



Case Brief: Class Action Lawsuit by Cambodian Villagers Against Mitr Phol Sugar Corporation

April 2, 2018

On March 28, 2018, a group of Cambodians who were forcibly displaced and dispossessed to make way for a sugarcane plantation owned and operated by Mitr Phol Sugar Corporation filed a class action lawsuit against the company in the Civil Courts of Bangkok, Thailand, where Mitr Phol is domiciled. This brief provides a summary of the lawsuit.

I. The parties

The plaintiffs are two Cambodian citizens residing in Samrong District, Oddar Meanchey Province, in northwestern Cambodia. The plaintiffs represent a class of approximately 600 families who resided and cultivated arable land in the Samrong District villages of Bos, O'Bat Moan, Taman, Trapiang Veng and Ktum when the defendant commenced the activities in Cambodia that are the subject of the litigation.

Typically, each household in the group had a housing parcel of 40 x 60 square meters and agricultural land of five hectares, or 31.25 rai, which was provided to them by the Cambodian government in a series of allocations from 1995 to 2005. In some cases, group members had taken legal possession of land under Cambodian land laws.

Four of the villages had existed for decades. The fifth, O'Bat Moan, was established in 2003 as an extension of one of the other four villages. Typically, the plaintiffs and other group members had lived and worked in the area of these villages for their entire lives. The plaintiffs and other group members had lived a normal subsistence farming life, growing rice and vegetables and foraging non-timber forest products from a nearby forest. They depended on these local natural resources, as well as water from streams and wells, to sustain their livelihoods.

The defendant is Mitr Phol Sugar Corporation Limited, a privately owned group of companies domiciled in Thailand, which is controlled and owned mainly by the Vongkusolkrit family through the holding company Mid-Siam Sugar Co., Ltd. The defendant engages in large-scale sugarcane cultivation, and production and distribution of sugar, with operations in Thailand, China, Australia, Laos and formerly Cambodia. To carry out its investment in Cambodia, the defendant directed the creation and operation of Angkor Sugar Co. Ltd (ASC), which was responsible for all the harms suffered by the plaintiffs and group members, and two other companies, Tonle Sugar Company and Cambodia Cane Sugar Valley Company.

Angkor Sugar was incorporated in 2007 by Tat Wanakornkul, who was Executive Vice-President of Mitr Phol Sugar Corporation at the time. Other shareholders of Angkor Sugar, as with Tonle Sugar Company and Cambodia Cane Sugar Valley Company, included other senior Mitr Phol executives and/or members of the Vongkusolkrit family, including Krisda Monthienvichienchai (President of Mitr Phol), Komkrish Nagalakshana (Vice President of Mitr Phol), Buntoeng Vongkusolkrit (Managing Director of Mitr Phol), Supavee Vongkusolkrit and Ataphol Vongkusolkrit.

In 2009, Mitr Phol Sugar Corporation became the sole shareholder of Angkor Sugar, which in turn became a “Single Member Private Limited Company,” wholly owned and controlled by the defendant.

II. The facts

In January 2008, the Cambodian Ministry of Agriculture, Forestry and Fisheries (MAFF) granted three 70-year economic land concessions (ELCs) for industrial sugarcane production in the Samrong and Chongkal districts of Oddar Meanchey province to the three companies linked to Mitr Pohl.

The three concessions together totaled 19,736 hectares (123,350 rai) and were more or less adjoined. Cambodian Land Law Article 59 says that “Land concession areas shall not be more than 10,000 hectares” and that “the issuance of land concession titles on several places relating to surface areas that are greater than [10,000 hectaress] in favor of one specific person or several legal entities controlled by the same natural persons is prohibited.” Conscious of the illegality of what they were doing the company issued a statement in 2012, explaining that “Mitr Phol owns one company and is partnering with two other companies not owned by Mitr Phol.”¹ Nevertheless, the directors and shareholders of each of the three companies when the concessions were issued were all senior figures in Mitr Phol. Public statements and documents prepared by the defendant make clear that Mitr Pohl was in charge of all three.

