Specific instance under the OECD Guidelines for Multinational Enterprises submitted to the Australian National Contact Point (NCP) for the OECD Guidelines by:

Inclusive Development International (IDI) and Equitable Cambodia (EC) Against Australia New Zealand Banking Group (ANZ), concerning financial services provided to Phnom Penh Sugar Company

អង្គការ សមធម៌កម្ពុជា
equitable cambodia

inclusive development international

I. Introduction

This specific instance sets out breaches of the OECD Guidelines for Multinational Enterprises by Australia and New Zealand Banking Group Ltd. (ANZ) and its controlled entity ANZ Royal Bank. It is submitted by Equitable Cambodia (EC) and Inclusive Development International (IDI) on behalf of affected families who were forcibly displaced and dispossessed of their land and productive resources to make way for a sugar plantation and refinery project in Cambodia that was partially financed by ANZ. In addition to forced evictions, military-backed land seizures and destruction of crops and property, the project is also implicated in arbitrary arrests and intimidation of villagers, and the widespread use of child labor and dangerous working conditions that have resulted in several worker deaths. ANZ and ANZ Royal Bank (the "Respondents") breached the OECD Guidelines by contributing to these abuses through their actions and omissions, and failing to take reasonable measures to prevent or remedy them.

This specific instance is directed to the Australian National Contact Point.

Identity and Interest of the Complainants

EC and IDI submit this complaint on behalf of 681 families from O'Angkum, O'Prolov, Kork, Pis, Ta Koang, O'Taong, Prey Padov, Kraing Thnorng, Kraing Tbeng, Prey Chrov, Plov Kov, Ploach, Svay Taeb and La Ngim in Thpong and Oral districts, Kampong Speu province, Cambodia (the "Complainants").[1]

The Complainants' land and productive resources, and in some cases homes, were seized and destroyed by ANZ Royal's former client, Phnom Penh Sugar Co. Ltd., in collusion with State authorities and armed forces, to make way for a sugar plantation between 2010-2011. The affected households remain either uncompensated or undercompensated for their losses. An inventory of losses conducted by EC found that the Complainants are collectively owed approximately USD 11 million for uncompensated losses of private land and income.[2] This figure is based on a conservative estimation and excludes losses of common productive resources.

EC is a nongovernmental organization, registered in Cambodia, which works to promote equitable development and the progressive realization of human rights in Cambodia through research, evidence-based advocacy, community empowerment and grassroots organizing. Contact: Mr. Eang Vuthy, Executive Director, Tel: +855-12-791700, Email: vuthy@equitablecambodia.org, Address: #55 Street 101, Boeung Trabek, Phnom Penh, Cambodia.

IDI is a human rights organization, registered in the United States, which works to make the international economic system more just and inclusive through research, casework and policy advocacy. IDI works to strengthen the human rights regulation and accountability of

[1] A list of individual complainants can be provided to the NCP upon request, provided that their anonymity is protected.
[2] The inventory of losses can be provided to the NCP, provided that the anonymity of the households is protected.

corporations, financial institutions and development agencies. Contact: Mr. David Pred, Managing Director, Tel: +1-917-280-2705, Email: david@inclusivedevelopment.net, Address: 23532 Calabassas Road, Suite A, Calabassas, CA 91302, USA.

Identity of the Respondents

Australia and New Zealand Banking Group Ltd. is a publicly listed company that was incorporated in Australia in 1977. ANZ operates in 32 countries globally, with representation in Australia, New Zealand, Asia, Pacific, Europe, America and the Middle East. Its world headquarters is located in Melbourne, Australia.[3] It is the third largest bank in Australia, the largest banking group in New Zealand and the Pacific, and among the top 20 banks in the world.[4] ANZ's "super-regional strategy" is focused on "profitable expansion in Asia through an integrated network connecting customers with faster growing trade, capital and wealth flows into and across the region."[5]

ANZ Royal Bank is a joint venture of ANZ and the Royal Group of Companies ("RGC"), one of Cambodia's largest firms. ANZ holds a 55% stake in ANZ Royal; the remaining 45% is owned by RGC. ANZ Royal is listed in ANZ's Annual Report as a controlled entity of ANZ.[6]

ANZ states on its website that its standards reflect its commitment to "respect and promote human rights in the way [it] does business." It states that this commitment is "supported by clear ethical standards set in in the Code of Conduct and Ethics, Group policies and [its] support for globally-recognized standards which aim to help ensure [it] avoid[s] violating human rights or being complicit in human rights abuses." These ethical standards are purportedly embedded into its business practices, including contracts, agreements and due diligence processes. ANZ states that it "take[s] measures to ensure that [it does] not become associated with or inadvertently support human rights violations by the organization or projects [it supports]." [7]

