



Mr. David Willers
Better Sugarcane Initiative
20 Pond Square
London
N6 6BA
United Kingdom

January 31, 2010

Subject: Serious concerns about conduct of sugar companies connected to BSI member Mitr Phol in Cambodia.

Dear Mr. Willers,

We are deeply concerned that directors of the Thai company Mitr Phol are involved in sugar plantations implicated in land-grabbing, forced evictions and other illegal activity in Cambodia. We understand that Mitr Phol is a member of the Better Sugarcane Initiative, and as such we request that you investigate any possible links between this company and ongoing violations of Cambodian law, human rights and the core principles of the Better Sugarcane Initiative.

The plantations in question are in the districts of Samrong and Chongkal, Oddar Meanchey Province, northwest Cambodia. According to the website of the Cambodian Ministry of Agriculture, Forestry and Fisheries, three neighboring concessions have been granted to the companies *Angkor Sugar Co. Ltd.*, *Tonle Sugar Cane Co. Ltd.*, and *Cane and Sugar Valley Co. Ltd.*¹ The directors of the three companies are all senior figures in Mitr Phol: Mr. Buntoeng Vongkusolkiet (Managing Director) and Mr. Krisda Monthienvichienchai (President), and Mr. Tat Wanakornkul (Vice-President).

The 19,736 hectare concessions overlap with thousands of hectares of land that were already legally possessed by Cambodian citizens, either for residence or agriculture. The granting of these concessions by the Cambodian Government essentially provided approval for a large scale illegal land grab, which has led to the displacement and impoverishment of hundreds of rural families, the destruction of community-managed forests, and the arrest and persecution of human rights defenders.

To date, only the Angkor Sugar Company plantation is active, however, it has already been implicated in serious failures to respect key safeguards in the Land Law and the law regulating Economic Land Concessions. This includes respecting the legal land rights of existing landholders, consulting with affected communities, conducting environmental and social impact assessments before beginning operations, avoiding or minimizing harmful impacts, and respecting environmental regulations.

¹ <http://www.elc.maff.gov.kh/comprofiles/udmangksugar.html>,
<http://www.elc.maff.gov.kh/comprofiles/udmtonlesucan.html>,
<http://www.elc.maff.gov.kh/comprofiles/udmcamcan.html>

The most serious recorded violations connected to these concessions occurred in Bos Village in 2008 and 2009, when 214 homes were destroyed by police, gendarmes, and military soldiers.² These evictions were documented and condemned by both local and international organizations and were widely reported in the media. Prior to the eviction a number of community members were severely beaten, and one man was hospitalized.

On 27 May 2010, two men arrested prior to the October 2009 eviction were sentenced to two years in jail. They were found guilty of "clearing State forest".³ Others have gone into hiding out of fear of arrest. Two other community representatives were found not guilty at trial and released; however, they both served more than 6 months in jail in pre-trial detention. One representative was pregnant at the time and gave birth in jail before she was found not guilty and released. The arrested individuals were prominent members of the community and often spoke out in defense of their community.

This long-running dispute is ongoing and efforts to resolve it fairly and in accordance with the law have failed. The Angkor Sugar concession has cleared disputed land and impoverished villagers have been forced to leave with little or no compensation. The enclosed Licadho Briefing Paper (Annex 1) and BABC Briefing Paper (Annex 2) provide further details about the violations of law and human rights connected to these concessions. Local residents fear continued violations of their rights, when the remaining two concessions become active.

There are credible allegations that the three companies described above are also connected to Ly Yong Phat, one of Cambodia's most notorious businessmen and a senator from the ruling Cambodian People's Party. Ly Yong Phat is implicated in land-grabbing and forced evictions in many provinces of Cambodia, including Koh Kong and Kompong Speu. Staff employed by the companies told villagers that if they have complaints they should address them to Ly Yong Phat. In discussions with local communities, officials have frequently referred to the concessions as Ly Yong Phat concessions.⁴ *Angkor Sugar Company* employees have been observed wearing t-shirts printed with the words: "Donated by H.E. Ly Yong Phat".⁵

We have also sent a letter to Mitr Phol, requesting further information on their involvement in these plantations, and we await a response. Meanwhile, we also seek to raise this case with BSI, as this case suggests that this BSI member is committing serious breaches of your Code of Conduct.

We have observed the following breaches:

1. Principle 1 – Obey the Law: The three concessions, when combined, cover 19,736 hectares of land. If the concessions are, as it appears, a single venture of Mitr Phol, the registration of the three concessions under separate companies indicates an attempt to circumvent the legal limit of 10,000 hectares dictated by the Land Law.⁶

² Licadho briefing paper, *Bos/O'bat Moan Village in Konkriel Commune, Samraong District, Oddur Meanchey Province*, 12 October 2009.

³ Phnom Penh Post, *Two men sentenced to two years in jail after land dispute with Senator*, 28 May 2010.

⁴ According to community testimony.

⁵ Licadho briefing paper, *Bos/O'bat Moan Village in Konkriel Commune, Samraong District, Oddur Meanchey Province*, 12 October 2009.

⁶ *Land Law* (2001), art 59: Land concessions areas shall not be more than 10,000 hectares... 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 is prohibited.

