

SUGAR AND LAND IN SRE AMBEL, KOH KONG, CAMBODIA

CONTEXT

On 19 May 2006, land clearances began in the Sre Ambel District of Cambodia for a sugar plantation of 18,057.32 hectares¹. Land belonging to 456 families in the Chi Kha, Trapaing Kandaol and Chouk villages of Chi Kha Leu Commune was seized to make way for the plantation.² At the time, communities gathered to protest against this land acquisition, which they claim took place with no prior consultation or consent of the communities who have been farming the land since at least 1999. During their protest they were threatened, their movement was restricted.³

More than seven years later, 200 families⁴ continue to seek justice and want their land back – which they claim amounts to 1365 hectares.⁵ They are employing every method they can to raise awareness of their plight and thereby force the company and the international community to pay attention. Their journey has taken them from the Cambodian courts to the Thai National Human Rights Commission, from the European Union⁶ to negotiations under the Bonsucro Better Sugar Initiative.⁷

The plantation comprises two economic land concessions (ELCs) granted by the Cambodian government to the Koh Khong Sugar Industry Ltd, and the Koh Khong Sugar Plantation Ltd. Thai sugar giant, Khon Kaen Sugar Co Ltd (KSL), owns a 70 percent share in both companies. A Taiwanese company (Ve Wong) owns the other 30 percent stake in the companies. The attraction of investing in sugar plantations in Cambodia has increased in recent years due to the introduction of trade preferences to allow duty- and quota-free access to the European Union market for all products (except armaments) exported from the least-developed countries.⁸ In June 2010 KSL reported the first ever export of 10,000 tonnes of sugar to leave Cambodia in 40 years, estimated to be valued at \$3.13m.¹⁰

It was reported in January 2010 that KSL had a five-year contract with London-based Tate & Lyle to supply all of its output from Cambodia at the price of 19 cents per pound.¹¹ However, according to Tate & Lyle Sugars, there is no such contract. Tate & Lyle Sugars was incorporated in July 2010 and acquired the European sugar business of Tate & Lyle plc, in September 2010. The company has received only two shipments of Cambodian sugar from KSL to date, the first in May 2011 and the second in June 2012.¹²

Tate & Lyle Sugars is one of only two major sugar suppliers in the UK and supply many of the key food and beverage companies in Europe. Both Coca-Cola and PepsiCo confirmed that sugar sold by Tate & Lyle Sugars is used in their products and purchased by their bottlers.¹³

COMMUNITY IMPACTS

The story told by different members of the of the Sre Ambel community is consistent: that the community was never consulted or invited to participate in a discussion about the plantation, that they received no compensation when their land was seized, that they had a decent standard of living from their land prior to the clearance and that they now struggle to maintain a livelihood or secure enough food to eat. Community representatives report that have been on the land since at least 1999 – and many as far back as 1979.¹⁴ According to a 2007 report by the United Nations Special Representative of the Secretary-General for human rights in Cambodia, the concessions for the plantation were granted without public consultation and cover land ‘which villagers had farmed since 1979’.

The communities do not have official title to the land – a situation common in Cambodian rural areas due to the lack of formalization of land rights since the Khmer Rouge regime. This means that many communities who have lived on, invested in and relied on their land for decades do not have secure title or official rights over that land. However, the Cambodian Land Law passed in 2001 – widely recognized to be a positive but poorly implemented piece of legislation – suggests that ‘any person who enjoyed peaceful, uncontested possession of land (but not state public land) for at least five years prior to the law’s promulgation has the right to request a definitive title of ownership’. It also states that ‘those who have enjoyed such possession for less than five years may obtain a definitive title of ownership after five years’.¹⁵¹⁶ Economic land concessions cannot be legally granted in areas of state public land in Cambodia, which makes the land in this case state private land, to which the rules above apply, thereby making the communities eligible for claiming official ownership over the land.¹⁷

Oxfam partner Equitable Cambodia has drawn attention to village maps that were produced for the three villages in February and March of 2006 prior to the land clearance as part of the donor-funded Participatory Land Use Planning (PLUP) project. These maps indicate that a variety of smallholder farming activities were taking place on land inside the concession, and so provide further evidence of the villagers’ occupation and farming of the land. The concession agreements also state that the concessions contain land ‘legally owned by local residents’ and which is not available for the companies’ use ‘unless mutual agreement is reached’, requiring that either the land be excluded from use or that compensation be facilitated within three months.¹⁸

The communities speak of how their lives have been devastated through the loss of income derived from growing crops such as rice, watermelon, corn, cashew-nuts and jackfruit, as well as the loss of area for rearing and grazing livestock – cows, buffalo and pigs. Some families used to earn up to \$2000 per year from harvesting their crops,¹⁹ but now they have no regular income at all, so instead have to rely on odd-job and irregular labour in the surrounding area to make ends meet. They don’t always make enough money to cover basic costs and feed

themselves. This means that in many cases they cannot afford to send their children to school, due to lost income and also because the children now need to work so that the families can make enough money.