ANZ further states: "We support the OECD Guidelines for Multi-National Enterprises as a comprehensive framework to guide our approach to responsible business management, including the protection of basic human rights."[8]

In its Forestry and Forests Policy, ANZ states that "as a minimum, [ANZ] will work with [its] customers to ensure compliance with environmental laws and regulations."[9]

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[3] ANZ website, online: http://www.shareholder.anz.com/our-company/profile/facts/history>.
[4] ANZ Annual Report 2013, p. 2.
[5] Ibid. p. 6
[6] Ibid. p 161.
[7] ANZ website, online: http://www.anz.com/about-us/corporate-responsibility/framework/responsible-practices/human-rights/
[8] ANZ websites, online: https://www.anz.com/aus/About-ANZ/Corporate-Responsibility/pdf/Human_rights_statement.pdf
[9] ANZ website, online: http://www.anz.com/resources/5/6/56b7f056-5f44-49b2-8748-bfc7ca004e5d/Forestry-Forests-Policy-2011.pdf.

ANZ is a signatory to the Equator Principles (EP), a risk management framework adopted by financial institutions "to provide a minimum standard for due diligence to support responsible risk decision-making."[10] As such, ANZ commits to implementing the EP in its internal environmental and social policies, procedures and standards for financing projects, and to not providing Project Finance or Project-Related Corporate Loans to projects where the client will not, or is unable to, comply with the EP.

In January 2014, two confidential social and environmental "site assessment" reports were leaked to EC and IDI, revealing that ANZ Royal had provided significant financing to Phnom Penh Sugar Co. Ltd. ("PPS") to develop its sugar plantation and refinery in the Cambodian province of Kampong Speu.

PPS is owned by LYP Group, a conglomerate wholly owned by Cambodian tycoon and senator Ly Yong Phat, who is notorious for engaging in unethical, corrupt and illegal business practices.[11] According to a 2010 report by international NGO, Global Witness, "the portfolio of Senator Ly Yong Phat and his company extends to casinos, hotels and economic land concessions. Violent forced evictions of farmers to make way for plantations by the company have led to strong criticism from human rights groups."[12]

II. Factual Allegations

PPS received approval from the Cambodian government for an economic land concession of approximately 9,000 ha in Thpong district, Kampong Speu province in February 2010. On the same date, Kampong Speu Sugar Co. Ltd. ("KSS") was awarded an adjacent ELC of 9,052 ha in Oral district.[13] The side-by-side concessions are registered to Ly Yong Phat and his wife, Kim Heang.[14] On March 21, 2011, Prime Minister Hun Sen signed a sub-decree allowing land in the Oral Wildlife Protected Area to be reclassified and the Kampong Speu Sugar concession to be expanded by 4,700 ha.[15] This brought the total landmass of the three connected concessions to nearly 23,000 ha.

The twin concessions encroach on farmland belonging to families in 15 villages in Thpong district and at least six villages in Oral district. In addition to farmland, the concessions

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[10] See: http://www.equator-principles.com

[11] See *Bittersweet Harvest: A human rights impact assessment of the EU's Everything But Arms initiative in Cambodia,* Equitable Cambodia and Inclusive Development International, September 2013, p. 31-32, available at: http://www.inclusivedevelopment.net/wp-content/uploads/2013/10/Bittersweet_Harvest_web-version.pdf; see also *Shifting Sands: How Singapore's demand for Cambodian sand threatens ecosystems and undermines good governance,* Global Witness, May 2010, p. 7- 13, available at: http://www.globalwitness.org/sites/default/files/pdfs/shifting_sand_final.pdf.

[12] Global Witness, op cit., p. 13.

[13] Kingdom of Cambodia, Council of Ministers, *Approval letter No 175,* February 2010. A*vailable at:* http://www.opendevelopmentcambodia.net/pdf-viewer/?pdf=references/Sugar_Request_PM_Approval__22.09.2009.pdf

[14] See Open Development's website for company profiles and available documents: http://www.opendevelopmentcambodia.net/concessions/

[15] James O'Toole and Phak Seangly, "Questions over land concession to wife of ruling party senator," *Phnom Penh Post,* 27 April 2011.

overlapped with thousands of hectares of grazing land, water resources and registered community forests that villagers in Thpong and Oral districts relied upon for their livelihoods.