According to a letter issued in 2007 by provincial authorities, 31 villages occupying an area of 4,500 hectares in three communes were located within the boundaries of the concessions that were proposed at that time. In May 2007, the proposed land concessions were demarcated and villagers were warned to stop using the land that overlapped with the concessions. In April 2008, land clearance activities began.

Throughout 2008-2009, the plaintiffs and group members were forced to give up their land for the Angkor Sugar Company concession. Affected households lost extensive rice fields, plantation/orchard land, and grazing land as well as the associated crops that sustained their livelihoods. Crops including rice, watermelon, fruit, vegetables, maize, cassava, sweet potatoes and soybean were lost. Most affected households lost five hectares of rice fields on average. Annual market-related losses from rice crops averaged about \$1,000 per family. Compensation provided for these losses was generally a plot of inferior land that was much smaller than what they lost and often already owned by others.

Common property resources, including community-managed forests, were also lost or degraded as a result of Mitr Phol's plantation development. The Angkor Sugar concession effectively reduced the size of the pending Ratanak Rukha / Rattanak Sambak Community Forest from 28,772 to 12,872 hectares, affecting the livelihoods of thousands of people in 16 villages. Extensive illegal logging of old growth, high-value timber took place within the concession.

The gravest human rights violations occurred in O'Bat Moan village, which was entirely destroyed to make way for the defendant's plantation. In April 2008, 154 homes in the village were forcibly demolished by company staff under the guidance of local authorities. Further evictions occurred in October 2009, when around 100 homes were burned to the ground by approximately 150 police, military police and hired demolition workers. Most affected families lost all of their possessions during the evictions and were left landless and homeless. Even their rice crops, which they were about to harvest, were reportedly looted by company staff and security forces,

¹ “Mitr Phol Group response to alleged human rights abuses and seizure of land by sugar companies in Cambodia,” 24 July 2012. Available at: http://www.business-humanrights.org/media/documents/company_responses/mitr-phol-

leaving them without essential food and income in the immediate aftermath of the evictions. These forced evictions were preceded by arrests and an assault on the former village chief. Two community leaders were sentenced to two years in jail on charges of 'clearing State forest,' while two others were released after serving over six months in pre-trial detention. One was pregnant at the time and gave birth during her eight months of imprisonment.²

Only 14 families from O'Bat Moan village received compensation in the form of a one-hectare plot of forested land in a remote area. The shelters that these families rebuilt there are rudimentary and do not provide sufficient protection against the elements. They lack access to sanitation and drinking water. Transportation is difficult to arrange, time consuming, and costly due to the remote location and poor conditions of the access road. Thus, access to health care, education and the outside community is severely limited. The closest school, for example, is 10 kilometers away. Many affected people resorted to illegal migration to Thailand after they lost their land to the sugar concessions.

The affected communities submitted multiple complaints and requests for intervention to the local and national authorities between 2007 and 2009. In response, community representatives were met with intimidation, harassment and arrest.

In 2010, after learning of Mitr Phol's ownership of these concessions, Cambodian NGOs Bridges Across Borders Cambodia and LICADHO wrote to the company's directors detailing the evidence of human rights abuses and violations of Cambodian law. No response was received.

In early 2011, the organizations submitted a complaint together with extensive documentation of abuses to the Better Sugarcane Initiative (now Bonsucro), of which Mitr Phol was a member. Rather than address the complaint, Mitr Phol withdrew its membership from Bonsucro.

On July 24, 2012, following the publication of an NGO report that exposed the abuses, the defendant issued a response to the Business and Human Rights Resource Centre that implied that the company should bear no responsibility for any human rights abuses or violations of Cambodian law that may have occurred in relation to its concessions because it relied entirely on Cambodian government assurances of propriety.³

In May 2013, Cambodian NGOs Equitable Cambodia and LICADHO submitted a complaint on behalf of 602 affected families to the National Human Rights Commission of Thailand.

Following an investigation by the Thailand Human Rights Commission between 2013 and 2015, the defendant submitted a request to the Cambodian government to cancel its economic concessions in Cambodia. All three concession agreements were cancelled on August 9, 2015. It appears that the defendant closed Angkor Sugar as a company that year as well.

