibility to Respect Human Rights

A. Foundational Principles

11. Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.

12. The responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of

Human Rights and the principles concerning fundamental rights set out in the International Labor Organization's Declaration on Fundamental Principles and Rights at Work.

13. The responsibility to respect human rights requires that business enterprises:

(a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;

(b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.

14. The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure. Nevertheless, the scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and with the severity of the enterprise's adverse human rights impacts.

15. In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including:

(a) A policy commitment to meet their responsibility to respect human rights:

(b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;

(c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.

#### B. Operational Principles

16. As the basis for embedding their responsibility to respect human rights, business enterprises should express their commitment to meet this responsibility through a statement of policy that:

(a) Is approved at the most senior level of the business enterprise;

(b) Is informed by relevant internal and/or external expertise;

(c) Stipulates the enterprise's human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services;

(d) Is publicly available and communicated internally and externally to all personnel, business partners and other relevant parties;

(e) Is reflected in operational policies and procedures necessary to embed it throughout the business enterprise.

#### Human Rights Due Diligence

17. In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process



should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Human rights due diligence:

(a) Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships;

(b) Will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations;

(c) Should be ongoing, recognizing that the human rights risks may change over time as the business enterprise's operations and operating context evolve.

18. In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should:

(a) Draw on internal and/or independent external human rights expertise;

(b) Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.

#### Remediation

22. Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.

#### Issues of Context

23. In all contexts, business enterprises should:

(a) Comply with all applicable laws and respect internationally recognized human rights, wherever they operate;

(b) Seek ways to honor the principles of internationally recognized human rights when faced with conflicting requirements;

(c) Treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue wherever they operate.

### III. Access to Remedy

#### A. Foundational Principle

25. As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.

## B. Operational Principles

### State-based Judicial Mechanisms

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

### Non-State-based Grievance Mechanisms

28. States should consider ways to facilitate access to effective non-State-based grievance mechanisms dealing with business-related human rights harms.

## 5. Statement and Resolution of the Subcommittee on Community Rights

### 5.1 Summary of Findings

Upon review of verbal and written statements by the complainants, defendants and relevant parties, in addition to review of relevant documentary evidence, the Subcommittee can summarize the following findings:

#### **(1) Community Background and Characteristics**

The Subcommittee reviewed information on community background and characteristics of Chikhor, Chhouk and Trapeng Kendal villages in Sre Ambel district, Koh Kong province. The Subcommittee found that villagers settled in this area before the reign of King Norodom Sihanouk, meaning before 1941 (B.E. 2484), or approximately 70 years ago. Because of the villagers' early settlement in this area, the Cambodian government acknowledge these villagers' rights to land use under the national policy on Participatory Land Use Planning (PLUP). This policy was introduced by the Cambodian government as part of the Land Policy in May 2001 and the Strategic Framework on Land Policy in September 2002. It is evident that in the land concessions to Koh Kong Sugar Industry Co. Ltd. and Koh Kong Plantation Co. Ltd., villagers have lived and established livelihoods as a community for a long time.

On the issue of land use and use of local natural resources by community residents, the Subcommittee found that the community has long used the land for agricultural purposes and benefits from other natural resources for subsistence, such as the forest and forest goods. It can be said that this community's way of life is based on agricultural production from the beginning of community settlement, and agricultural production has been passed on as the way of life until today. Evident in the research findings of the Collaborative Working Group, prior to the land concession, the main source of income for community residents was still from land use for agricultural production. Community residents categorize the land into 4 main types of land and land uses: 1) Highland, which has quite high levels of fertility and can grow many types of crop such as corn, cassava, watermelon and cashew nut, among others; 2) Floodplain, which villagers tend to use for growing rice and as grassland for raising livestock; 3) Forest, which is usually located on mountain slopes. This type of land is for public uses, with no individual ownership. Everyone can collectively use this land for collecting forest goods. Forest land is a very important area for the community to benefit from natural resources from the forest, which can be found easily and within close distance of the villages. These natural resources include various vines, rattan, rubber oil, honey, various fruit and herbs. Villagers collect

plants in the forest and put them to use in the household. For instance, weaving rattan baskets, burning charcoal, and making traditional medicine. Villagers can sell these products in Sre Ambel district, Koh Kong province, as well as keep the products for household use. In addition, the forest is used as grazing land for livestock. Therefore, the forest is a very important component of the community.; 4) Residential area, which villagers consider as separate from farmland, rice fields and forests. Residential area is strictly limited for building homes and residences. Upon contextual review of most indigenous communities throughout the Southeast Asia region, which are widely accepted as agricultural communities, it can be concluded that the land use characteristics and community way of life in the area of this complaint is the same as indigenous communities throughout Southeast Asia.