Empirical research published by EC and IDI in September 2013; as well as subsequent research, monitoring and media reports; document that Phnom Penh Sugar has engaged in widespread illegal, and in some cases criminal, conduct including *inter alia*:

1. **Holding land concessions far in excess of the legal limit under Cambodian law.** The PPS/KSS concessions are in clear breach of Article 59 of the Cambodian Land Law (2001), which prohibits "the issuance of land concession titles on several places relating to surface areas that are greater than [10,000 hectares] in favor of one specific person or several legal entities controlled by the same natural persons." The three concessions form a single sugar plantation covering nearly 23,000 ha, which is controlled by LYP Group.[16]

2. **Failing to adhere to the Cambodian regulatory requirements governing Economic Land Concessions, including *inter alia*:**
   - Prior classification and registration of the land as State private land in accordance with the relevant legal procedures;
   - Assurances that lawful landholders would not be displaced and that access to private land would be respected;
   - Prior public consultations on the proposed project; and
   - Prior completion of an Environmental and Social Impact Assessment.[17]

3. **Illegally seizing and bulldozing farm and residential land belonging to more than 1,300 families in Thpong and Oral districts.** With no prior notice and no court order, in February 2010, company staff accompanied by military, police and local authorities began clearing and seizing the villagers' land and crops, including rice, mango, jackfruit banana and coconut trees. The land seizures continued into 2011, affecting more than 1,300 families in Oral and Thpong districts, including the Complainants. These land seizures constitute a flagrant violation of Article 248 of the Land Law, which makes a penal offense: *"An act or conduct, in fact, that hinders the peaceful holder or possessor of immovable property in an area not yet covered by the cadastral index maps, the ownership rights of which have not yet been fully strengthened under this law."*

4. **Forcibly evicting an estimated 115 families in Pis and Plourch villages from their homes.** Pis village, in Thpong district, was totally destroyed and its 67 residents were forcibly relocated onto small 40x50 m residential plots of rocky land at the foot of a mountain. An estimated 48 residents of Plourch village, in Oral district, were also forcibly relocated to smaller plots in remote Trapaing Prolet village.

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[16] For further commentary on this, see: http://www.phnompenhpost.com/national/groups-criticise-granting-land.

[17] Sub-decree No. 146 on Economic Land Concessions, Article 4.

5. **Illegally clearing community forests, which were legally recognized by the Forestry Administration, and protected State forests in the Oral Wildlife Sanctuary.** Satellite imagery shows that an estimated 2,000 hectares of dense State forest within the Oral Wildlife Sanctuary and Protected Area have been cleared outside the boundaries of the concessions granted by the government to PPS/KSS.

6. **Employing the police and military to intimidate people into accepting inadequate compensation for their losses, including unproductive replacement land.** Battalion 313 is officially sponsored by PPS and has worked as a private army to protect its concessions.

7. **Impoverishing affected families and undermining their food security as a result of the loss of farmland, grazing land, crops and access to forest resources.** Since losing their productive resources, many affected families have been forced to pull their children out of school and put them to work on the PPS and other nearby plantations.

8. **Failing to comply with workplace health, safety and labour regulations, resulting in several plantation worker deaths in the past year. Other serious labour violations include the widespread employment of children below the age of 15 to conduct hazardous work.**[18] These practices represent flagrant violations of Cambodian Labour Code (1997), section 177, and International Labour Organisation Convention No. 138, respectively.

9. **Legal harassment and arbitrary arrest of villagers for protesting their dispossession.** The Senator and company representatives have used Cambodia's notoriously corrupt courts to harass the villagers in Kampong Speu to end their protests. At least four villagers have been jailed since the land seizures began and there are criminal charges, arrest warrants or court summonses currently pending against at least 38 villagers.[19]

PPS's illegal conduct was widely publicized in the Cambodian English-language press prior to ANZ's loan decision. Despite this controversy, ANZ proceeded to loan tens of millions of dollars to the firm, without apparently attaching any human rights, social or environmental safeguard requirements.

ANZ did commission the Bangkok-based firm International Environmental Management ("IEM") to conduct a "Phase 1 Environmental and Socio-Economic Site Assessment" of the project in late 2010 when it was considering whether to finance PPS. The introduction to the report, dated 16 November 2010, states:

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[18] Daniel Quinian, Richard Baker, and Nick McKenzie, "Deaths raise new questions on ANZ funding of Cambodian sugar projects," The Sydney Morning Herald, 27 April 2014, available at: http://www.smh.com.au/national/investigations/deaths-raise-new-questions-on-anz-funding-of-cambodian-sugar-projects-20140427-zr0bj.html

[19] These allegations are substantiated by empirical research conducted by EC and IDI in 2012-2013 and published in the 2013 report, *Bittersweet Harvest: A human rights impact assessment of the EU's Everything But Arms initiative in Cambodia, a*vailable at: http://www.inclusivedevelopment.net/wp-content/uploads/2013/10/Bittersweet_Harvest_web-version.pdf.

> ANZ Royal Bank (Cambodia) Ltd. is considering funding a large local corporation, Phnom Penh Sugar Co. Ltd. to help with the establishment of a plantation on land granted to them through a 90 year Economic Land Concession (ELC) by the Royal Group of Cambodia. ANZ Banking Group has specific standards on environmental and social implications of projects they support and it is important to fully understand these issues before they move forward with any politically sensitive transaction.

