

(Unofficial Translation)

NHRC.7

National Human Rights Commission

Date: 12 October 2015

Investigation Report No: 1003/2015

Re	Community Rights: Mitr Phol Sugar Company Limited negative impacts on people living in Samrong District and Chongkal District, Oddar Meanchey Province, Northeastern Cambodia
Complainants	Foundation for Ecological Recovery, Equitable Cambodia and Cambodian League for the Promotion and Defense of Human Rights (LICADHO)
Respondent	Mitr Phol Sugar Company Limited

1. Background

The National Human Rights Commission (NHRC) received a complaint from Foundation for Ecological Recovery, Equitable Cambodia and LICADHO (Complaint No. 259/2013) on Mitr Phol Sugar Company Limited, a Thai national company who had received land concession under the Economic Land Concession (ELCs) to operate a sugar industrial plant in Samrong District and Chongkal District of Oddar Meanchey Province in Northeastern Cambodia. The land concession has been granted to three subsidiary company, which have a relationship to the Mitr Phol Sugar Company Limited to operate in the said area, in which the company has illegally occupied the land of local people by destroying local people's houses, killed their livestock, torched villages, destroyed crops, resulting in the series of threaten and arrest villagers. The operation had threatened food security and extreme poverty to affected Cambodian people.

2. A Consideration of the Complaint

The National Human Rights Commission of Thailand (NHRCT) considered the complaint and had several points for consideration. Firstly, The Mitr Phol Sugar Company Limited, a Thai business entity, may operate its business in a way that had violated international obligations that Thailand has ratified, including The International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the ASEAN Human Rights Declaration. There is a possibility that the operation would be against the United Nations Guiding Principles on Business and Human Rights: Implementing the Protect, Respect, Remedy Framework (2011). The UN Guiding Principle suggests that a business entity respect human rights, avoid any action or any engagement in any action which create adverse impacts on human rights or human rights violation of other people. Finally, the UN Guiding Principle recommended a remedy for any negative impact that a business entity had involved. A business entity must seek measures to prevent and mitigate the human-right-related risks of their direct production or service resulting from their business relationships although the enterprises do not directly involved in creating an adverse effects.

The above complaint is well-grounded that an operation of a Thai business entity may involve and may cause human rights violation against Cambodian people. Moreover, the Complainants are non-profit organizations with legal entity under the Thai law and are working to promote and/or protect human rights without the political aim or profit seeking aim. Thus, the Complainants are eligible to lodge a complaint under Section 24 of the National Human Rights Commission Act 1999 and the complaint is under the NHRCT is authorize to consider the complaint under the National Human Rights Commission Act 1999 Section 15 (1), (2) and (3), which stipulates that the NHRCT is mandated to promote protection and compliance with human rights principles in the domestic and international level; to investigate and report an act of commission or omission which constitutes a human rights violation or an non-compliance with Thailand's international human rights instruments that Thailand has ratified; and to provide policy recommendations and legal recommendations to amend law, rules or regulations to

the Parliament and the Cabinet, in order to promote and protect human rights.

In the NHRCT's Complaint Screening and Consideration of Human Rights Violations Report Sub-Commission meeting Session 16/2013, on 13 June 2013, approved the acceptance of the complaint and forwarded it to the Sub-Committee on Community Rights for further consideration and action.

3. An Investigation

The Sub-Committee on Community Rights considered the complaint, the record of the exponents and relevant parties and conducted an investigation by virtue of the National Human Rights Commission Act 1999, Section 15. According to the complaint, Mitr Phol Sugar Company Limited operated a business with a concession to run sugar refinery factories and sugar cane plantation in Samrong District and Chongkal District in Oddar Meanchey Province, in Northeastern Cambodia. The investigation therefore examined whether an act of commission whether the company had conducted actions that constitute a violation of other people's human rights and whether the company has prepared to prevent or mitigate the adverse impacts on human rights that might occurred in related to their business or having the measure to implement a fair remedy or compensation. Additionally, the investigation also considered whether it would be appropriate to have a policy recommendation to the Cabinet and/or relevant agencies on the case.

3.1 Statement from the Complainants

The Complainants are the non-governmental human rights organizations, registered as a legal entity under the law (Foundation for Ecological Recovery) and non-governmental Cambodian organizations, namely: Equitable Cambodia and Cambodian League for the Promotion and Defense of Human Rights (LICADHO) gave an oral statement to The Sub-Committee on Community Rights on 11 November 2014 and submitted written statements. The said organization stated that Mitr Phol Sugar Company Limited, a Thai national private company, involved in human rights violation incidents in Cambodia. The detail of the statement can be concluded as follows.

1. Background

On January 2008, Ministry of Forestry and Fishery granted an Economic Land Concession (ELCs) for 70 years in Sarong District and Chongkal District in Oddar

Meanchey Province in the Northeast of Cambodia to three sugarcane companies, namely:

- (1) Angor Sugar Co.; Ltd.
- (2) Tonle Sugar Cane Co., Ltd
- (3) Cane and Sugar Valley Co., Ltd.

The companies are subsidiary of Mitr Phol Sugar Group. The three companies' directors are high level personnel(s) of Mitr Phol Sugar Company Limited. The concessions have been granted in the same day from the Cambodian Cabinet. The three companies also signed the concession agreements in the same day. Altogether, the three companies have been granted over 19,700 Hectare of land (1 Hectare = 6.25 Rai) in Bos village, O'Bat Moan village, Taman village, Trapaing Veng village and Ktum village.