On the issue of community rights to manage and use local resources, the Subcommittee reviewed human rights principles which recognizes that the right to use natural resources as a Natural Right, which cannot be revoked or impeded. The community uses natural resources for life and bodily sustenance, which is a fundamental human right. If the exercise of this right to use natural resources is revoked or impeded to the point of causing impediments or revoking the ability to maintain a normal livelihood, the action which revokes or impedes that right is equivalent to a human rights violation. For this reason, the right of access to use local natural resources is guaranteed in many international human rights laws, namely the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). These international covenants recognize that communities have the right to self-determination, the right to freely manage their natural wealth and resources, and the right to maintain their own means of subsistence which cannot be deprived under any condition.

In addition, the community right to use natural resources is guaranteed in the ASEAN Human Rights Declaration. This document was produced by the ASEAN Intergovernmental Commission on Human Rights (AICHR) with the purpose of declaring ASEAN's intention to promote and protect human rights according to the political, social and cultural characteristics unique to ASEAN while still upholding human rights standards in accordance with international principles. Guaranteed under the "Right to Development" in the ASEAN Declaration: "The right to development is an inalienable human right by virtue of which every human person and the peoples of ASEAN are entitled to participate in, contribute to, enjoy and benefit equitably and sustainably from economic, social, cultural and political development. The right to development should be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations."

Therefore, upon review of the aforementioned information on the background and characteristics of communities in Chikhor, Chhouk and Trapeng Kendal villages, Sre Ambel district, Koh Kong province, the Subcommittee is of the opinion that all 3 villages located in the land concession area belonging to Koh Kong Sugar Industry Co. Ltd. and Koh Kong Plantation Co. Ltd. are not derelict and abandoned areas as claimed by the companies, but are characteristic of communities with a long history of settlement. Thus, all 3 villages have the right to benefit from local natural resources for the purpose of maintaining their means of subsistence, the right to freely manage their natural wealth and resources, and the right to maintain their own means of subsistence which cannot be deprived under any condition, as guaranteed by ICCPR and ICESCR. The 3 villages are also entitled to participate in, contribute to, enjoy and benefit equitably and sustainably from economic development, as guaranteed in the ASEAN Human Rights Declaration.

Beyond the community rights of these 3 villages as guaranteed by international covenants and the ASEAN Declaration, the Subcommittee finds that community residents in all 3 villages are also entitled to land rights as guaranteed by the 2001 Land Law of Cambodia. As Article 30 states: “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. Any person who possessed the immovable property for less than five years may request a definitive title of ownership after five years of possession.” (Land Law of Cambodia 2001, Article 30) Article 31 also states that any person who had been enjoying possession before the 2001 Land Law of Cambodia entered into force and fulfills all requirements to become an owner of the property may be authorized by the competent Cambodian authority to extend the land possession until the legally prescribed period of five years to attain permanent title of ownership. Moreover, Cambodian authorities cannot deny this right to attain the title of land ownership if the possession is peaceful and uncontested. (Land Law of Cambodia 2001, Article 31) The residents of Chikhor, Chhouk and Trapeng Kendal villages have lived on their land uncontested for more than 5 years and have possessed the land peacefully, uncontested, and in a publically evident and continuous act in good faith. Therefore, these residents are without question entitled to the right of possession and fulfill the requirements to request and attain land documents or land titles and receive market value in the case of land expropriation.

The Subcommittee is of the opinion that the Cambodian government’s Participatory Land Use Planning Policy (PLUP) of May 2001 and the Strategic Framework on Land Policy of September 2002 – which assigned these 3 villages as policy implementation areas – is evidence confirming that land possession by residents of the 3 villages have been peaceful, uncontested and publically evident.

## **(2) The State of Human Rights Violations**

The Subcommittee finds that statements by complainants and village representatives, both verbal statements and documentary evidence, were in accordance with the findings of many human rights organizations. Namely, the statements were in line with the report on human rights violations in Koh Kong by the United Nations Special Representative of the Secretary-General for Human Rights in Cambodia, as reflected in the report entitled “Economic Land Concessions in Cambodia: A human rights perspective,” published by the Office of the United Nations High Commissioner for Human Rights in 2007. Concurrently, the Asian Human Rights Commission (AHRC) recorded the events in the AHRC Urgent Appeal entitled “Cambodia: Two villagers shot and several injured during the illegal forced eviction in Koh Kong” in June 2006.