A basic level of due diligence on the part of ANZ and ANZ Royal would have uncovered the poor quality, significant gaps and inaccuracies of the IEM assessment. Most notably, the assessment failed to mention the high-profile conflict between PPS and local communities displaced by its land concessions. Such conflict resulted in large-scale protests, roadblocks and violent clashes between the company and local communities. These events were widely reported in the readily accessible English-language press in Cambodia throughout 2010.[20]

Without any baseline data on which to make an assessment, and despite acknowledging that interviewees were dissatisfied with the compensation they had received, the IEM report concluded that the living conditions of resettled households and farmers had either improved or remained the same. This assessment stands in stark contrast with the findings of EC and IDI's extensive research between 2012-2014 and the claims of the Complainants.

Despite the significant shortcomings of the IEM report, it did note a number of serious social and environmental concerns, which should have alerted ANZ that its proposed loan would breach its internal policies and standards. The IEM report recommended that the firm "conduct a detailed impact assessment in the project area according to the assessment guideline provided by the Equator Principles and IFC Performance Standards." This recommendation was rated "high" in terms of "urgency to address impact."

No such assessment was ever undertaken and ANZ proceeded to approve the loan.

ANZ Royal management confirmed the bank's financing of PPS in a meeting with EC and IDI on 19 January 2014, following the leak of the IEM report (see Annex 3). ANZ Royal representatives indicated during the meeting that the financing decision was made at a senior level at ANZ headquarters.

The story was covered several days later in Australia by Fairfax media.[21]

EC, IDI and community representatives have raised the problems associated with the PPS loan with ANZ on numerous occasions since becoming aware of ANZ's role, including in three meetings and conference calls with senior officials, and several email and letter exchanges.

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[20] See for example, http://www.phnompenhpost.com/national/tension-still-runs-high-kampong-speu

[21] Richard Baker and Nick McKenzie, "ANZ ethics under scrutiny over Cambodian sugar plantation loan," 22 January 2014, available at: http://www.smh.com.au/business/banking-and-finance/anz-ethics-under-scrutiny-over-cambodian-sugar-plantation-loan-20140122-3196k.html

On 15 February 2014, ANZ organized a meeting with Ly Yong Phat, PPS management, IDI, EC and community representatives. During this meeting, community representatives articulated 15 actions that they wanted PPS and ANZ to take in order to repair the harms that they have suffered as a result of the project.

EC and IDI called upon ANZ to contract an independent expert to conduct a detailed assessment of the communities' claims and associated impacts, Such an assessment would serve as the basis for working with PPS to develop and implement a comprehensive remedial action plan to bring the project in compliance with ANZ's internal policies and international standards, including the OECD Guidelines.

None of the requested remedial actions were carried out.

On 5 July 2014, The Australian newspaper reported that ANZ's commercial relationship with PPS had "come to an end, with pressure applied by the bank over the group's poor social and environmental record resulting in the sugar plantation business refinancing with another lender."[22] The article went on to describe how "the relationship broke down over the company's inadequate response to a detailed project plan developed by ANZ […] designed to remedy longstanding concerns about the use of child labour, forced evictions and military-based land grabs."[23] This positive portrayal of ANZ's role in ending the business relationship was authored by Richard Gluyas, the spouse of ANZ Group Head of Strategic Content and Digital Media, Amanda Gome.[24]

Contrary to The Australian's reporting on the matter, it is apparent to EC and IDI, based on ANZ's statements leading up to the announcement, that ANZ encouraged PPS to repay the loan so that it could claim it no longer had any responsibility for the controversial project.

Further information and evidence of these allegations can be found in the annexes:

1. Report: *Bittersweet Harvest* (September 2013)
2. IEM, Phase 1 Environmental and Socio-economic Site Assessment (November 2010)
3. Minutes of meeting between IDI, EC and ANZ on 19 January 2014
4. Minutes of meeting between IDI, EC, community representatives, ANZ and Phnom Penh Sugar on 15 February 2014
5. PowerPoint presentation presented by EC and IDI at meeting on 15 February 2014
6. Compilation of news articles regarding Phnom Penh Sugar operations

3. Breaches of the OECD Guidelines by ANZ and ANZ Royal

[22] See: http://www.theaustralian.com.au/business/financial-services/anz-cuts-off-ties-to-cambodian-firm/story-fn91wd6x-1226978346569?nk=08ecbdc8d8bc7a4e655dfe932017f7bb
[23] Ibid.
[24] See: http://www.crikey.com.au/2014/04/16/tips-and-rumours-1106/?wpmp_switcher=mobile

3.1. Breaches related to Chapter II General Policies and Chapter IV Human Rights

ANZ has breached paragraphs A1, A2, A10, A11, A12 and A13 of Chapter II General Policies and paragraphs 1, 2, 5, and 6 of Chapter IV Human Rights.