2. Problems and Impacts in Cambodia

2.1 Forced eviction and house torching

After the concession was granted, in April 2013 the Angor Sugar Co., Ltd.'s workers had destroyed 154 villagers' households, in O'Bat Moan village. Meanwhile, 150 police officials, military officials and forest officials had evicted, demolished and torched villagers from Bos village. In October 2009, the demolition was carried out against another 100 households in O'Bat Moan village. In total, 254 households of O'Bat Moan households were destroyed.

2.2 Arrest, Prosecution and Detention

During the force eviction, former village leaders were arrested, assaulted and detained. Two community leaders were sentenced to two years imprisonment for deforestation in a state owned area. The other two were released after six months under a detention before a trial. One of the arrestees is a woman named Hoy Mai, a Bos villager. Ms. Hoy Mai testified before the Sub-Committee on Community Rights on 11 November 2014 that on 12 October 2009, her husband, six villagers and herself walked on foot to petition Somdej Hunsen, the Prime Minister in Phnom Penh, after the Bos village was evicted torched and demolished. When they arrived in Cambodia, the party was refused to see the Prime Minister, thus they camped out at night in an ancient pagoda in the heart of Phnom Penh City. At night,

the police arrested them, while other people and Ms. Hoy Mai's husband could escaped, she was arrested and criminally charged for violating a forestry law. She was transferred to a prison in Siem Reap Province while she was five months pregnant at the time.

Ms. Hoy Mai was imprisoned for eight months, later on June 2012, she and her son, who had been born in the prison, was released in exchange for signing an agreement to withdraw her demand for land rights in Bos village and that she agreed to receive a piece of resettlement land as a compensation package. Nevertheless, she returned to her house and did not receive any piece of land promised in the agreement.

2.3 Loss of agricultural land

Villagers lost a large amount of their paddy fields, plantations and fruit orchards. A survey indicated that on average, each villager's household lost five hectares of paddy land. Moreover, the land-grabbing happened during the harvest season, thus villagers lost all of their crops. It was also found that the concession recipient also sold the crops from such expropriation.

2.4 Lack of food security

When villagers lost their agricultural area and an access to harvest their crops, they also lost their food resources to sustain their livelihood in addition to inadequate money to nourish themselves. Furthermore, community forest areas, which was a traditional foraging were destroyed from the company's sugar cane plantations. It was found that Angor Sugar Co., Ltd's concession reduced an area of a community forest (which was being applied an official community forest certification) in Rattanak Sambak, from 28,772 Hectare to 12,872 Hectare. Consequentially, thousands of residents from 16 villages were affected. Sugar cane plantation also blocked accesses to natural water resources for consumption, utility, fishery and edible plants harvest, whereas remaining ones were polluted and scare, thus reducing an amount of fish harvest.

3. Remedies

Despite the fact that villagers lost habitat, arable land, crops and natural food resources from Mitr Phol Sugar Company Limited's concession, some villagers had not received any money or other forms of compensation. Villagers who received compensation reported that the amount of compensation assessed was

lower than the actual damage caused. Additionally, only 14 families that received compensation in term of the land for the resettlement. However, the houses in the resettlement land are of low quality and could not be used as their habitat. Villagers had to use plastic fertilizer or rice sacs to repair the houses. There was drinking and utility water shortage. Traveling and transportation in the area was restricted because of the long distance to the relocation site, required time and high transportation cost. Healthcare services, education and communication to the external areas were limited. The nearest school was located ten kilometers away from the relocation site. The land that were compensated to villagers did not have any land title. Despite the fact that villagers had been trying to request for written land titles, the requests was always rejected. The compensation process was conducted without any participation from villagers. Additionally, they were subjected to threats, intimidation frauds and corruption.

4. Income and occupations

Some villagers from the affected areas were allowed to work in sugarcane planation. Nevertheless, an income from such occupation is not sufficient to make a living because on average, a worker would earn 10,000 Riel (2.50 USD) for 10-12 hours working day. The workers were not permitted to leave the plantation, unless they were sick. According to Pred, D. and Nuijen. M. (2013) *Bittersweet Harvest: A Case Study on the Displacement Impacts of the EU Everything but Arms Initiative in Cambodia*. Oxford: Forthcoming Publication, pregnant women and child workers were brazenly employed. The danger causing by poor health protection standard in the workplace and poor safety regulation was therefore obvious. For example, the companies did not train workers to use chemical substances spray, protection gears and equipment were not distributed to workers. As a result, workers fell ill. Some workers reported skin irritation and some vomited blood. The employment was precarious as the companies only used workers in the plantation averagely two to four months a year.

5. Intervention provided by Cambodian organizations

In 2010, numbers of Cambodian organizations lodged a complaint with many supporting documents about the human rights violation to Better Sugarcane Initiatives, at the present is known as “Bonsucro,” an association based in England with the mission to make the sugar productions have a standard and sustainable, by conforming to [sugar production] standard. Mitr Phol Sugar Company Limited used

to be the member of this Better Sugarcane Initiative thus the complaint was forwarded to the company. However, later the company resigned from being Bonsucro member and has operated without an accreditation from the said Association.