The state of human rights violations have been documented in reports by many non-governmental human rights organizations including: “The Changing Livelihoods, Natural Resources and Economy after Economic Land Concessions to Koh Kong Plantation Co. Ltd. and Koh Kong Sugar Industry Co. Ltd. in Cambodia,” a report by the Collaborative Working Group consisting of Toward Ecological Recovery and Regional Alliance (TERRA) and Community Legal Education Center (CLEC); “Losing Ground: Forced Evictions and Intimidation in Cambodia, September 2009,” a report by the Cambodian Human Rights Action Committee (CHRAC); and the report by Ngo Sothath and Chan Sopal entitled “Does Large-Scale Agricultural Investment Benefit the Poor?” published by the Cambodian Economic Association Research Report (July 2, 2010).”

Upon review of the information above, the Subcommittee finds that human rights violations have occurred against the residents of Chikhor, Chhouk and Trapeng Kendal villages, Sre Ambel district, Koh Kong province. These human rights violations occurred from land concessions and can be reviewed according to the aforementioned human rights principles as follows:

(2.1) Violations of the Right to Manage and Benefit from Resources

Land concessions caused community residents of all 3 villages to lose the right to land for subsistence, due to expropriation for the sugar industry of land that villagers have possessed for agricultural production for a long time. In addition, land concessions caused residents of all 3 villages to lose their right to access local natural resources which the communities have relied on and used for maintaining their way of subsistence for a long time. For instance, residents were obstructed from entering the forest to collect forest goods for subsistence, and prohibited from letting their livestock graze in the forest. Once villagers were unable to continue agricultural production or enter the forest and collect forest goods, their means of subsistence was forcibly changed from agricultural production as a main profession to become hired labor for industry. Because most villagers lack the relevant skills for industry, they were only able to work as daily laborers, which provided low and unstable remuneration, insufficient to support a normal livelihood. Villagers became much poorer, compared to the time they owned farmland. Children were compelled to drop out of school because their parents did not have sufficient income for their tuition. These children were then compelled to work and earn supplementary income for their families.

(2.2) Violations of the Right to Life

Violations of the Right to Life occurred during forced evictions and destruction of property belonging to villagers, which occurred prior to the signing of land concession contracts. Homes were destroyed, farmland with ongoing crops was destructively tilled, villagers' livestock were shot dead, and some villagers were assaulted and shot dead during the land expropriation. These violent actions were documented by the Office of the United Nations High Commissioner for Human Rights in the 2007 report entitled "Economic Land Concessions in Cambodia: A human rights perspective": "For example, since May 2006, villagers in Sre Ambel district, Koh Kong province, have protested against the presence and activities of Koh Kong Sugar Industry Company and Koh Kong Plantation Company. In September 2006, protests at the concession site were met with violence by armed company security guards, who are military personnel, resulting in the shooting and injury of a female villager, and assault of four other villagers. Villagers have delivered their concerns to the National Assembly and the Prime Minister's Cabinet, filed a complaint with the National Authority for Land Dispute Resolution, and protested in front of the National Assembly in July 2006 and March 2007. The provincial government has promised to resolve the dispute, but the concessionaires continue to further encroach upon villagers' farmland." (pages 17-18)

**(3) Relevance of Khon Kaen Sugar Industry Public Company Limited**

In a letter dated November 20, 2013, Khon Kaen Sugar Industry Pcl explained to the Subcommittee that the company has not acted in any way that can be deemed a human rights violation against villagers. For example, the company has not taken part in the violent eviction or encroachment of villagers' land, has not threatened or harassed villagers, has employed no child labor,

and has not supported any form of human rights violations in the area. The Subcommittee considered the following issues:

Upon review of the company letter dated November 20, 2013 on page 3, topic 2. The Use of Violence in Eviction and Encroachment of Villagers' Land, topic 2.2 stated that: "The land concession we received was passed on from two companies with Cambodian nationality, who received the concession firsthand. Acts of violence were committed before we received the concession. Therefore, Koh Kong Sugar Industry Co. Ltd. and Koh Kong Plantation Co. Ltd. had no part in the use of violent force in the eviction and encroachment of villagers' land." This statement is equivalent to the company admitting that such an act of violence really occurred, but the actions occurred before the company received its concession, meaning that Khon Kaen Sugar Pcl had no part in the violent action.