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

The Commentary to the Guidelines explains that "[t]here should not be any contradiction between the activity of multinational enterprises (MNEs) and sustainable development."

The Rio Declaration On Environment and Development sets forth the fundamental principles of sustainable development, including 1) that human beings are "at the centre of concerns for sustainable development (Principle 1); 2) that "the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations (Principle 3); that environmental protection is "integral" to the development process (Principle 4); and that the eradication of poverty is "an indispensible requirement" for sustainable development.[25]

Far from contributing to sustainable development, PPS's activities, which the Respondents enabled and profited from, destroyed the environment and led to the loss of livelihoods and impoverishment of hundreds of local families. PPS forcibly displaced and dispossessed these families of their productive resources to make way for a mono-crop plantation that largely produces sugar for export markets. Previously, smallholder farmers produced enough food to sustain their own families, and often a surplus to supply to local markets. Now, they have been left with no choice but to toil on industrial plantations where the work is seasonal, the pay is low and the working conditions are harsh and unsafe.

Natural resources, including forests and streams, that were essential to the livelihoods of the Complainants were lost or degraded as a result of the plantation's development. Forests were a particularly important source of livelihood support for families that grazed animals and collected forest products such as bamboo, wood, honey, beeswax, medicinal herbs, and rattan, which they could sell or consume. Families also lost fishing resources when the sugar companies covered local streams to develop the plantation. Fish are scarcer and residents can no longer find edible water plants such as morning glory and lily that used to grow locally.

Given the above, the development project that ANZ financed in Kampong Speu can in no way be described as sustainable.

General Policy II.A.2: Respect the internationally recognized human rights of those affected by

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

their activities.

Human Rights IV.1&2: Enterprises should, within the framework of internationally recognized human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations:

1. **Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.**
2. **Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.**

The Kingdom of Cambodia has ratified both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, as well as other core human rights conventions. Article 31 of the Constitution of the Kingdom of Cambodia states: "The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, and conventions related to human rights, women's and children's rights." As such, the Cambodian government has a binding legal obligation under international law and under its own Constitution to respect, protect and fulfill the human rights enshrined in these international instruments.

This case represents only one of countless instances where the Cambodian government has systematically breached its legal obligation to uphold human rights by granting large-scale economic land concessions ("ELCs") to private companies for agro-industrial plantations and using state authorities to conduct forced evictions on behalf of concessionaires. As the UN Special Rapporteur on the situation of human rights in Cambodia, Surya P. Subedi, concluded in his 2012 report to the Human Rights Council, which assesses the impact of land concessions in the context of Cambodia's domestic legal framework and international human rights obligations, "[t]here are well documented serious and widespread human rights violations associated with land concessions that need to be addressed and remedied."[26]

Notwithstanding the Cambodian government's complicity in these human rights violations, including its failure to protect the human rights of its citizens from third parties, the Commentary to the OECD Guidelines provides that a "State's failure to enforce relevant domestic laws, or to implement international human rights obligations or the fact that it may act contrary to such laws or international obligations does not diminish the expectation that enterprises respect human rights."[27]

Forced evictions constitute the primary human rights violations that are alleged in this complaint. The UN Basic Principles and Guidelines on Development-based Evictions and Displacement (the "Eviction Guidelines") define forced evictions as:

> acts and/or omissions involving the coerced or involuntary displacement of individuals, groups and communities from homes and/or lands and common

[26] Report of the Special Rapporteur on the situation of human rights in Cambodia, Surya P. Subedi, A/HRC/21/63/Add.1, 24 September 2012, p 2.
[27] OECD Guidelines, Chapter IV, Commentary 38.

> property resources that were occupied or depended upon, thus eliminating or limiting the ability of an individual, group or community to reside or work in a particular dwelling, residence or location, without the provision of, and access to, appropriate forms of legal or other protections.[28]

It is widely recognized that forced evictions are amongst the most disempowering violations of human rights and "one of the most supreme injustices any individual, family, household or community can face."[29] Forced evictions are considered "a practice that does grave and disastrous harm to the basic civil, political, economic, social and cultural rights of...both individual persons and collectivities."[30] The UN Human Rights Commission has affirmed in two resolutions (1993/77 and 2004/28) that the practice of forced evictions constitutes "a gross violation of a range of human rights." These include the rights to adequate housing, adequate food, security of the person, freedom of movement, privacy, and access to healthcare and education, among others.