Many community members have migrated to towns and cities to seek work elsewhere, such as in construction. Some have even gone as far as Thailand to find alternative employment and income, often leaving their young children in Sre Ambel with grandparents as they have no other choice.

'We have no money to send children to school – we can't even afford basic materials'²⁰

As a result of their significantly lowered earning capacity, many community members referred to taking out small loans. After they have covered their basic needs – including food – they don't have any money left. This means they are getting into debt as they don't have the means or the assets to generate enough money to pay the loans back or to sustain themselves without further loans. Some community members referred to using the money gained from seasonal labour on the plantation to pay the loans back, but given the irregularity of the work and the low pay, they continue to live hand-to-mouth. Many said that they had never taken loans or got into debt before, as they didn't need to when they had a secure asset in their land.

Community members are also shouldering a higher risk burden, as their resilience has been dramatically decreased by their lower earning potential – those who have fallen sick or sustained injuries find themselves in a desperate position. One man, Sok Mao, had suffered a snake bite that had left him incapable of doing manual labour. He was forced to sell the few buffalo he still had to raise money for his family's basic needs: *'I cannot provide for my family any more, my wife has to take on more work as I am not able to work since my injury'*. Another community member, Yun Ny, described a recurring illness which requires medicine; not only does this cost her money that she doesn't have, which she covers with loans, but when she falls ill she is unable to work to generate an income. Community leader Teng Kao complained that the community *'barely have any animals left at all, as there is nowhere for them to graze'*. Many of the farming families previously reared cows and buffalo on their land – as many as 15–20 animals for some families – but this grazing land was lost with the arrival of the plantation. Numerous community members talked about the early days after the land was cleared when livestock strayed onto the plantation land and were either confiscated by company authorities and released only for a fee, or were shot. Some reported receiving a small amount of compensation for their buffalo that had been shot by company security guards, but at far below market rates.

'We never used to borrow money – we didn't need to because we had land. Now we are getting into debt'²¹

Some community members referred to the work they do on the plantation during the harvesting season, which takes place from December to February. They said the work was tiring and poorly paid, with workers only being paid 100 Riel per bunch of sugar cane. To earn 10,000 Riel (\$2.5 approx) in one day they would need to pick 100 bunches, which is often impossible, especially for women who tire more easily from the physically demanding labour.

The company confirmed that payment to contractors (who then employ the local workers) is made by the tonne of sugar cane harvested, rather than stipulating any hourly or daily rates for workers. The combination of hard and poorly paid labour with the brevity of the harvesting season makes working on the plantation an unattractive and unviable option for villagers seeking a sustainable livelihood. One lady, Sok Pheourn, said that she asked the company to provide some support for

her and her son to make a living – even just enough for a small pig. Sok Pheourn told us that the response she received was *'we will not give you the money for a small pig, we will not even give you enough for a small rat'*. Sok Pheourn's son has since had to move to another area of the country to work in construction, only returning a few times a year to bring her money to live on.

The 200 families remain adamant that they want their land to be returned to them, and that they will not accept land in a different location that would necessitate long travel or relocation. The communities collectively reiterated that *'we need land like a fish needs water'*. Financial compensation would be a *'second best'* option but only if the company is willing to compensate them for the true market value of the land, reflecting the potential income derived from the land and the assets that they have lost. All community members confirmed that they would be very happy to talk to the company further to resolve the issue, and would welcome the opportunity to enter into dialogue.

When asked what they would say to the big food and beverage companies who are buying this sugar, and to the consumers who buy the products which contain this sugar, the community representatives all said they would implore them *'to think about and understand where this sugar comes from – that it is 'blood sugar, not clean sugar, from land that is soaked in our tears'*.

COMMUNITY ACTION

The case in Koh Khong has attracted international attention due to the mobilization of the communities themselves; to advocacy and campaigning; to the links to Tate & Lyle in the UK; and now due to the implication that some of the world's biggest food brands are sourcing their sugar from Tate & Lyle in Europe.