Succeeding to the above action, a non-governmental organizations alliance called Clean Sugar Campaign attempted to have the company to respond, by lodging a complaint to Business and Human Rights Resource Center, a nonprofit website operating as a platform for private company accused of inappropriate conducts to respond to an accusation. On 24 July 2012, the company responded through the aforementioned website and denied the accusation. The company also affirmed that it should not be the responsible entity for human rights violation in its Cambodian investment because the Cambodian government has already verified the investment.

6. Violation of Cambodian law

The law governing land concession on Cambodia: Land Law of Cambodia 2001, Article 59, prescribes the limit of not exceeding 10,000 Hectares, or 62,500 Rai (1 Hectare is equal to 6.25 Rai) to an economic land concession per an applicant. In this case, the three land concession was registered separately under the different companies but the Mitr Phol Company Limited admitted that the three companies are connected to one another.

Additionally, in the Sub-decree No. 146 on Economic Land Concession 2005, prescribed certain requirements that a company received the concession must implement. For example, Article 12 and Article 20 stipulate that the company must conduct a social and environmental impact assessment. However, in reality, the villagers had never received any impact assessment documents, which was required by the law.

7. Violations of international human rights obligation

The complainants considered that the impacts suffered by villagers in the concession areas, covering Bos Village, O' Bat Moan Village, Taman Village, Trapiang Veng Village and Klum Village in Samrong District and Chongkal District, Oddar Meanchey Province, in the Northeast of Cambodia violated human rights agreement [obligation] in the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic Social and Cultural Rights (ICESCR) on forced eviction and right to food (Article 11, Subsection 1); Arrest and Detention

(Article 9 - ICCPR) and violation of the United Nations Guiding Principles on Business and Human Rights: Implementing the Protect, Respect, Remedy Framework (2011).

8. A study report on impacts of land concession for sugarcane plantation and sugar factories in O’Bat Moan Village, Oddar Meanchey Province, Cambodia

Equitable Cambodia and LICADHO jointly conducted a field research in O’Bat Moan Village during September - October 2014. The village is among those suffering the impacts and it was selected as a study site because the village sustained the most severe damages.

The research interviewed 48 villagers who had been forcible evicted from the village to gain at least 22 per cent of the overall 214 households that had been evicted from their land. Twenty eight persons of the interviewees were included in the list of the people lodging the complaint with the National Human Rights Commission of Thailand and 20 people have been certified by their village leaders that they have been genuinely affected.

The questionnaire used in the survey was jointly developed by Equity Cambodia and Foundation for Ecological Recovery. The original version was in English and it was later translated to Cambodian. The questionnaire comprised of open-ended questions in five parts; namely:

- Information about an informant;
- Circumstances and livelihood of an informant before the sugarcane factory was in the area;
- Circumstances and livelihood of an informant when the sugarcane factory/ies was in the area;
- Present and future situation; and
- Complaints to the NHRCT.

The finding from the research concluded that before the O’Bat Moan village was evicted, in 2008 and 2009, the majority of respondents (over 90 per cent) could make an adequate living for their families from integrated farming and foraging food from the forest nearby. Paddy rice was the majority source of income for respondents at 83 per cent and foraging in the forest contributed to 17 per cent of income. Most of respondents reported that they also planted other vegetables on their land. Despite they had a low monthly income at 566,600 Riel per month (140 USD) but they could sufficiently rely on paddy rice to feed the family.

In October 2009, all respondents were forcibly and violently evicted from their home in favor of a sugarcane plantation. Per family, they had lost the settlement land for housing approximately 40x60 square meter and 5 Hectares of agriculture area (about 31.25 Rai) along with many houses and properties. Although they were pressured and intimidated by local authorities, most of the respondents (45 from 48 persons) refused to relocate to a resettlement site because they did not receive a fair compensation package, comprising of only one hectare (about 6.25 Rai) of fallow land to replace the five hectares of confiscated land.

The research also revealed significant changes in livelihood of the respondents after the land grabbing. The land was the main resource of income from paddy rice and forest foraging before the forced eviction. Loss of land and forest contributed to the interviewees' family to change their livelihood. Only 30 per cent of the interviewees affirmed that agriculture is still their main source of their incomes, whereas, 35 per cent reported that they have become laborers in agricultural sector or construction sector. Despite the number of the family who practiced foraging in the forest was more or less the same, they reported that the amount of the harvests decreased significantly because for significant loss of forest areas.

On average, the people's income was lower from an average of 566,600 Riel (about 140 USD) per month before the forced eviction to 496,200 Riel (about 124 USD) per month after the relocation. Although the overall income decrease did not significantly changed but the decrease from agriculture and forest income was heavily felt among the farmers and forest gatherers. Thirty of 48 interviewees reported that they have lost agricultural income at an approximate rate of 75,000 Riel (about 19 USD) per month, while 38 among 48 interviewees have lost an income from foraging in the forest at 227,500 Riel (about 56 USD) per month, which was the main source of income for many interviewees. Although the income did not significantly changed, the cost of living increased markedly because the families of the interviewees had to buy food. Before the eviction, they could rely on their crops and forest resources for food. Thus, the eviction negatively affected the interviewees' subsistent livelihood.