The international law principle against forced evictions applies to all households, regardless of their tenure status.[31]

While forced evictions, as defined above, are in all cases illegal, evictions are allowed in narrow circumstances where specific protections are properly in place. Such circumstances include making way for a development project that is genuinely in the public interest. Even in such cases, all feasible alternatives to eviction must first be explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, displacement. In circumstances in which an eviction is considered justified, it must be carried out in accordance with general principles of reasonableness and proportionality. The eviction must also occur in strict compliance with the procedural protections described in General Comment No. 7, issued by the Committee on Economic, Social and Cultural Rights (CESCR).[32]

According to the CESCR, no one should be made homeless or vulnerable to the violation of other human rights as a result of eviction. The State is obligated to ensure that affected households have access to adequate alternative housing, resettlement in a reasonable location with basic services and/or access to productive land as appropriate. [33]

In violation of international law, evictions carried out to clear the way for the PPS plantation were neither authorized by law nor undertaken for the purpose of promoting the general

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[28] Miloon Kothari, "Basic Principles and Guidelines on Development-based Evictions and Displacement (*UN Eviction Guidelines*)," *Report of the Special Rapporteur on the right to adequate housing, Miloon Kothari, A/HRC/4/18,* February 2007, para 4.

[29] UN OHCHR, "Fact Sheet No 25, Forced Evictions and Human Rights:*" Available at*: http://www.ohchr.org/Documents/Publications/FactSheet25en.pdf

[30] Theo van Boven, "Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms: Final report submitted by Mr. Theo van Boven, Special Rapporteur," UN ESCOR, Commission on Human Rights, [21], UN Doc E/CN.4Sub.2/1993/8 (1993).

[31] Committee on Economic, Social and Cultural Rights (CESCR), "General Comment No. 4," (1991), para 8.

[32] CESCR, "General Comment No. 7: The right to adequate housing (Art. 11.1): forced evictions," (1997), para 15.

[33] *Ibid,* para 16.

welfare. Alternatives to eviction were not explored in consultation with potentially affected people and no credible impact assessments were conducted. As a result, strategies were not developed to avoid or minimize displacement. PPS did not disseminate information about the development project or engage in meaningful consultations regarding compensation and resettlement options with the affected households. Seizure of land was also undertaken without providing adequate notice of eviction. On the contrary, many affected people did not learn that their land had been granted to sugar companies until the police and military attended their homes with bulldozers. Others faced a campaign of intimidation and were pressured to forfeit their land and accept the minimal compensation offered.[34]

During the evictions, PPS also flagrantly violated the procedural requirements for lawful evictions. Police and state security forces, sponsored by PPS, carried out arbitrary arrests and detentions, and used physical force against community members who attempted to defend their land and property.[35] More than 2,700 hectares of rice fields, orchards and residential land belonging to the Complainants were seized.[36] An estimated 115 families in Pis and Plourch villages were forcibly evicted from their homes and relocated to remote resettlement sites without the provision of adequate replacement housing or access to productive farmland. Many families witnessed the destruction of their crops, livestock and personal possessions.[37] Thousands of hectares of community forest and environmentally protected areas were also demolished to make way for the sugar plantation.[38]

Despite significant loss of housing, land, property and resources to support livelihoods, compensation was generally not provided. Where compensation was given, losses were significantly understated and undervalued, and the process was characterized by threats and a lack of participation and transparency. None of the evicted families were granted a right to return to their land and no efforts were made to support and rehabilitate the displaced. [39]

As a direct consequence of forced displacement, affected people experienced severe retrogressions in their enjoyment of economic and social rights, including the rights to adequate housing, food, work, education and healthcare. Affected households have experienced decreased food security and deterioration of livelihoods as a result of the loss of capital and access to productive resources that had previously provided a safety net. Most affected people have been forced to work as day laborers on the sugar plantations, where work is irregular, conditions are poor and wages are generally insufficient to enable most households to make ends meet.[40]

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[34] Bittersweet Harvest, op cit., p. 2.
[35] *Ibid; see also:* May Tittarha and Will Baxter, "Tension still runs high in Kampong Speu," Phnom Penh Post, 10 May 2010, available at *http://www.phnompenhpost.com/national/tension-still-runs-high-kampong-speu; and* May Titthara, "Summonses, arrests must stop: villagers," Phnom Penh Post, 31 December 2013, available at: http://www.phnompenhpost.com/national/summonses-arrests-must-stop-villagers.
[36] Equitable Cambodia Inventory of Losses, available to NCP upon request.
[37] Bittersweet Harvest, op cit., p. 54-65.
[38] Ibid, p. 28.
[39] Bittersweet Harvest, op cit. p. 58-59; *see also:* Equitable Cambodia Inventory of Losses.
[40] Ibid, p. 67-72.

The violent evictions caused particularly adverse impacts on children's wellbeing. Access to education was severely impeded at relocation sites and in a number of cases, deteriorations in mental and physical health were reported.[41]

EC, IDI and local and international media outlets have documented the widespread use of child labor on PPS's plantation. Children as young as seven have been witnessed and photographed harvesting and hauling cane bundles on the planation. Many of these children have been displaced by the development of the sugar plantation and subsequently dropped out of school to work as day laborers to supplement their families' diminished income.[42]

PPS's operations, which caused these ongoing human rights violations, depend on financial contributions by its financiers. ANZ was complicit in carrying out human rights abuses,through its significant corporate and trade financing of PPS. In turn, the bank profited handsomely from its business relationship with PPS.