However, upon review of the history and background of the business based on statements of the complainants, statements by Khon Kaen Sugar Pcl and statements by the Stock Exchange of Thailand made to the Subcommittee (Stock Exchange of Thailand Letter No. WK.10/2556 dated February 13, 2013), the Subcommittee can summarize the events in chronological order as follows:

March 20, 2006      The Cambodian Prime Minister's Cabinet issued a resolution approving land concessions to Duty Free Shop and Koh Kong International Resort Club of 10,000 hectares each (Statement by Khon Kaen Sugar Industry Pcl)

March 21, 2006      On behalf of Khon Kaen Sugar Industry Pcl, the company's Board President and Chief Executive Officer Mr. Chamroon Chinthammit submitted a letter to Board Members and Manager of the Stock Exchange of Thailand. The letter indicated a request to explain about the investment in sugarcane plantation and the establishment of a sugar factory in Cambodia. Khon Kaen Sugar Industry Pcl and subsidiary companies wanted to inform the Stock Exchange of Thailand that Khon Kaen Sugar Industry Pcl planned to set up a joint venture in Cambodia in order to request the permit to open a sugar factory and obtain a land concession of 20,000 hectares (125,000 rai) in Koh Kong, Cambodia. (Statement by the Stock Exchange of Thailand)

May 19, 2006      Bulldozers and armed guards began clearing land. (Statement by Khon Kaen Sugar Industry Pcl)

May 29, 2006      Koh Kong Plantation Co. Ltd. (KPT) and Koh Kong Sugar Industry Co. Ltd. (KSI) registered a company called Khon Kaen Sugar Industry Pcl, holding 50 percent shares of registered capital stock. A Taiwanese company, Vewong, held 30 percent shares. Mr. Ly Yong Phat, Senator of the Cambodian People's Party, held 20 percent shares. (Statement by the Stock Exchange of Thailand)

June 20, 2006      Duty Free Shop and Koh Kong International Resort Club submitted a letter to the Cambodian government requesting a change in the name of concession recipient (Statement by Khon Kaen Sugar Industry Pcl)

July 18, 2006      The Cambodian Prime Minister's Cabinet approved the transfer of land concession from Duty Free Shop to Koh Kong Plantation (KPT) and approved the transfer of land concession from Koh Kong International Resort Club to Koh Kong Sugar Industry (KSI). (Statement by Koh Kong Sugar Industry Pcl.)

August 2, 2006      Concession contract signed by the Cambodian Ministry of Agriculture, Forestry and Fisheries, Koh Kong Plantation (KPT) and Koh Kong Sugar Industry (KSI). (Statement by Koh Kong Sugar Industry Pcl.)

January 8, 2010      Thai Ministry of Commerce issued a letter to Koh Kong Sugar Industry (KSI) Board Member Mr. Chamroon Chinthammit regarding a bond change for Koh Kong Sugar Industry (KSI) which indicated a new structure of shareholding. Namely, Khon Kaen Sugar Industry Pcl will hold 70 percent shares and Ve Wong Corporation will hold 30 percent shares. (Statement by the Stock Exchange of Thailand)

The above chronology reveals that Khon Kaen Sugar Industry Pcl had no legal ties to Koh Kong Sugar Industry Co. Ltd. and Koh Kong Plantation Co. Ltd. until after the land concession contract on August 2, 2006, which occurred after the land was cleared on May 19, 2006. However, Khon Khaen Sugar Industry Pcl sent a letter to the Stock Exchange of Thailand Board and Manager on April 21, 2006 indicating that the company had plans to set up a joint venture in Cambodia in order to request a permit to establish a sugar factory and receive land concessions of 20,000 hectares (125,000 rai) for sugarcane plantations in Koh Kong, Cambodia. (This land area in the company's plan was equivalent to the land area later received by concession.) This letter to the Stock Exchange of Thailand occurred before the land was cleared on May 19, 2006. In addition, a company representative of Khon Kaen Sugar Industry Pcl issued a verbal statement to the NHRC Subcommittee on Civil and Political Rights on July 20, 2010 that "...To survey the land in 2005-2006, we had to travel by helicopter because cars could not enter the area..." This statement indicated that Khon Kaen Sugar Industry Pcl had entered the land and "acknowledged and displayed intention" to take actions in Koh Kong area since 2005.