Previously, all interviewees relied on agriculture for a living, such as paddy rice farming, forest foraging and other edible plants gardening around their houses as a source of income and food. Hence, the loss of land resulted in severe impacts on their lives. A majority of interviewees (87 per cent) reported that could not adequately provide for their family. Problems include, declining quality of life,

lower rate of food security, increasing health problems, debts, and outbound internal immigration to seek jobs in other provinces, thus many people could not live with their families. Some interviewees also noted limited movement and mobility as they could not access the forest and the surrounding area of the concession land. They have also been threatened by authorities. When villagers did not know if they could have their land back, most interviewees rated their future as being very negative.

9. The Withdrawal of Mitr Phol Sugar Co., Ltd from the investment area

An additional statement obtained from the Complainants indicated that the local villagers had heard that the company would leave the concession granted area since January 2015, based on the government officials at the district level's words. Nevertheless, the villagers had not received any information on their land and there was not any communication from the company on this matter, Thus, the people were afraid whether the land and forest that had been grabbed would be returned to them. Later in May 2015, a military troop arrived in the area in a manner as if they would confiscate the land to use of some activity, although people stopped them. Because of this, the villagers were afraid that, rather than having the land back, it would be granted to a new operator even after the company would finally withdraw the concession.

3.2 Field Fact-finding Mission

Mr. Nirun Pitakwatchara, MD — a human rights commissioner and the president of the Sub-Committee on Community Rights conducted a field visit to Oddar Meanchey Province to gather additional information from the Complainants and relevant people on 11 August 2014, during his official visit to participate in the forum on Business and Human Rights with Land Concession Policy for Agribusiness in Cambodia. In the morning of the field visit day, he listened to villagers from Taman Village, Trapiang Veng Village and Ktum Village and in the afternoon with villagers from O'Bat Moan Village. According to the summary report from the field visit, villagers had resided in the land for about 60 years. In the past they had from 5-20 Hectare of land, based on the size of either a small or a large family. On average, each family had not exceeding five Hectare per a household. Later they found out that the land was given to the company so they had tried to negotiate with the company but they fell to do so. Finally they were forced to print their

thumbs in a document, which they found out later that it was an eviction notice from their land.

In term of compensation, firstly the company had proposed 400 USD financial compensation per a Hectare of confiscated land but the company later negotiated to reduce the compensation to 200 USD per a Hectare. Finally, the Company did not pay any monetary compensation. Also, land compensation package proposed by the company as resettlement land belongs to villagers from other villages. Consequently, the villagers could neither use nor utilize the resettlement area given by the Company and they were still landless. Those with some land left also did not have enough land to cultivate enough to sustain their families. In the end villagers had to migrate to work in Thailand as a manual workers, laborers or small scale border traders, thus, they suffered broken families. Children had dropped out from the school because they needed to help their parents to earn a living. An employment opportunity with the company could not be realized as positions and job opening were small.

The company also received the concession land which covered the community forest and public land where villagers from many communities to gather foods in the forest for subsistent living. However, when the company had accessed over the land after the concession, villagers were forbidden to access this community forest area and the only access to the community forest must pass the concession land and the company checkpoints, thus the villagers could not utilize the area and their food security was greatly compromised.

Villagers confirmed that nobody from Taman Village, Trapaing Veng Village and Ktum Village was beaten, arrested or detained.

In the afternoon session, the mission went to O' Bat Moan Village. In conclusion villagers reported that they had been granted the land under the state's land reform scheme since 2003, then during 2007-2008, the company went into the area and ordered villagers to thumbprint in a blank paper. In 2009 the company evicted the villagers residing in the area by torching and demoting their houses. Their agricultural produces were also confiscated. Additionally, eleven villagers were arrested and detained for illegally occupying and working in state land.

After the incident, the villagers were allocated new plots of land but only some villagers decided to relocate to the resettlement area. The relocation areas did not have a clear land survey, demarcation and titles documents, thus villagers did not know how long they can stay. Villagers were in constant famine and needed food assistance from LICADHO for occasional rice distribution. It was not

until villagers were informed on the land demarcation that they started to plant some paddy rice.

Other families that denied the relocation reasoned that the land was not suitable for agricultural purposes. They looked for an employment in other areas. Some went to live with the original Bos Village and some had migrated to Thailand for an employment.

Villagers wanted their original land. Land grabbing resulted in uneducated children and cross-border migration to Thailand either through legal or illegal immigration. Workers at the sugarcane factory earned 90 Thai Baht (2.4 USD) a day.

3.3 Testimony from the Accused

Mitr Phol Sugar Company Limited

Mitr Phol Sugar Company Limited delivered the following testimony.

(1) Written testimony, submitted on 14 July 2013

Mitr Phol Group is committed to sustainable agriculture in all aspects and believes that its 60 year track record exemplifies this commitment to farmers and farm communities. The company's business model depends on strong, transparent, and fair relations with farmers. Further, its overall industry leadership in Thailand reflects the company's commitment to corporate governance, best practices, investing in research and development and sharing new technology with farmers.

Mitr Phol Group started its operation in Thailand since 1946 and expanded the business to China and Laos PDR, respectively by investing ten sugar production facilities and extension industries. Mitr Phol Group also supported over 150,000 farmers in local communities to plant sugarcane in sustainable ways. The operations include large working capital amounts dedicated to year round agricultural technical and the use of appropriate technology adaptation services to sugarcane farmers. In addition, Mitr Phol Group contributed to community services to support sugarcane plantation in infrastructure such as roads and irrigation, and support for improvements in local education and medical services.