After ANZ was presented with evidence of its client's illegal conduct, it still failed to implement remedial actions, demonstrating a lack of *bona fide* commitment to its own safeguard policies and standards, which have been touted to the public, including the bank's clients, investors and shareholders.

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

General Policy II.11: Avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur.

General Policy II.12: Seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship. This is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship.

General Policy II.13: In addition to addressing adverse impacts in relation to matters covered by the Guidelines, encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of responsible business conduct compatible with the Guidelines.

Human Rights IV.3: Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.

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

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[41] Ibid, p. 76-78

[42] Ibid., p. 78. *See also:* May Titthara and Stuart White, "Children as young as 7 toil in the sugarcane fields," Phnom Penh Post, 4 January 2013, available at: http://www.phnompenhpost.com/national/children-young-7-toil-sugarcane-fields; *and* "Richard Baker and Nick McKenzie, "ANZ ethics under scrutiny over Cambodian sugar plantation loan," 22 January 2014, available at: http://www.smh.com.au/business/banking-and-finance/anz-ethics-under-scrutiny-over-cambodian-sugar-plantation-loan-20140122-3196k.html

As noted above, the Respondents contributed to adverse human rights impacts covered by the Guidelines when it agreed to finance PPS. It failed to undertake reasonable due diligence prior to engaging with PPS, so as to avoid contributing to these impacts and becoming complicit in the company's ongoing human rights violations.

According to the Commentary to the Guidelines, "due diligence is understood as the process through which enterprises can identify, prevent, mitigate and account for how they address their actual and potential adverse impacts as an integral part of business decision-making and risk management systems." [43] Human rights due diligence, which should be included within broader enterprise risk management systems, entails "assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses as well as communicating how impacts are addressed."[44] Human rights due diligence is "an on-going exercise, recognizing that human rights risks may change over time as the enterprise's operations and operating context evolve."

A simple Google search on Ly Yong Phat would have revealed widespread allegations of human rights abuses and illicit activities connected to his businesses, PPS in particular. The forced evictions and other human rights violations described above, along with abuses linked to Ly Yong Phat's other affiliated sugar plantations in Koh Kong and Oddar Meanchey provinces, were reported regularly in the English-language press in Cambodia before ANZ decided to provide financial services to the senator's company (see Annex 6 for a selection of articles). In August 2010, ABC's Radio Australia published a feature, "Evictions at gunpoint," which provided an in-depth description of these abuses .[45]

ANZ was either aware of these allegations and chose to ignore them, or failed to undertake basic due diligence prior to financing PPS.

As noted above, ANZ commissioned the IEM "Phase 1 Environmental and Socio-economic Site Assessment," but the latter's urgent recommendation that a full IFC Performance Standards-compliant environmental and social impact assessment be carried out was ignored. Had ANZ required and supported PPS to undertake a thorough and credible impact assessment, many of adverse impacts noted above could have been prevented or mitigated.

Following ANZ's decision to finance PPS, the company continued to seize land and clear crops of local villagers in Thpong and Oral districts, while utilizing the police and courts to harass, threaten and arrest community members for peacefully protesting their dispossession. These human rights abuses continued to be publicly reported, but ANZ took no discernable action to address them.

In February 2012, the Cambodian human rights NGO ADHOC issued a statement denouncing the use of 40 heavily armed soldiers to dispel a peaceful protest by villagers at

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[43] OECD Guidelines, Chapter II, Commentary 14.
[44] Ibid., Chapter IV, Commentary 45.
[45] Liam Cochrane, "Evictions at gunpoint," ABC Radio Australia, 16 August 2010, available at: http://www.radioaustralia.net.au/international/2010-08-16/evictions-at-gunpoint/231960

the provincial court. The demonstrators were demanding the release of Chum Srey Noun, a villager who was arrested and detained for over three months on charges of illegally occupying PPS's land. The demonstrators were also protesting against the harassment of 49 villagers who had been summoned to the court since 2010 in connection with their dispute with PPS.[46]

In July 2012, in response to the deteriorating human rights situation in Cambodia's sugar industry, the Clean Sugar Campaign was launched by local NGOs to publicize the plight of communities displaced by sugar plantations and to pursue justice for victims.[47] The Campaign and its activities were reported by the media. Again, ANZ took no action.

In September 2013, EC and IDI published its report *Bittersweet Harvest*, a comprehensive human rights impact assessment of the sugar industry, including the PPS operation. The report's findings were reported by the media. ANZ took no action.

