

AMNESTY INTERNATIONAL PUBLIC STATEMENT

30 July 2020

THAILAND: EVICTED CAMBODIAN VILLAGERS SUE SUGAR GIANT MITR PHOL; AMNESTY INTERNATIONAL SUBMITS THIRD PARTY INTERVENTION TO THAI COURT

On 17 July 2020, Amnesty International submitted a third-party intervention (amicus curiae brief) to the Bangkok South Civil Court in the case of Smit Tit, Hoy Mai & Others vs. Mitr Phol Co. Ltd.¹ The submission was made ahead of a crucial ruling in the landmark business and human rights case set to be announced tomorrow, 31 July.

This case is significant from a regional business and human rights perspective as it could set an important precedent by enabling cross-border accountability for human rights abuses involving corporate actors in Southeast Asia. The submission by Amnesty International seeks to assist the court by setting out relevant international legal principles and standards, including Thailand's obligations in relation to the right to remedy, access to justice, and non-discrimination in the context of transnational corporate abuses of human rights.

The claimants in this case are a group of Cambodian villagers locked in a decade-long struggle for justice after being forcibly evicted from their homes in 2008-09.² The evictions occurred after the Cambodian government granted three agro-industrial 'economic land concessions' – long-term leases of land for economic development – to companies linked to the Thai sugar producer, Mitr Phol Co. Ltd., for a sugar plantation in Cambodia's Oddar Meanchey province in January 2008.³ Mitr Phol is the world's third-largest sugar producer and has operations in Thailand, China, Australia, Laos and previously Cambodia.⁴

Following the grant of these economic land concessions, villagers allege that Cambodian police, military police and others destroyed farmland and bulldozed, burned and razed hundreds of homes to the ground in order to clear land for the sugar plantation.⁵ Organizations working in support of the villagers have further alleged that workers of Angkor Sugar Co. Ltd. – a wholly-owned subsidiary of Mitr Phol⁶ – also participated in the forced evictions.⁷ The former UN Special Rapporteur on Cambodia has also reported that Angkor Sugar, along with other companies, hired military forces to "aid in the burning and bulldozing of the village".⁸ Many of the evicted families were left in dire circumstances, with some made homeless, as a result of the evictions. Over the past

¹ Amnesty International, 'Amicus Curiae in the Case of Hoy Mai & Others Vs. Mitr Phol Co. Ltd.', 20 July 2020, ASA 39/2753/2020. Thai language available here: <https://www.amnesty.org/download/Documents/ASA3927532020THAI.pdf>.

² For an overview of the land conflict and eviction, see: 'Mai' in Amnesty International, 'Eviction and Resistance in Cambodia: Five Women Tell Their Stories', 24 November 2011, p.10 ASA 23/006/2011, <https://www.amnesty.org/en/documents/ASA23/006/2011/en/>.

³ For an overview of the land conflict and eviction, see: 'Mai' in Amnesty International, 'Eviction and Resistance in Cambodia: Five Women Tell Their Stories', 24 November 2011, p.10, ASA 23/006/2011, <https://www.amnesty.org/en/documents/ASA23/006/2011/en/>. For further information on economic land concessions, see: OHCHR, 'Economic and other land concessions', January 2015, <https://cambodia.ohchr.org/en/economic-social-rights/economic-and-other-land-concessions> (last accessed 29 July 2020).

⁴ See: Mitr Phol, 'About us', <https://www.mitrphol.com/mitphol-sugar.php> (last accessed 20 July 2020).

⁵ Amnesty International, 'Eviction and Resistance in Cambodia: Five Women Tell Their Stories', 24 November 2011, p.12, ASA 23/006/2011, <https://www.amnesty.org/en/documents/ASA23/006/2011/en/>.

⁶ Mitr Phol, 2017 Annual Report with consolidated financial statement, p.3, <https://market.sec.or.th/public/idisc/en/FinancialReport/ALL-0000001138> (last accessed 29 July 2020).

⁷ See: Inclusive Development International and Equitable Cambodia, 'Bittersweet Harvest', 2013, p.55, https://www.inclusivedevelopment.net/wp-content/uploads/2013/10/Bittersweet_Harvest_web-version.pdf (last accessed 30 July 2020).