The same practices were adopted in the Kingdom of Cambodia since 2009. Mitr Phol Group planned for a “nucleus plantation” concept to establish a critical minimum size that will support an expanding number of future private farms in adjacent or nearby areas. Planned investment includes a sugar mill with biomass power production for export to the local Cambodian power grid. There will be substantial opportunity for private farmers to grow their own crops with the company’s technical assistance, as well as for training and employment of nationals in company operations.

Mitr Phol Group does not support encroachment on private land or forced eviction, or the destruction of private property. The investment in the Kingdom of Cambodia has followed a land concession process prescribed by Cambodian domestic law and in conformity with the United Nations’ Guiding Principle on Business and Human Rights 2011. As per the contract, the Cambodian Government undertook land surveys to grant the concession to Mitr Phol Group. Authorized state officials would identify and determine the area such as land privately owned by residents; land already set aside or reserved for natural conservation, i.e. national forests, national heritage sites, or other protected areas. In case the expropriation is needed, the authorized officials would negotiate until the final agreement would be reached and Mitr Phol Group would, under the condition in the concession contract, be responsible to compensate for any expropriation according to the agreement conducted by authorized officials.

Mitr Phol Group’s project in Cambodia is in final stages of development. Mitr Phol Group owns one company and is partnering with other companies in another two companies. There has been no Cambodian shareholding in any of these companies. Currently, The company has been granted only 18,400 Hectare and the project was in an experimental stage because in some area, the land was not suitable for plantation. The company has not built any processing plant. During its initial operations the project have helped stimulate the local economy with continuing employment of 100 positions, (increasing to 300 positions during parts of the growing season). It also gives Cambodian farmers an opportunity to undertake land improvement and to learn about sustainable sugarcane farming. Mitr Phol Group directly trained Cambodian staff and through them, the company provided knowledge transfer to local farmers.

Overall, the amount of land available to the project has been significantly reduced after surveying out private land, undergoing public consultation, and identifying land set aside for any reason by the government.

Reduction of area by 40%-60% has been in line with Mitr Phol expectations and investment experience elsewhere. It should also be noted that the final usable land area may be further reduced to levels close to or below what would be considered a minimum sized economically viable sugarcane with mill project, with a production capacity of 100,000 tons of sugar, which implies sugar cane supplies of around 1 million tons.

(2) Verbal testimony on 12 May 2015

Representatives of Mitr Phol Sugar Company Limited testified that in the late 2014, the Board of Committees has issued a motion to withdraw the investment and return the land concession contract to the Cambodian Government. The company has acknowledged that the villagers were affected, thus it hired the International Environment Management company, a Switzerland national company to survey the damages in the area the company had been granted the concession. The company affirmed that it will be responsible to any damage under the International Finance Company Framework. The survey requires 3-4 months to collect data, including the number of affected households and household income. The company also recommended the Cambodian Government should return the land rights to villagers. Nevertheless, the matter depends on the Cambodian Government's decision.

(3) Written testimony, submitted on 9 July 2015

Mitr Phol Group stated that the following progress had been made;

1. Currently (as of July 2015) Mitr Phol Group notified the Cambodian Government that it will return all land granted by a concession. The Cambodian Government, through the Office of the Prime Minister has issued an internal memorandum to relevant Cambodian ministry and agencies to confirm an approval of the concession revocation. The company has left the concessioner areas.

2. Mitr Phol Group is processing to close its subsidiary companies in Cambodia and strictly follows Cambodian law. The closing down will be finalized at the earliest occasion.

3. Mitr Phol Group hires an international consultancy company to conduct a Post Investment Study, using an internationally accepted guidelines by the ADB and World Bank. After Mitr Phol Group received a permission from the Forest and Fishery Ministry, the consultant company has visited the field in the past May and met with the provincial governors for a discuss into the details of the

matter. Currently, the consultation company is coordinating with the province and relevant agencies in Cambodia to prepare an on-site survey. After the survey, it will take approximately four months to study, analyze and conclude all related data.

4. Relevant International instruments

The NHRCT is empowered under the Constitution of the Kingdom of Thailand (Interim Constitution) 2014, Constitution of the Kingdom of Thailand 2007 (the effective constitution during the time of the incident.), the National Human Rights Commission Act 1999, the International Covenant on Civil and Political Rights, the International Covenant on Economic Social and Cultural Rights and the United Nations Guiding Principles on Business and Human Rights : Implementing the Protect, Respect, Remedy Framework.

(1) The Interim Constitution of the Kingdom of Thailand (2014)

Article 4 Subject to the provisions of this Constitution, human dignity, rights, freedoms and equality of all Thais, which have been protected under the customary practices of the government of Thailand under the democratic regime with the King as Head of State and under existing international obligations of Thailand, shall remain protected under this Constitution.

(2) The Constitution of the Kingdom of Thailand 2007

Section 82, first paragraph. The State shall promote friendly relations and cooperation, adopts the principle of non-discrimination, and complies with treaties on human rights which Thailand is a party. It shall also follow the obligation committed to other countries and international organisations.