Considering the above information, the Subcommittee is of the opinion that Khon Kaen Sugar Industry Pcl did not personally "commit the act of human rights violation" against residents of Chikhor, Chhouk and Trapeng Kendal villages in Sre Ambel district, Koh Kong province. The company only received the land concession from 2 companies of Cambodian nationality, namely Koh Kong International Resort Club and Duty Free Shop. On the contrary, Khon Kaen Sugar Industry Pcl entered into negotiations with villagers in the area and paid compensation to villagers.

However, there is evidence that the land concession for sugarcane plantation and the establishment of a sugar factory in Chikhor, Chhouk and Trapeng Kendal villages in Sre Ambel district, Koh Kong province resulted in human rights violations against community residents of all 3 villages. The fact that Khon Kaen Sugar Industry Pcl received the land concession from the 2 aforementioned companies is sufficient to conclude that Khon Kaen Sugar Industry Pcl entered into an agreement to receive a transfer of benefits from other businesses based on land concessions that caused human rights violations. Therefore, Khon Kaen Sugar Industry Pcl is a business entity must be responsible for human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts. (United Nations Guiding Principles on Business and Human Rights: Implementing the Protect, Respect, Remedy Framework. 2011. Principle 13.)

## **5.2 Conclusion by the Subcommittee on Community Rights**

In light of the above findings, it is evident that the land concessions belonging to Koh Kong Sugar Industry Co. Ltd. and Koh Kong Plantation Co. Ltd. were not located in derelict and abandoned land as claimed by Khon Kaen Sugar Industry Pcl. On the contrary, the land belong to residents of Chikhor, Chhouk and Trapeng Kendal communities in Sre Ambel district, Koh Kong province. These communities lived and relied on local natural resources as a means of subsistence for a long time. Thus, these communities are entitled to the right to self-determination, the right to freely manage their natural wealth and resources, and the right to maintain their own means of subsistence which cannot be deprived under any condition. These rights are guaranteed by international covenants and the ASEAN Human Rights Declaration. However, the concession was later given to the sugar industry and resulted in serious human rights violations against the communities, both the use of violence force to evict villagers from their homeland and the impediments against the exercise of community rights to use natural resources which is fundamental to their main means of subsistence.

The impact of these human rights violations are in part the direct responsibility of Khon Kaen Sugar Pcl, due to the company's decision to receive and benefit from the land concessions which caused human rights violations, regardless of the fact that the company did not itself commit the act of human rights violation.

Even though the human rights violation in this allegation occurred in Cambodia, Article 2(2) of the International Covenant on Civil and Political Rights, Article 2(1) of the International Covenant on Economic, Social and Cultural Rights and Article 39 of the ASEAN Human Rights Declaration all affirm that member states such as Thailand have the clear duty to provide guarantees for human rights protection according to these international agreements. This duty includes prevention of transboundary human rights violations by companies located within each member state's territory or registered under each member state's jurisdiction.

## **5.3 Resolution of the Subcommittee**

The Subcommittee resolved that measures to resolve human rights violations should be presented to Khon Kaen Sugar Industry Pcl and the Thai government, as follows:

- (1) Resolved that Khon Kaen Sugar Industry Pcl should implement the following actions:
  - 1.1 Consider the feasibility of land return, or compensation in the case that land return is not feasible
  - 1.2 Compensate for accumulative losses in the past
  - 1.3 Remediate the local environment
  - 1.4 Employ principles of good governance in business practices, including transparency, legal compliance and human rights protection

- (2) Resolved that, on behalf of the Thai government, the Ministry of Foreign Affairs and the Ministry of Commerce establish a mechanism or establish official duties to monitor international investments by Thai investors to ensure compliance with fundamental human rights principles, using as the United Nations Guiding Principles on Business and Human Rights: Implementing the Protect, Respect and Remedy Framework (2011) as an implementation framework.