III. Legal claims

Although the harms occurred in Cambodia to Cambodian nationals and residents, Thai law allows the plaintiffs to file a case in Thailand since Mitr Pohl is a Thai company headquartered in Thailand. Filing in a Cambodian court would not be effective because the defendant has no more presence in Cambodia. The plaintiffs therefore are seeking to claim their right to an effective remedy in the justice system of Thailand. The plaintiffs have agreed to make themselves accessible to the Thai Court and the close proximity of witnesses and experts in neighboring Cambodia mean that there should be no practical obstacles to hearing the case in Thailand.

² See: Amnesty International (2011), *Evictions and Resistance in Cambodia: Five Women Tell Their Story*, pp. 11-19.

³ "Mitr Phol Group response to alleged human rights abuses and seizure of land by sugar companies in Cambodia," *op cit*.

There is also an important public interest at play, since a ruling in favor of the plaintiffs will have broad implications for Thai companies operating outside of Thailand, making them more likely to refrain from abusing human rights in foreign countries -- a current risk to the country's image -- and more likely to implement their responsibilities as articulated in the United Nations Guiding Principles on Business and Human Rights. This will also help to give effect to Thailand's extraterritorial obligations under the International Covenant on Economic, Social and Cultural Rights.

The complaint argues that the Thai Court, in its deliberations and in making its judgment, should look to the applicable Cambodian law, to the extent that it is consistent with Thai law. The Thai Conflict of Laws Act (1938), section 15 states:

"An obligation arising out of a wrongful act is governed by the law of the place where the facts constituting such wrongful act have taken place. The foregoing provision does not apply to facts which, having taken place in a foreign country, are not wrongful according to the Thai law. In no case can the injured party claim compensation or remedies other than those allowed by Thai law."

The defendant's actions as described above, which caused harms to the plaintiffs and group members in Cambodia, amounted to tortious acts. Article 743 of the Cambodian Civil Code sets out elements of a general tort. Subsection (1) states:

"A person who intentionally or negligently infringes on the rights or benefits of another in violation of law is liable for the payment of damages for any harm occurring as a result."

Similarly, the Thailand Civil and Commercial Code, section 420, states:

"A person who, willfully or negligently, unlawfully injures the life, body, health, liberty, property or any right of another person, is said to commit a wrongful act and is bound to make compensation therefore."

Cambodian Civil Code Article 742 defines a negligent act as one in which:

"a person having the same profession or experience as the actor could have foreseen that a particular result would normally occur from such act, but failed to foresee the results due to an absence of due care; and (ii) the actor was obligated to prevent the occurrence of such result but neglected to fulfill such duty."

The Thai Code does not define negligence, but it contains a provision (section 422) stating:

"If damage results from an infringement of a statutory provision intended for the protection of others, the person who so infringes is presumed to be in fault."

The facts of this case clearly rise to the level of both negligence as defined by the Cambodian Code and the infringement of statutory provisions intended for the protection of others, resulting in damage, as codified under Thai law.

The defendant's actions constituted infringements of laws intended to protect others, and this resulted in damage to the plaintiffs and group members. The defendant was obligated under these legal provisions to prevent the occurrence of this result, but neglected to fulfill this duty. Indeed, the facts indicate that Mitr Phol colluded with Cambodian authorities to breach a host of Cambodian laws and regulations, including the Land Law, Forestry Law, Environmental Protection and Natural Resources Management Law and the Sub-Decree on Economic Land

Concessions, as well as Cambodia's international human rights treaty obligations. Applicable legal provisions include the following (which is not exhaustive):