Section 257, The National Human Rights Commission has the powers and duties as follows:

To examine and report the commission or omission of acts which violate human rights or which do not comply with obligations under international treaties to which Thailand is a party, and propose appropriate remedial measures to the person or agency committing or omitting such acts for taking action. In the case where it appears that no action has been taken as proposed, the Commission shall report to the National Assembly for further proceeding;

(3) The National Human Rights Commission of Thailand Act (1999)

Section 3 in this Act: "human rights" means human dignity, right, liberty and equality of people which are guaranteed or protected under the Constitution of the Kingdom of Thailand or under Thai laws or under treaties which Thailand has obligations to comply;

Section 15. The Commission has the powers and duties as follows:

(1) to promote the respect for and the practice in compliance with human rights principles at domestic and international levels;

(2) to examine and report the commission or omission of acts which violate human rights or which do not comply with obligations under international treaties relating to human rights to which Thailand is a party, and propose appropriate remedial measures to the person or agency committing or omitting such acts for taking action. In the case where it appears that no action has been taken as proposed, the Commission shall report to the Nation Assembly for further proceeding;

(3) to propose to the National Assembly and the Council of Ministers policies and recommendations with regard to the revision of law, rules or regulations for the purpose of promoting and protecting human rights;

(4) The International Covenant on Civil and Political Rights (Ratified 29 October 1996)

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

Article 47 Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

(5) The International Covenant of Economic, Social and Cultural Rights (Ratified 5 December 1999)

Article 1:

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

Article 25: Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

(6) ASEAN Human Rights Declaration (Signatory since 18 November 2013)

RIGHT TO DEVELOPMENT

35. The right to development is an inalienable human right by virtue of which every human person and the peoples of ASEAN are entitled to participate in, contribute to, enjoy and benefit equitably and sustainably from economic, social, cultural and political development. The right to development should be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations. While development facilitates and is necessary for the enjoyment of all human rights, the lack of development may not be invoked to justify the violations of internationally recognised human rights.

36. ASEAN Member States should adopt meaningful people oriented and gender responsive development programmes aimed at poverty alleviation, the creation of

conditions including the protection and sustainability of the environment for the peoples of ASEAN to enjoy all human rights recognised in this Declaration on an equitable basis, and the progressive narrowing of the development gap within ASEAN.

COOPERATION IN THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

39. ASEAN Member States share a common interest in and commitment to the promotion and protection of human rights and fundamental freedoms which shall be achieved through, inter alia, cooperation with one another as well as with relevant national, regional and international institutions/ organisations, in accordance with the ASEAN Charter.

40. Nothing in this Declaration may be interpreted as implying for any State, group or person any right to perform any act aimed at undermining the purposes and principles of ASEAN, or at the destruction of any of the rights and fundamental freedoms set forth in this Declaration an international human rights instruments to which ASEAN Member States are parties.

(7) The United Nations Guiding Principles on Business and Human Rights: Implementing the Protect, Respect, Remedy Framework (2011), which were adopted as an international standard endorsed in the 17th session of the UN Human Rights Council. It was publicized as Document No. A/HRC/17/31 on 21 March 2011

Part 1, States' existing obligations to protect human rights

A. Foundational principles

1. States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.

2. States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.

B. Operational Principles

General State regulatory and policy functions

3. In meeting their duty to protect, States should:

(a) Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps;

(b) Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights;

(c) Provide effective guidance to business enterprises on how to respect human rights throughout their operations;

(d) Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.

Ensuring policy coherence

(8) States should ensure that governmental departments, agencies and other State-based institutions that shape business practices are aware of and observe the State's human rights obligations when fulfilling their respective mandates, including by providing them with relevant information, training and support.

Part 2: The corporate responsibility to respect human rights

A. Foundational principles

11. Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.

12. The responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work.

13. The responsibility to respect human rights requires that business enterprises:

(a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;

(b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.

14. The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure. Nevertheless, the scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and with the severity of the enterprise's adverse human rights impacts

15. In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including:

(a) A policy commitment to meet their responsibility to respect human rights;

(b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;

(c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute

B. Operational Principles

Policy commitment

16. As the basis for embedding their responsibility to respect human rights, business enterprises should express their commitment to meet this responsibility through a statement of policy that:

(a) Is approved at the most senior level of the business enterprise;

(b) Is informed by relevant internal and/or external expertise;

(c) Stipulates the enterprise's human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services;

(d) Is publicly available and communicated internally and externally to all personnel, business partners and other relevant parties;

(e) Is reflected in operational policies and procedures necessary to embed it throughout the business enterprise.

Human rights due diligence

17. In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Human rights due diligence:

(a) Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships;

(b) Will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations;

(c) Should be ongoing, recognizing that the human rights risks may change over time as the business enterprise's operations and operating context evolve.

18. In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should:

(a) Draw on internal and/or independent external human rights expertise;

(b) Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.

Remediation

22. Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.

Issues of context

23. In all contexts, business enterprises should:

(a) Comply with all applicable laws and respect internationally recognized human rights, wherever they operate;

(b) Seek ways to honor the principles of internationally recognized human rights when faced with conflicting requirements;

(c) Treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue wherever they operate.

Part 3: Access to Remedy

A. Foundational Principles

25. As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.

B. Operational Principles

State-based judicial mechanisms

26. States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy.

Non-State-based grievance mechanisms

28. States should consider ways to facilitate access to effective non-State based grievance mechanisms dealing with business-related human rights harms.