⁸ Report of the Special Rapporteur on the situation of human rights in Cambodia, Surya P. Subedi, 24 September 2012, Addendum, para. 159, A/HRC/21/63/Add.1.

decade, the Cambodian authorities have arrested and imprisoned multiple community members for protesting the evictions and for continuing to use the confiscated land.⁹

The plaintiffs in this case are two Cambodian citizens residing in Samrong District, Oddar Meanchey Province, in northwestern Cambodia. The plaintiffs represent a class of over 700 families who lived on and farmed land located within the area of the economic land concession granted to Angkor Sugar Co. Ltd., which the villagers allege is responsible for human rights abuses and economic losses they have suffered. The villagers are now suing Mitr Phol for damages in the Thai courts after struggling for over a decade for a just resolution to the dispute.

The National Human Rights Commission of Thailand has previously investigated the land dispute at the heart of this case and found in 2015 that “[l]and management under the concessions granted to Mitr Phol Sugar Company Limited caused adverse effects and human rights violations to Cambodian people [including] forced eviction away from the villages that they had been living for a long time”.¹⁰

The investigation also concluded that “it is Mitr Phol Company Limited’s direct responsibility because the company has business [which] benefit from the concession of the land” and recommended that “Mitr Phol Sugar Company Limited should provide remedies and compensations for the damage in Bos Village, O’Bat Moan Village, Taman Village, Trapaing Veng Village and Ktum Village in Oddar Meanchey Province, the Northeastern part of Cambodia”.¹¹

Tomorrow, the Bangkok South Civil Court will issue its decision in an appeal by the claimants against the first instance court’s denial of class action status – a decision which constrained access to justice for the majority of the evicted Cambodian villagers. Should the appeal succeed, the Bangkok South Civil Court will hear the case on its merits as a Class Action Lawsuit (CAL).

Class action lawsuits are enabled under Thailand’s amended Civil Procedure Code; however, the court of first instance denied CAL status in this case on the basis of a number of technical considerations, including the villagers’ lack of Thai language skills, their capacity to comprehend court orders effectively, and the alleged practical difficulty of posting notices to the rural addresses of the concerned villagers in Cambodia. As noted in the Amnesty International third-party submission, language and national or social origin are prohibited grounds of discrimination under international human rights law, and therefore cannot be legitimately relied upon to deny access to justice.

When human rights violations and abuses occur, international law requires that perpetrators, including non-state actors such as businesses, are held accountable and that the victims receive an effective remedy. The commentary to Principle 26 of the UN Guiding Principles on Business and Human Rights specifically addresses the issue of access to justice in the context of class actions. It states: “States should ensure that they do not erect barriers to prevent legitimate cases from being brought before the courts ... Practical and procedural barriers to accessing judicial remedy can arise where, for example ... There are inadequate options for aggregating claims or enabling representative proceedings (such as class actions and other collective action procedures), and this prevents effective remedy for individual claimants.”¹²

In respect of communal claims to secure justice for forced evictions, the UN Special Rapporteur on Adequate Housing has stated: “Access to justice must ... extend to both individuals and groups. Support should be available for them to participate in all stages of rights claims and in the implementation of remedies.”¹³

⁹ For an overview of the land conflict and eviction, see: ‘Mai’ in Amnesty International, ‘Eviction and Resistance in Cambodia: Five Women Tell Their Stories’, 24 November 2011, p.10, ASA 23/006/2011, <https://www.amnesty.org/en/documents/ASA23/006/2011/en/>.

¹⁰ Thai National Human Rights Commission, Investigation Report No: 1003/2015, 12 October 2015.

¹¹ Thai National Human Rights Commission, Investigation Report No: 1003/2015, 12 October 2015.

¹² Human Rights Council, Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, UN Doc A/HRC/17/31, 21 March 2011, Commentary to Principle 26, https://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr_en.pdf.

¹³ Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, A/HRC/40/61, para 15.

In March 2015, all three Mitr Phol-linked land concessions were cancelled, and the company withdrew from its operations in Cambodia. Mitr Phol has responded to the allegations against it by stating that it “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...”. Mitr Phol’s full response to the allegations can be read [here](#).¹⁴

¹⁴ Business and Human Rights Resource Centre, ‘Mitr Phol Group response to alleged human rights abuses and seizure of land by sugar companies in Cambodia’, 24 July 2012. See: <https://www.business-humanrights.org/en/mitr-phol-group-response-to-alleged-human-rights-abuses-and-seizure-of-land-by-sugar-companies-in-cambodia> (last accessed 27 July 2020).