## **6. Statement and Resolution of the National Human Rights Commission**

The National Human Rights Commission reviewed this allegation in the meeting on human rights protection and standards Meeting No. 2/2558 on January 12, 2015 and concluded in agreement with the conclusions of the Subcommittee on Community Rights, by a majority vote of five Commissioners (Professor Amara Pongsapich, Mr. Tairjing Siripanich, Mr. Niran Pitakwatchara, Mr. Paiboon Warahapaitoon and Ms. Wisa Benjamano). NHRC concluded that community residents of Chikhor, Chhouk and Trapeng Kendal villages in Sre Ambel district, Koh Kong province lived and relied on local natural resources as a means of subsistence for a long time. These communities are therefore entitled to the right of self-determination, the right to freely manage their natural wealth and resources and the right to maintain their own means of subsistence which cannot be deprived under any condition. These rights are guaranteed by international covenants and the ASEAN Human Rights Declaration. Land concessions given to the sugar industry resulted in serious human rights violations, including the use of violence to evict villagers from their place of residence, impediments against the use of natural resources which is fundamental to community subsistence. The impact of these human rights violations are a direct responsibility of Khon Kaen Sugar Industry Public Company Limited, due to the company's decision to receive and benefit from the land concessions which caused human rights violations, regardless of the fact that the company did not itself commit the act of human rights violation. In addition, even though the human rights violation in this allegation occurred in Cambodia, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the ASEAN Human Rights Declaration and the United Nations Guiding Principles on Business and Human Rights: Implementing the Protect, Respect, Remedy Framework (2013) Part 1 The State duty to protect human rights and Part 2 The corporate responsibility to respect human rights in particular Articles 16, 17 and 18 all affirm that member states such as Thailand have the clear duty to provide guarantees for human rights protection according to these international agreements. This duty includes prevention of transboundary human rights violations by companies located within each member state's territory or registered under each member state's jurisdiction.

In light of the above findings, the National Human Rights Commission resolved by a majority vote of five Commissioners that in this case of human rights violations allegation, Khon Kaen Sugar Industry Pcl is in part directly responsible for the impact of these human rights violations, even though it did not itself commit the act of human rights violation. This is due to the company's decision to receive and benefit from the land concessions which caused these human rights violations. The National Human Rights Commission resolves to submit policy recommendations or alleviation measures.

The minority vote of two Commissioners (Mr. Parinya Sirisarakarn and Pol. Gen. Wanchai Srinualnad) expressed their views as evident in the minutes of the National Human Rights Commission Meeting No. 2/2558 on January 12, 2015 and No. 3/2558 on January 19, 2015.

## **7. Statement and Resolution of the National Human Rights Commission**

The National Human Rights Commission resolved to submit policy recommendations or alleviation measures, with the following recommendations for Khon Kaen Sugar Public Company Limited, Thailand's Ministry of Foreign Affairs and the Ministry of Commerce:

7.1 Khon Kaen Sugar Industry Pcl should consider implementing the following actions, even though the company did not commit the human rights violations:

- (1) The company should consider land return in areas of dispute, or consider compensation in the case that land return is not feasible in areas of dispute
- (2) The company should compensate for various types of loss, accumulative of time past
- (3) The company should remediate the local environment to enable local residents and communities in Cambodia to rely on and benefit from natural resources, which is fundamental to maintain the community's means of subsistence.
- (4) The company should employ principles of good governance in business practices, including transparency, legal compliance and human rights protection

7.2 The Ministry of Foreign Affairs and the Ministry of Commerce should present policy recommendations to the Cabinet in order to establish a mechanism or official duties to monitor international investments by Thai investors to ensure compliance with fundamental human rights principles, using as the United Nations Guiding Principles on Business and Human Rights: Implementing the Protect, Respect and Remedy Framework (2011) as an implementation framework.

Resolved that the Office of the National Human Rights Commission will monitor and request the results of these recommendations within 60 days from the date that Khon Khan Sugar Industry Pcl, the Ministry of Foreign Affairs and the Ministry of Commerce are notified of this Findings Report.

(Prof. Amara Pongsapich)  
Chairperson of the National Human Rights Commission

(Mr. Tairjing Siripanich)  
National Human Rights Commissioner

(Mr. Niran Pitakwatchara)  
National Human Rights Commissioner

(Mr. Parinya Sirisarakarn)  
National Human Rights Commissioner

(Mr. Paiboon Warahapaitoon)  
National Human Rights Commissioner

(Pol. Gen. Wanchai Srinualnad)  
National Human Rights Commissioner

(Ms. Wisa Benjamano)  
National Human Rights Commissioner

Note: Views of the minority vote (Mr. Parinya Sirisarakarn and Pol. Gen. Wanchai Srinualnad) as evident in the minutes of the National Human Rights Commission Meeting No. 2/2558 on January 12, 2015 and No. 3/2558 on January 19, 2015.