5. Observations and Resolution of the all Community Rights Sub-commission

The Sub-Committee on Community Rights has considered information from oral testimony and documents from the Complainants, an additional fact-finding mission from the affected villagers in O’Bat Moan Village, Taman Village, Trapaing Veng Village and Ktum Village on 31 August 2014. For the company’s party, the Sub-commission also considered the documents and oral testimony from Mitr Phol

Group Company Limited. The Sub-commission makes following facts and observations.

(1) The five communities in Bos Village, O’Bat Moan Village, Taman Village, Trapaing Veng Village and Ktum Village are local communities. There are Cambodian residents living and making a living in the area for a long time. Villagers usually rely on agriculture for a living, such as paddy rice and grains and vegetable cultivation, gathering food from nearby community forest. The fact is in coherence with the finding from a field research conducted at O’Bat Moan Village that villagers can make a living for their families when they practiced integrated agriculture, foraging products from the nearby area, which used to be their main source of income. Villagers relied on other vegetations for food and supplemental income. O’Bat Moan villagers lived sustainable lives because the paddy rice was enough for the families. Five villages relied on natural resources for their livelihood for a long period of time, thus, they have the rightful self-determination, the freedom to manage their properties and natural resources, and the rights not to have their livelihood destroyed by any mean. Those rights are enshrined in the international law and the ASEAN Declaration on Human Rights.

(2) Land management under the concessions granted to Mitr Phol Sugar Company Limited caused adverse effects and human rights violations to Cambodian people from forced eviction away from the villages that they had been living for a long time. Moreover, over one hundred of villages in O’Bat Moan and Bos villages had been torched. Villagers who came out to make demand had been arrested and had faced legal actions. As a result, most people lost all of their farm land. In some cases, affected people were left with limited areas of land that was insufficient to generate adequate income to feed the whole family. Their food security was reduced because of lack of land, lack of access to harvest agricultural products they had grown, and lack of access to forage in the community forest, where the company had been granted the concession. The information from the Complainants is coherence with the information from the Community Rights Sub-commissioner’s hearing from villagers of O’Bat Moan, Taman, Trapaing Veng and Ktum on 11 August 2014.

Apart from the compensation on damages and loss of their properties, the affected people demand that their land be returned to owners because the loss of land has tremendous adverse impacts to their livelihood. Despite Mitr Phil Group (Mitr Phol Sugar Company Limited), testified orally and in writing, on 14 July 2013, that the company had never supported already owned land encroachment, forced eviction and property destruction. It also indicated that the Company has conformed to every step required the Cambodian domestic law and the UN Guiding Principle on

Business and Human Rights. Under the contract, the Cambodian Government was undertook land surveys to grant the concession to Mitr Phol Group. At the moment, the company has already tendered a cancelation of the land concession to the Cambodian Government and closed its subsidiary companies in Cambodia. Nevertheless, when it is found that the company has known that there was human rights violation conducted from forced eviction, torching houses, damaging agricultural assets and harvests which belonged to the villagers, in order to force them out of their land and that the land would be able to be utilized for the company's concession. As a result of these actions, the affected villagers suffered from habitat deprivation, unfair compensation, attacks and legal actions, which was a result of the villagers' demand for justice. Thus, the human rights violations in Cambodian perpetrated because of the operation by the Angor Sugar Co., Ltd, the Tonle Sugar Cane Co., Ltd and the Cane and Sugar Valley Co., Ltd. — all of which were a direct investment or a joint investment of Mitr Phol Sugar Company Limited to receive a land concession to operate in Cambodia, is in compliance to the United Nations Guiding Principle on Business and Human Rights: Implementing the Protect, Respect, Remedy Framework 2011. The UN Guiding Principle stipulated that a business entity must respect human rights and avoid any action or involvement to cause adverse effects on human rights and/or human rights violation and must provide remedy for any adverse effects caused by its involvement. A business entity is also liable to prevent or reduce negative impacts from its direct business operation or service caused by a business relationship, despite it may not directly cause such adverse effects.

From the complaints, Mitr Phol Sugar Company Limited started the process for the withdrawal the concession to the Cambodian Government, left the concession areas and began its process to shut the subsidiary companies in Cambodia. The company also hired an international consulting company to study the damages from the concession. The company also stated with The Sub-Committee on Community Rights that it would take the responsibility to the damages incurred under then International Finance Company, which has been used internationally by the ADB and World Bank to remedy the damage to the Cambodian people, thus it indicated that the company admitted that there were human rights violation in the concession area and it demonstrated an intention to address the problems from its business relationship.

The Sub-Committee on Community Rights considered that the human rights violations occurred in the land the company was given the concession. Thus, it is Mitr Phol Company Limited's direct responsibility because the company has business benefit from the concession of the land. Despite the fact that the company has submitted a petition to return the concession to the Cambodian Government

and closed its subsidiary in Cambodia to eliminate any legal connection in the concession area but the is still liable to correct and remedy the impacts, as stipulated in the United Nations Guiding Principles on Business and Human Rights : Implementing the Protect, Respect, Remedy Framework (2011), that a business entity must prevent or reduce human rights impacts, whether it is from its direct operation or business administration, which is a result of business relationship, despite the business entity may not cause impacts. The business entity is advised to operate their business with responsibility, using human rights principle to prevent, to reduce adverse impacts, to assess negative impacts and to monitor impact closely. The company should also communicate to the public to ensure that the affected persons will receive fair redress and remedy.