Most recently, in April 2013 a case was filed to the UK High Court against both Tate & Lyle, a subsidiary of British multinational corporation Tate & Lyle plc, and Tate & Lyle Sugars, a subsidiary of American Sugar Holdings.²² The complainant's claim is that the firm is profiting from illegally seized land because 1,365 hectares of the land cleared for the sugar plantation belongs to them and was seized with neither consultation nor compensation. Attempts to date to reach out-of-court settlements through mediation have unfortunately failed.

Communities have put pressure on Tate & Lyle Sugars through the Bonsucro sugar initiative – a global multi-stakeholder voluntary platform that aims to improve standards in the sugar cane industry and of which Tate & Lyle Sugars is a member. A complaint was filed to the grievance mechanism of the Bonsucro initiative in December 2011, calling for a settlement to be reached with the communities, and Tate & Lyle Sugars were requested to take steps to address the complaint. Bonsucro believes that Tate & Lyle Sugars did not take the action requested. As a result, in July 2013 the company was suspended from the Bonsucro initiative by the Board until it fulfills a number of conditions or reaches a resolution of the dispute to the satisfaction of both parties.²³ Tate & Lyle Sugars feel aggrieved by the Bonsucro ruling, saying that Bonsucro's stated reasons for suspending Tate & Lyle Sugars did not align with what the company

was asked to do by Bonsucro; that time periods given were not adhered to; and that their ability to act on some areas was limited due to the UK Court action.²⁴

The communities have also pursued the case in the Cambodian Provincial Court since 2007. Recently, in 2012 the case was referred back to the Cadastral Committee – a lower level committee assigned the task of dealing with land disputes – but the communities with their legal representatives are insisting that their cases are referred back to the Provincial Court due to their challenge of the overall legality of the concession.

Communities have also had some success in highlighting the case in regional and international forums. The UN Special Rapporteur on human rights in Cambodia wrote a report in 2007²⁵ on the human rights impacts of Economic Land Concessions in Cambodia and more recently submitted a report on the human rights situation in Cambodia to the Human Rights Council.²⁶ Both documents referred to the case in Koh Kong and the adverse impacts on the communities. Alongside pursuing more official and legal channels, the communities – with the support of local NGOs CLEC, Equitable Cambodia, LICHADO and ADHOC – have also sought dialogue with the company, KSL, and in March 2013 community and company representatives met at a workshop to discuss the situation. Community representatives and NGOs who attended suggest that the company stated it was prepared to give the land back so long as ‘the government compensates the company by finding alternative land for the plantation.’ Since that meeting there has been no further communication between the community and the company, and no indication from the company that it has pursued discussions with the Cambodian government to resolve the situation.

Oxfam believes that the major food brands which source large amounts of the sugar produced worldwide also have a responsibility for land rights abuses in their supply chains. This is why Oxfam is asking them to publicly disclose from whom and where they source their sugar; to publish assessments of how the sugar they purchase impacts local communities’ land rights; to put policies in place that commit to zero tolerance of land grabs throughout their supply chains; and to use their influence to encourage governments and the wider food industry to respect land rights. The communities and Cambodian activists support Oxfam’s approach and have welcomed the Behind the Brands campaign as a potential opportunity to increase the pressure on the companies involved in the case to reach a settlement with the displaced communities, as well as a means to encourage better practice and due diligence in the future.

Government response

In a meeting with Oxfam, the Ministry of Agriculture Forestry and Fisheries²⁷ confirmed KSL’s assessment that there were 13 families who had not received compensation and that this was due to the fact that they have not yet been able to provide documentation or legal papers to prove that they own the land.

The Ministry stated that the Economic Land Concessions had been granted according to the policy and as per the legal framework. Officials said that the company also contribute a lot to the development of the infrastructure such as repairing roads to reach the village, health and schools facilities etc.

Further, the officials highlighted that they invite the international private sector for agricultural investment in order to increase economic growth within

Cambodia, and that they partner with the private sector in order to improve the poverty situation in the country. The officials highlighted that modern technology and large-scale investment in the agricultural sector are needed from foreign investors in order to push economic development for the whole country and improve the situation of poor people in Cambodia.²⁸

COMPANY CLAIMS

Oxfam spoke to a number of representatives from the KSL plantation to hear their side of the story. The company confirmed that the Cambodian plantation provides three percent of KSL's overall sugar output, and that all the sugar grown on the plantation is exported to Europe, given the preferential trade arrangements under the EBA. It admitted that the two Cambodian companies established to run the plantation are simply 'shell companies'.