1. The Cambodian Land Law (2001) makes it a criminal offense as well as a tort to hinder a person in possession of land in an "area not yet covered by the cadastral index maps."⁴ Many of the plaintiffs and group members qualified as "possessors" under Cambodian law.⁵ The general area, including the five villages in this case, were not covered by cadastral index maps at the time land clearance activities took place. By forcibly claiming the land and causing the forced eviction and destruction of property belonging to the plaintiffs, the defendant infringed this provision meant to protect possessors, resulting in damage and harm to the plaintiffs.
2. The Cambodian Sub-decree 146 on Economic Land Concessions (2005),⁶ article 4, states that such concessions may not be granted unless it meets all of the following:
 - "The land has been registered and classified as state private land in accordance with the Sub decree on State Land Management and the Sub decree on Procedures for Establishing Cadastral Maps and Land Register or the Sub-decree on Sporadic Registration."
 - "Environmental and social impact assessments have been completed with respect to the land use and development plan for economic land concession projects."
 - "The Contracting Authority shall ensure that there will not be involuntary resettlement by lawful land holders."⁷
 - Also, there shall "have been public consultations, with regard to economic land concession projects or proposals, with territorial authorities and residents of the locality."None of these requirements, intended to protect others, were met in relation to the economic land concessions held by the defendant, resulting in damage and harm to the plaintiffs.
3. Two other Cambodian laws required environmental and social assessments to be completed, including with public consultations, before the ELC was granted. These are the Environmental Protection and Natural Resources Management Law (1996) and an implementing 1999 sub-decree requiring public participation in the assessment; and the Forest Law (2002) Article 4, requiring assessments to be "made available for public comment." These laws, meant to protect others, were infringed.
4. The Cambodian Land Law, article 58, states: "The land concession may not violate ... waterways, pools, ponds and water reserves to be used by the people in their daily lives." The defendant extensively blocked, polluted and in general interfered with waters the villagers depended on, in clear violation of a law intended to protect others from harm.⁸

⁴ Article 247 states: "The infringements against ownership and the other rights relating to an immovable property can constitute a penal offense punishable in accordance with the provisions of this law and the damages caused by such acts shall be compensated by civil remedies." Article 248 states: "The following acts are considered as infringements on ownership and other legal rights to immovable property and constitute penal offenses under this law: ... - An act or conduct, in fact, that is a hindrance to 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 ..."

⁵ By various provisions in chapter 4 of the Cambodian 2001 Land Law, if before the effective date of the law a person started to peacefully, openly, etc. occupy and use (Article 38) "state private land" (Article 17), then under the law he/she is a "possessor" as of whenever the occupation began. Thereafter the land is no longer state land (Article 12) unless the possessor abandons it (Article 38). No formal possession title is necessary to secure this right, although it is possible to obtain a possession title. (Article 40) The possessor may sell and in other ways transfer the land to others. (Article 39) The transferees are also possessors as long as they continue to occupy and use the land. (Article 30) After five years of possession the possessor has the right to obtain a formal ownership title to the land. (Article 30) Lands not settled prior to the effective date of the Land Law cannot be legally possessed. (Articles 29, 34) Many but not all of the 600 families qualified as possessors.

⁶ Sub-decree on Economic Land Concessions, No. 146 ANK/BK article 4 (2005).

⁷ As lawful possessors the plaintiffs qualify as "lawful land holders".

⁸ Complainants told the Thai National Human Rights Commission that "sugar cane plantations also blocked access to natural water resources for consumption, utility, fishery and edible plants harvest, whereas remaining ones were polluted, thus reducing the amount of fish harvest."

5. The destruction of homes, bulldozing of rice fields and other personal property belonging to group members also constitute criminal violations under either Article 52 (“Wrongful Damage to Property”) of the Cambodian Criminal Code in effect until November 30, 2009, or under Article 410 (“Intentionally Damaging Property Belonging to Another”) of the Cambodian Criminal Code in effect since November 30, 2009, depending on when the destruction took place.

Additionally, the defendant’s acts and omissions resulted in breaches of both Cambodia’s and Thailand’s international human rights obligations, particularly those arising from the International Covenant on Economic, Cultural and Social Rights (ICECSR), which both Cambodia and Thailand have ratified.⁹

Cambodia enshrined its international human rights treaty obligations into its domestic law through Article 31 of the 1993 Constitution of the Kingdom of Cambodia, as well as by a subsequent decision of the Cambodian Constitutional Council.¹⁰ Accordingly, Cambodia has made a legally binding commitment to ensure the protection of the rights contained in the treaties, which includes the obligation to prevent businesses and other third parties from violating these rights.