The Sub-commission observed that the Mitr Phol Company Limited land concession is related to the human rights violation in Cambodia, thus the company is liable to completely address the problems and remedy the damages under the United Nations Guiding Principles on Business and Human Rights: Implementing the Protect, Respect, Remedy Framework (2011) as previously mentioned above.

The Sub-commission, thus, issues the following policy recommendations to Mitr Phol Sugar Company Limited and to the Thai Government.

- (1) Mitr Phol Sugar Company Limited should provide remedies and compensations for the damages in Bos Village, O’Bat Moan Village, Taman Village, Trapaing Veng Village and Ktum Village in Oddar Meanchey Province, the Northeastern part of Cambodia, as it had stated the intention to The Sub-Committee on Community Rights earlier on 12 May 2015 and on its letter dated 9 July 2015. It is advised that the local villagers should be consulted in every step for any consideration to provide remedies from the company, until the affected people will have been compensated fairly. The company should also consider to give a warranty and ensure that villagers will received their land back in the size and area where they used to live and earn their livelihood.
- (2) The Cabinet, Ministry of Foreign Affairs, Ministry of Commerce, the Stock Exchange of Thailand, the Bank of Thailand and relevant Thai authorities should establish a mechanism or stipulate obligations that ensure Thai overseas investment will respect basic principles of human rights by using the United Nations Guiding Principles on Business and Human Rights: Implementing the Protect, Respect, Remedy Framework (2011) as an operational framework.

6. Observation from the National Human Rights Commission of Thailand

The National Human Rights Commission of Thailand has considered the matter in the protection and protection standard in the 32/2558 (2015), on 23 September 2015. The case on Mitr Phol Sugar Company Limited and other three business partners: Angkor Sugar Co.Ltd., Tonle Sugar Cane Co.Ltd., and Cane and Sugar Valley Co., Ltd. have committed an action or an omission that violate human rights in Sarong District, Chongkal District, Oddar Meanchey Province in the Northeastern Cambodia, in Bos Village, O'Bat Moan Village, Taman Village and Trapaing Veng Village and Ktum Village, where Mitr Phol Sugar Company Limited, a Thai national business entity has jointly operated in the business. . The Human Rights Commission considered that the business operation in Cambodian territory has not adhered to the United Nations Guiding Principles on Business and Human Rights: Implementing the Protect, Respect, Remedy Framework (2011) part 2, Article 11, 13 and the company should be responsible to its operation under the Principle as in Article 17,18,22 and 23.

The finding from the Community Rights Sub-commission from the meeting on 12 May 2015, the clarification letter from the Mitr Phol Sugar Company Limited, dated 9 July 2015 has stated that it withdrew the concession to the and return the land to the Cambodian Government. The company also hired an international consulting company to study the damages from the concession. The majority of the Community Rights Sub-Commission (5 majority votes) considered that the Mitr Phol Sugar Company Limited should reconsider its business operation in a way that it would have not violated human rights in any form, The company should remedy and compensate damages in Bos Village, O'Bat Moan Village, Taman Village and Trapaing Veng Village and Ktum Village Oddar Meanhey Province, the the Northeastern part of Cambodia as the company has stated to The Sub-Committee on Community Rights on 12 May 2015 and in writing through a clarification letter, date 9 July 2015, until all affected party will receive appropriate and fair compensation and remedy. The National Human Rights Commission also proposed the following policy recommendation to the Cabinet and relevant agencies.

1. Policy Recommendation

The National Human Rights Commission of Thailand proposed the Cabinet, Ministry of Foreign Affairs, Ministry of Commerce, Stock Exchange of Thailand, Bank of Thailand and relevant Thai authorities should establish a mechanism or stipulate an obligation that keep Thai overseas investment respect basic principles of human rights by using the United Nations Guiding Principles on Business and Human Rights: Implementing the Protect, Respect, Remedy Framework (2011) as an operational framework.

1. Resolution of The National Human Rights Commission

From the above reasons, the National Human Rights Commission considered a policy recommendation under Section 15(3) of the National Human Rights Commission Act (1999) under the item No. 7 to the Cabinet, the Ministry of Foreign Affairs, the Ministry of Commerce, the Stock Exchange of Thailand and other relevant agencies. The Office of National Human Rights Commission is assigned to request for results from the recommendation in the future.

[Undersigned]

(Professor Amara Pongsapich)

Chairperson, the National Human Rights Commission of Thailand

[Undersigned]

(Mr. Taijing Siripanich)

[Undersigned]

(Mr. Nirun Phitakwatchara)

Member, the National Human Rights
Commission of Thailand

[Undersigned]

(Mr. Parinya Sirisarakarn)

Member, the National Human Rights
Commission of Thailand

[Undersigned]

(Mr. Paiboon Warahapaitoon)

Member, the National Human Rights
Commission of Thailand

[Undersigned]

(Pol.Gen. Wanchai Srinulnat)

Member, the National Human Rights
Commission of Thailand

[Undersigned]

(Mrs. Visa Benchamano)

Member, the National Human Rights
Commission of Thailand

Member, the National Human Rights
Commission of Thailand

Note: The dissenting opinions of minority votes of Members (Mr. Parinya Sirisarakarn and Pol.Gen. Wanchai Srinulnat) were recorded and published in a Report of the National Human Rights Commission of Thailand's Meetings on Protection and Standards of Human Rights Protection, No. 32, dated 21st September 2015 and No.32, dated 21st September 2015 respectively.