At no point during this time did ANZ contact EC or IDI or any of the other NGOs that had been monitoring PPS and supporting its victims. ANZ took no meaningful steps to cease or prevent the impacts to which it was contributing until its financing role was exposed to the public by Fairfax media in January 2014.[48]

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

When enterprises identify that they have caused or contributed to an adverse impact, the Guidelines recommend that they have processes in place to enable remediation.[49] The Commentary to the UN Guiding Principles on Business and Human Rights stipulates that the responsibility of businesses to respect human rights "requires active engagement in remediation, by itself or in cooperation with other actors."[50]

The Commentary to the OECD Guidelines both recommend that enterprises or participate in operational-level grievance mechanisms for impacted communities, which "meet the core criteria of: legitimacy, accessibility, predictability, equitability, compatibility with the Guidelines and transparency, and are based on dialogue and engagement with a view to seeking agreed solutions."[51] ANZ has no such mechanism available to the people adversely impacted by its financial services.

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[46] ADHOC, "Peaceful land dispute protesters threatened by armed soldiers outside Kampong Speu Provincial Court, 13 February 2012, available at: http://www.adhoc-cambodia.org/?p=1214

[47] www.cleansugarcampaign.net

[48] Richard Baker and Nick McKenzie, "ANZ ethics under scrutiny over Cambodian sugar plantation loan," The Age, 23 January 2014, available at: http://www.theage.com.au/business/banking-and-finance/anz-ethics-under-scrutiny-over-cambodian-sugar-plantation-loan-20140122-3196k.html

[49] OECD Guidelines, Chapter IV, Commentary 46.

[50] UN Guiding Principles on Business and Human Rights (2011), Principle 22, Commentary.

[51] OECD Guidelines, Chapter IV, Commentary 46.

With its hand forced by the exposure of its loan to PPS, ANZ facilitated one meeting between community representatives and PPS. Beyond this step, rather than working with PPS to remediate the adverse impacts that it had caused, and to which ANZ had contributed, ANZ instead encouraged PPS to repay its loan so that it could sever its business ties with the controversial firm. The Complainants have been left without any avenues for redress as a result.

ANZ now asserts that, because it is no longer a financier to PPS, it has no responsibility for remediating the impacts of the PPS project to which it contributed and from which it profited between 2011and 2014.[52]

This constitutes a further breach of ANZ's responsibility to respect human rights.

3. Request for Australian NCP assistance

On behalf of the 681 affected families of Thpong and Oral districts, EC and IDI request the Australian NCP to offer its good offices to resolve their dispute with the Respondents over the failure of the latter to comply with the OECD Guidelines.

Recent attempts by IDI and EC to engage the Respondents over this matter have not yielded any outcomes. We therefore ask the NCP to assist us in engaging the Respondents in a dialogue, together with representatives of the communities, aimed at redressing the harms that the communities have suffered.

The Complainants recognize that ANZ is only partially responsible for the harms that they have experienced, and they further recognize that ANZ's ability to contribute to a full and effective remedy by working with PPS is now limited due to the severance of its business relationship with the sugar company. Nonetheless, the Complainants believe that ANZ can and should divest itself of the profits that it earned unjustly from the PPS loan, which were ultimately made possible from the theft of the community's land and resources. ANZ should provide those profits to the 681 families as reparations for the harms they suffered as a result of its breaches of the OECD Guidelines, which are outlined in this complaint.

Finally, IDI and EC urge the NCP to recommend that the Respondents develop a corporate-level human rights compliant policy on involuntary land acquisition and resettlement, including relevant due diligence procedures, in order to address other similar problems in its portfolio and to ensure that ANZ does not continue to contribute to such human rights violations elsewhere. ANZ should also establish, in partnership with other OECD financial institutions and/or Equator Principles Financial Institutions, a grievance redress mechanism that meets the criteria of legitimacy, accessibility, predictability, equitability, compatibility with the Guidelines and transparency.

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[52] Richard Baker and Nick McKenzie, "ANZ says no to evicted Cambodian farmers," 20 August 2014, available at: http://www.smh.com.au/national/anz-says-no-to-evicted-cambodian-farmers-20140819-105sib.html#ixzz3B0raVrQi

Appendices

1. Report: *Bittersweet Harvest, Equitable Cambodia and Inclusive Development International* (September 2013)
2. Report: *Phase 1 Environmental and Socio-economic Site Assessment,* International Environmental Management Co. Ltd. (November 2010)
3. Minutes of meeting between IDI, EC and ANZ on 19 January 2014
4. Minutes of meeting between IDI, EC, community representatives, ANZ and Phnom Penh Sugar on 15 February 2014
5. PowerPoint presentation presented by EC and IDI at meeting on 15 February 2014
6. Compilation of news articles regarding Phnom Penh Sugar operations