The company claims that compensation has been given to the affected communities and it has documents that appear to show that 580 families in total have been compensated, covering 1618.45 hectares and amounting to 1,167,220,000 Cambodia Riel (\$285,000 approx). The process of compensation (which the company also regards as a process of community consultation) was apparently led by a government agency, and the company claims it issued the compensation accordingly. The company claims that there are outstanding claims by '13 families' – in stark contrast to the 200 families claimed by the communities.²⁹ The company suggested that the discrepancy is in part caused by different definitions of 'family' used by the communities themselves, and the company and authorities. At present, these 13 families are apparently in negotiation with the Ministry of Land. The company claims that it has 'no authority to give the land back, as we lease the land from the government'. The company insists that it simply bought the right to the title – granted by the government – at \$20,000 per year,³⁰ so any redefinition of that title must be done by the government, and involve compensation granted to the company, or alternative land granted for any land lost. KSL insisted that 'we will not pay for land that we do not use'.

KSL also claims that it has brought multiple benefits to the area through job creation and that it employs 'around 400 permanent staff' in its offices, its sugar cane factory and through year-round maintenance of the plantation. During the harvest season from December to February it employs 'many more people' though it could not provide the exact numbers. KSL uses contractors to provide the labour during the harvest season, who are paid per ton of sugar cane harvested.

There are no minimum wages stipulated in the contracts, although there is a requirement that the contractor cannot employ anyone under the age of 18 or over the age of 30 due to the kind of work involved. When questioned about recent suggestions that children are working on the plantation, KSL insisted that this is not the case, but rather that Khmer plantation labourers bring their children with them while they are harvesting, rather than leave them at home. KSL insists that any children found on the fields are simply accompanying their parents during the working day. KSL insisted that they have documented timesheets for all the labourers which provide personal details including their age, and that KSL monitors the situation and if it were to find anyone under 18 working on the plantation it would 'sack the contractor'. The company confirmed that the harvesting season lasts for three months and that they have the

machinery to do the harvest without employing any local labourers, and they will 'probably resort to this model in the future'. At the current time the only reason they use contracted labour at all is because of requirements under the contract to provide local jobs.

Other than jobs and employment, the company also claims to have conducted extensive Corporate Social Responsibility (CSR) activities to the benefit of the local community. This includes three schools which they claim to have built in the area. Photographs provided showed pictures of school children and some kind of marquee construction, though no buildings were evident. The company provided no further verification of this claim in response to follow-up questions from Oxfam. The company has also gathered photographs of community members posing with bags of KSL sugar, who allegedly welcome the sugar plantation as a positive contribution to the area.

The company also provided photographic evidence of work it had funded to recondition roads to local temples and conservation areas, though the roads remain un-tarmacked. The company has a medical room and ambulance for its staff that it claims the local community can use in emergency situations. It is worth mentioning that both community representatives we spoke to who had suffered serious and ongoing illnesses had never been offered medical assistance by the company.

In Oxfam's meeting with Tate & Lyle Sugars, it maintained that it has undertaken a comprehensive due diligence process and full independent audit, and conclude that KSL acquired its stake in the land legitimately.³¹

NOTES

All web links given here were accessed in August 2013.