Most importantly for this complaint, Article 11(1) of the ICECSR states that: “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”

The Committee on Economic, Social and Cultural Rights’ General Comment 7, among other international law documents, affirms that forced evictions are a gross violation of the right to adequate housing. Evictions are only permissible in exceptional circumstances (such as for a development project that serves the general welfare), if there are no feasible alternatives, following meaningful consultations and in accordance with due process of law. As explained above and documented by numerous NGO reports,¹¹ the forced evictions, land seizures, destruction of homes, property, forests and crops, and other activities caused by the defendant that resulted in a reduction in access to food for subsistence amount to a serious violation of human rights.

On October 15, 2015, the National Human Rights Commission of Thailand (NHRCT) published its final investigation report, which found Mitr Phol directly responsible for human rights violations committed in conjunction with its business operations in Cambodia. The final investigation report states that, despite the fact that Mitr Phol has returned its concession to the Cambodian government and closed its subsidiary in Cambodia “to eliminate any legal connection to the concession area,” the company “is still liable to correct and remedy the impacts, as stipulated in the United Nations Guiding Principles on Business and Human Rights...” The NHRCT concluded that the defendant “must compensate and redress the damages caused to affected people in Bos

⁹ Cambodia acceded to the ICECSR in 1992. Thailand acceded to the ICECSR in 1999.

¹⁰ Decision No. 092/003/2007, 10 July 2007; Constitution of the Kingdom of Cambodia, Article 31: “The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women’s and children’s rights.”

¹¹ See: *Cambodia: The Bitter Taste of Sugar, Displacement Dispossession in Oddar Meanchey Province*. Available at: <http://www.actionaid.org/cambodia/publications/cambodia-bitter-taste-sugar-displacement-and-dispossession-oddar-meanchey-prov>; Equitable Cambodia and Inclusive Development International (2013), *Bittersweet Harvest: A Human Rights Impact Assessment of the EU’s Everything But Arms Initiative in Cambodia*. Available at: http://www.inclusivedevelopment.net/wp-content/uploads/2013/10/Bittersweet_Harvest_web-version.pdf; Amnesty International (2011), *Evictions and Resistance in Cambodia: Five Women Tell Their Story*, pp. 11-19. Available at: <http://www.amnesty.org/en/news-and-updates/video-and-audio/eviction-and-resistance-cambodia->

Village, O'Bat Moan Village, Taman Village, Trapiang Veng Village, and Ktum Village in Kon Kreal Commune, Samrong District, the Kingdom of Cambodia.”¹²

IV. Remedies

As a result of the defendant's tortious acts, the plaintiffs and group members suffered physical and mental harms, property losses, and loss of access to natural resources that provided a critical source of food, medicine, housing materials and household income.

Cambodia's Civil Code Article 758 states, in relation to the calculation of damages:

“(1) When calculating the economic loss caused by a tortious act, the difference between the economic situation that would be presumed to exist had the tortious act not occurred and the actual economic situation after the tortious act occurred shall be calculated using statistics and other materials to the greatest extent possible.”

“(2) When calculating the mental or emotional distress caused by a tortious act, damages shall be determined by taking into account such factors as the degree of culpability of the tortious actor, the type and degree of harm, and the tortious actor's conduct after committing the tortious act.”

Article 759 of the same (“Damages for harm caused by loss or destruction of an Object”) states:

“Should an Object be destroyed or damaged through a tortious act, the injured party may seek compensation for the price of the damaged or destroyed Object, the cost of repair, or other such consequential remedies.”

In accordance with these provisions, and a formula for calculating damages caused to group members that is annexed to the complaint, the defendant is liable for compensation to the two plaintiffs for damages in the amount of 4,076,740 Thai Baht. Plaintiffs' counsel requests that the Court apply the same formula for calculating compensation to the entire class.

¹² Thai National Human Rights Commission (2015), Final Investigation Report: Mitr Phol Sugar Company Limited negative impacts on people living in Samrong District and Chongkal District, Offar Meanchey Province, Cambodia; Oxfam and Action Aid (2015),