The *Angkor Sugar* concession has taken and cleared disputed land, and those who have been evicted or had agricultural land seized have not been compensated – a clear violation of the Land Law.⁷ Evictions have been implemented by State security forces, including illegal use of military soldiers,⁸ and have included widespread destruction of property, in breach of the Criminal Code of Cambodia.

In violation of the Sub-decree on Economic Land Concessions, communities and NGOs are unaware of any Environmental Impact Assessment being conducted,⁹ and affected people were not consulted.

2. Principle 2 – Respect Human Rights and Labor Standards: Not only are the evictions of legal land holders illegal under Cambodian law, they also breach international human rights law. The UN Committee on Economic, Social and Cultural Rights¹⁰ and the UN Special Representative for Human Rights in Cambodia¹¹ have both concluded that widespread and serious human rights abuses have been committed in connection with economic land concessions in Cambodia, including those for sugarcane plantations.

We assert that the Oddar Meanchey concessions have been linked to the following potential violations of international law:

- Families have lost their agricultural land, losing their main source of income and livelihood. This violates the right of self-determination, including the right not to be deprived of one's means of subsistence,¹² the right to work,¹³ and the right to food.¹⁴
- The forced evictions of those within the Angkor Sugar concession violate the right to adequate housing,¹⁵ and the right to privacy of the home.¹⁶
- The treatment of the community representatives who were imprisoned and tried also presents clear violations of their civil liberties under both domestic and international law. This includes: the right to liberty and security of person, including the prohibition on arbitrary arrest and detention,¹⁷ the right to a fair trial, including the presumption of innocence,¹⁸ and the right to equal protection before the law.¹⁹

3. Article 1 – Promotion and Commitment: As can be seen from the above summary of negative impacts connected with these concessions, it is apparent that the company is not

⁷ See: *Land Law* (2001), art. 5 & 248.

⁸ See: *Law on General Statutes for the Military Personnel of the Royal Cambodian Armed Forces*, art. 9, 17, 25.

⁹ See: *Sub-Decree on Economic Land Concessions* (2005), art. 12 / 20; *Sub-Decree on the Environmental Impact Assessment Process* (1999), art. 1, 6 & 29; *Prakas On Guideline For Conducting Environmental Impact Assessment Report* (2000).

¹⁰ Concluding Observations of the Committee on Economic Social and Cultural Rights, Forty-second session, 4 – 22 May 2009, UN Document E/C.12/KHM/CO/1, [15, 30, 31].

¹¹ *Economic Land Concessions in Cambodia, A Human Rights Perspective*, UNOHCHR, Special Representative of the Secretary-General for human rights in Cambodia, June 2007.

¹² International Covenant on Economic, Social and Cultural Rights (1966), Article 1.

¹³ Ibid, Article 6.

¹⁴ Ibid, Article 11.

¹⁵ Ibid, Article 11.

¹⁶ International Covenant on Civil and Political Rights (1966), Article 17.

¹⁷ Ibid, Article 9.

¹⁸ Ibid, Article 14.

¹⁹ Ibid, Article 26.

fulfilling Article 1.3, which states "Members undertake to demonstrate respect and concern for the environment, *and all stakeholders.*"

4. Article 2 – Transparency: Article 2.2 states members "must commit to open and transparent engagement with interested parties". This has not been the case, and very few local people are even aware that the concessions are held by senior figures in Mitr Phol. Local officials frequently refer to this concession as belonging to Iy Yong Phat, despite the concessions being registered to the individuals mentioned above. Most local people are too intimidated to challenge the powerful Senator. No information is published in the media or on the Thai company's website, and we are currently awaiting clarification from Mitr Phol on the exact details of their involvement in these concessions. Furthermore, Article 2.5 states that "Members will commit to open and transparent engagement with interested parties, and actively seek resolution of conflict". The affected communities have not had their requests to resolve the dispute addressed, have not been adequately compensated, and indeed, vocal members have been arrested and imprisoned.
5. Article 3 – Implementation and Support: According to Article 3.1: "All members commit themselves to the principle of continuous improvement of the sugar cane value chain." In the case of the Oddar Meanchey concessions, there have been extensive violations of law from the very outset. From the granting of the concessions in violation of domestic law, through to evictions and land seizure in violation of both domestic and international law. Clearly the company is currently not demonstrating any commitment to this principle.

The preamble to BSI's Code of Conduct states that it is "open to all who support the production, procurement and use of sugar cane and products derived from sugar who meet BSI's core principles and commit to its code of conduct. All Members undertake to act in good faith towards this objective and commit to supporting this Code of Conduct." In light of this, we are calling on BSI to raise the issues detailed here to Mitr Phol and seek clarification as to their involvement in the Oddar Meanchey concessions, and what actions they are going to take to remedy the harms that have been caused. If no positive action is forthcoming, we note that Article 4.4 of the BSI Code of Conduct states: "Members accept that the ultimate consequence for disregard of this Code, or the by-laws and statutes of the BSI, may be exclusion from the organization."

We appreciate your consideration of this matter. We respectfully request that you respond on receipt of this letter, and thereafter keep us informed of any developments. We are more than happy to discuss these issues further with a representative of BSI either in person or by telephone.

We look forward to your response.

Yours sincerely,



David Pred
Executive Director
Bridges Across Borders Cambodia



Dr. Pung Chhiv Kek
President & Founder
LICADHO

Annexes:

1. Licadho Briefing Paper
2. BABC Oddar Meanchey Briefing Paper