- 1 Koh Kong Sugar Plantation Ltd. with 8657.24 hectare, and Koh Kong Sugar Industries Ltd. with 9400.08 hectares.
- 2 The Cambodian Legal Education Centre (CLEC) which has been representing the communities has documented evidence of 456 families being displaced, and has used this as the basis of multiple complaints and appeals, including through the OECD, see <http://www.state.gov/e/eb/oeecd/usncp/links/rls/210970.htm>. Given the long struggle of the communities, many have either moved elsewhere or given up their protest, which is why there are now only 200 families continuing to pursue the case.
- 3 Reported in Phnom Penh Post, <http://www.phnompenhpost.com/national/guns-subdue-farmers-senator-clears-land>
- 4 Of the original 456 families, 256 have chosen not to continue to fight for the return of their land. This is due to a combination of having been offered and accepted some form of compensation, or choosing not to pursue their claim with the company and authorities.
- 5 The precise amount is 1365,707 hectares.
- 6 <http://www.boycottbloodsugar.net/everything-but-arms/>
- 7 <http://www.clec.org.kh/clecnews.php?cnsID=72&pID=1>
- 8 http://trade.ec.europa.eu/doclib/docs/2013/april/tradoc_150983.pdf
- 9 Letter to Thai stock exchange from Mr. Chamroon Chinthammit, President and CEO of KSL. December 4, 2007.
- 10 *Phnom Penh Post*, 'Kingdom gets back on track with overseas sugar exports, June 10, 2010.
- 11 This contract was first reported by Thai News Services in 2010, <http://www.accessmylibrary.com/article-1G1-217599129/thailandcambodia-khon-kaen-industry.html>
- 12 Confirmed by Tate & Lyle Sugars in an interview with Oxfam, 30 August 2013. In this interview they also confirmed that they did not receive any sugar from Cambodia this year and told Oxfam that it has no current plans to do so in the future.
- 13 Coca-Cola and PepsiCo work with 'franchisees' which manufacture and produce branded products such as Coke and Pepsi. These entities are subject to Coca-Cola and PepsiCo supplier guidelines and other contract provisions which mandate certain sustainability requirements.
- 14 In conversations with community member on 11 and 12 July 2013.
- 15 United Nations Special Representative of the Secretary-General for human rights in Cambodia (UNSRSG), 'Economic land concessions in Cambodia: A human rights perspective,' June 2007, p. 12; available at: <http://cambodia.ohchr.org/EN/PagesFiles/Reports/Thematic-Reports.htm>
- 16 See *Report of the Special Rapporteur on the situation of human rights in Cambodia, Surya P. Subedi: A human rights analysis of economic and other land concessions in Cambodia* p10 http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-63-Add1_en.pdf
- 17 Oxfam has audio and video recordings of these claims made by communities, as well as documented evidence collected through Oxfam partner, the Cambodian Legal Education Centre (CLEC). This includes photocopies of 'Family Books' which are official documents listing family members and the location and length of their residence in the area.
- 18 D. Pred (2013) *Bittersweet Harvest: A Human Rights Impact Assessment of the EU Everything But Arms Initiative in Cambodia*, Equitable Cambodia, Inclusive Development International and the Hands Off the Land Alliance.
- 19 According to World Bank data, in 2012 Gross National Income (GNI) per capita was on average \$880 per annum <http://data.worldbank.org/country/cambodia>
- 20 This is a quote from a villager who spoke in a large community meeting of over 100 people. Oxfam was unable to confirm her name.
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- 22 <http://www.earthrights.org/sites/default/files/Particulars-of-Claim.pdf>
- 23 See the Bunsucro Board statements here: <http://bonsucro.com/site/about/complaints/>
- 24 From Tate & Lyle Sugars interview with Oxfam, 30 August 2013.
- 25 <http://www.earthrights.org/sites/default/files/UN-OHCHR-report.pdf>
- 26 http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-63-Add1_en.pdf
- 27 In a meeting between Oxfam and the Ministry of Agriculture Forestry and Fisheries on Friday 13th September 2013]
- 28 In a meeting with Oxfam on 13th Sept the Ministry of Agriculture Forestry and Fisheries confirmed that Koh Kong Sugar plantation was granted concession of 8657.24 hectares and 9400.08 hectares to Koh Kong Sugar industry.
- 29 Documents were shown briefly to Oxfam in a meeting which the company claimed as evidence for the issuing of compensation and the outstanding claims. As the company insisted the documents were confidential, we were unable to take copies and so cannot verify these claims.
- 30 S. Starling (2013) 'Tate & Lyle Sugars slams Guardian over Cambodian sugar sourcing allegations' *Food Navigator*, 12 July 2013, available at <http://www.foodnavigator.com/Financial-Industry/Tate-Lyle-Sugars-slams-Guardian-over-Cambodian-sugar-sourcing-allegations>
- 31 Sugaronline (2013) 'Cambodia: Tate & Lyle defends land deal', 17 April 2013. http://www.sugaronline.com/news/website_contents/view/1211908.

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This case study was written by Hannah Stoddart. Oxfam acknowledges the assistance of the Cambodian Legal Education Centre in its production. It is part of a series of papers and reports written to inform public debate on development and humanitarian policy issues.

For further information on the issues raised in this paper please e-mail advocacy@oxfam.org.uk

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The information in this publication is correct at the time of going to press.

Published by Oxfam GB for Oxfam International under ISBN 978-1-78077-464-0 in October 2013.

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