

Karel de Gucht
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Via Electronic Mail

cc:

Catherine Ashton, High Representative and Vice President of the European Commission
Barbara Lochbihler, Chair of the Subcommittee on Human Rights of the European Parliament
Christina Kokkinakis, Head of Political Section – Human Rights, EU Delegation to the UN in Geneva
Jean-François Cautain, Ambassador of the European Union to the Kingdom of Cambodia
Professor Surya Subedi, UN Special Rapporteur on the situation of human rights in Cambodia

November 6, 2013

Dear Commissioner de Gucht,

Our organisations wish to come back to our previous request to launch an investigation regarding the EBA scheme in Cambodia. A new report, “Bittersweet Harvest,” issued by Equitable Cambodia and Inclusive Development International, empirically documents the adverse human rights impacts of the EBA scheme in Cambodia. The impact assessment found that, in the absence of effective human rights safeguards, Cambodia’s policy of granting large-scale land concessions to private investors for agro-industrial development and the EU’s policy of granting preferential tariffs to spur such investment in least developed countries both carry risks of devastating human rights impacts. These risks materialized in forced evictions and land seizures that have been part and parcel of the development of Cambodia’s sugar industry.

While investment in Cambodian agriculture is badly needed to increase food security and alleviate rural poverty, the investments promoted by these policies have turned out to be disastrous for Cambodian small-scale farmers. Rather than reducing poverty, they have led to widespread impoverishment, hunger and violence.

We contest the immobility of the European Commission regarding the EBA and its related human rights violations. Without conducting its own comprehensive impact assessment of EBA, which we have called upon the Commission to do, the EU is not complying with its human rights obligations. It is also inconsistent for the Commission to take credit, on the one hand, for the EBA scheme helping Cambodia to double its exports to the EU in the garment and footwear industries that provide employment to half a million people,¹ and then to disavow any causal link between EBA and the harmful sugar industry, which has impoverished over ten thousand people. As the Bittersweet

¹ Sandra Gallina, European Commission Directorate General for Trade, Reply to Peoples Solidaires – ActionAid France, 17 October 2013.

Harvest report confirms, the establishment and growth of the sugar industry in Cambodia is a direct result of EBA.²

While we commend the EU for granting trade preferences to the world's poorest countries, we believe that the EBA scheme has major flaws. In contravention of the obligations that derive from Article 3(5) and Article 21 of the Lisbon Treaty, there is no mechanism to regularly and transparently assess its impacts on human rights or to enable the EU to respond to human rights violations and other harms to people in third countries that result from the granting of trade preferences. The withdrawal procedure is by design exceedingly difficult to trigger, even in the face of widespread and systematic human rights violations, as we have witnessed in Cambodia.

In your letter of 14 August 2012, you pledged that if “international monitoring bodies unequivocally conclude that serious and systematic violations are taking place, the European Commission will not hesitate to launch the EBA investigation.”

As the Commission is well aware, on September 24, 2012, the United Nations Special Rapporteur on the situation of human rights in Cambodia presented to the 21st session of the Human Rights Council his report, “A human rights analysis of economic and other land concessions in Cambodia.” The 120-page report assesses the impact of land concessions in Cambodia in the context of Cambodia’s domestic legal framework and international human rights obligations and ultimately concludes unequivocally that:

There are well-documented **serious and widespread human rights violations** associated with land concessions that need to be addressed and remediated [emphasis added].³

In his subsequent report, issued on August 2013, the Special Rapporteur made clear the links between human rights violations and EBA, while noting that the Prime Minister’s land titling campaign has not provided any remedy to those who have lost their land:

For example, communities’ land associated with the sugar plantations, which benefit from the European preferential trade agreement (Everything But Arms) in Koh Kong, Oddar Meanchey and Kampong Speu provinces, have reportedly not yet had their land measured.⁴

During subsequent meetings that we have held with DG-Trade and EEAS officials, we have been told that the Commission is of the view that the Special Rapporteur is not an ‘international monitoring body’ and that they were waiting to see the conclusions of the Human Rights Council. We consider this view factually and legally incorrect.

The mandate of the Special Rapporteur derives from the Paris Peace Accords. These international agreements clearly indicate that the Special Rapporteur is an international monitoring body:

² Pred, D., “Bittersweet Harvest: A human rights impact assessment of the EU’s Everything But Arms Initiative in Cambodia,” Equitable Cambodia and Inclusive Development International (2013), pp. 20-22.

³ 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.

⁴ Report of the Special Rapporteur on the situation of human rights in Cambodia, Surya P. Subedi, A/HRC/24/36, 5 August 2013, §56.

The United Nations Commission on Human Rights should continue to monitor closely the human rights situation in Cambodia, including, if necessary, by the appointment of a Special Rapporteur who would report his findings annually to the Commission and to the General Assembly.⁵

The Human Rights Council, like the Commission that preceded it, is a political body made up of States. This is why the Special Procedures of the Human Rights Council are critical to fulfilling its mandate. In the case of Cambodia, the Council fulfils its monitoring responsibility, as mandated by the Paris Peace Accords, through the appointment of the Special Rapporteur on the situation of human rights in Cambodia, who conducts two missions each year to the country, prepares thematic reports on a range of human rights issues, and reports to the Council.

The current Special Rapporteur's reports, including his report on the human rights impacts of Economic Land Concessions, were welcomed by the Human Rights Council during its 24th session and his mandate was renewed.

There is thus a clear legal basis for the European Commission to launch an investigation into human rights violations associated with agro-industrial products that are being exported to the EU, or may be exported in the future, under the EBA initiative.

As of 31 October 2013, nearly 60,000 Cambodians and Europeans have signed the Peoples Solidaires-ActionAid France petition and sent you messages urging the Commission to stop rewarding companies with lucrative trade preferences that have broken the law and violated human rights.⁶

By investigating and withdrawing preferences from products linked to serious violations until they are remediated, the EU will send an important message to companies that have committed crimes and run roughshod over the rights of thousands of Cambodian families, that there are concrete repercussions for these actions. This will also help to mitigate the unintended perverse consequences of EBA and help to ensure that it serves its purpose of promoting sustainable development.

We urge you to launch this investigation without further delay.

Sincerely,

Eang Vuthy
Executive Director
Equitable Cambodia

Seng Sokheng
Secretariat Coordinator
Community Peace-building Network (Cambodia)

⁵ Agreement Concerning the Sovereignty, Independence, Territorial Integrity and Inviolability, Neutrality and National Unity of Cambodia, 23 October 1991, Article 3.

⁶ <http://www.peuples-solidaires.org/appel-urgent-cambodge>

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