



Findings of the Subcommittee on Civil and Political Rights of the National Human Rights Commission of Thailand on the Koh Kong Sugar Cane Plantation case in Cambodia

The National Human Rights Commission of Thailand (“NHRC”) received a complaint dated 6 January 2010 regarding alleged human rights violations in the Koh Kong sugar cane plantation in Cambodia from lawyers at the Community Legal Education Center (“CLEC”). The NHRC accepted the complaint as case file no. 58/2553. The CLEC lawyers represent local community members who had been rightfully possessing and cultivating their land before they were evicted. The complainants allege that Thai company Khon Kaen Sugar Industry Public Company Limited (“KSL”), through Cambodian subsidiaries, obtained land concessions in violation of Cambodian laws on economic land concessions and of human rights laws and standards. KSL owns 70% of the Cambodian subsidiary companies, has effective control over operations in Cambodia and receives 100% of the processed sugar from the two Cambodian land concessions. KSL has denied that any such alleged human rights violations take place or has taken place in its concessions. The NHRC has designated the Subcommittee on Civil and Political Rights (“SCPR”) to carry out the investigation and to ensure that all forms of human rights violations are acted on in this matter.

The NHRC has jurisdiction to investigate

The NHRC has jurisdiction, and is in fact duty-bound, to examine the violations complained of and to facilitate a resolution between the stakeholders. The NHRC has mandate to ensure that the Thai State and private companies comply with human rights principles. The power and duties of the NHRC do not limit the types of stakeholder involved (whether public or private) or site of violations (whether inside or outside of Thailand). The NHRC is currently investigating three other transboundary human rights cases involving Thai actors, namely the Hatgyi Dam project in Myanmar, the Hongsa lignite mine and coal-fire powered plant in Laos PDR, and the Xayaburi Dam project also in Laos PDR. In these cases, we look into the role of public and private actors from Thailand in human rights violations that have been reported in development projects in the mentioned neighboring countries. As long as the relevant stakeholder is bound by Thailand’s laws and human rights obligations, the NHRC is committed to serving the interest of justice through human rights promotion and protection.

CLEC’s complaint on behalf of Cambodian villagers alleges illegal confiscation of land from local people, use of force in evictions, killing of livestock, threats and serious intimidation, loss of food security and significant worsening of poverty by companies owned and controlled by Thai company KSL. These alleged acts are violations of rights and thus fall within the NHRC’s mandate to examine and monitor, and relevant government agencies’ duty to regulate and/or control.

The SCPR notes that it is investigating the business activities of KSL through its Cambodian subsidiaries, as well as the obligations of the Thai State to protect human rights. *The scope of the SCPR's investigation does not include the responsibilities of the Cambodian State.*

The United Nations Guiding Principles on Business and Human Rights

The Special Representative of the United Nations Secretary General appointed by then UN Secretary General Kofi Annan developed the “Protect, Respect, Remedy” (“PRR”) framework that articulates three key responsibilities: 1) the state duty to protect against human rights abuses by third parties, including corporate actors; 2) the corporate responsibility to respect human rights; and 3) the need for greater access by victims to effective remedy, both judicial and non-judicial. The PRR framework was welcomed by the Human Rights Council in 2008 and is supported by many other bodies. In 2011, the United Nations Human Rights Council endorsed the Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework (“UNGP”). The ASEAN has also identified the UNGPs as a key standard for the development of the ASEAN framework on Corporate Social Responsibility. This is affirmed in the Press Release of the Fifth ASEAN Intergovernmental Commission on Human Rights in Jakarta, 25-29 April 2011. The NHRC is committed to promoting the implementation of the UNGPs as endorsed by the UN Human Rights Council and the ASEAN Intergovernmental Commission on Human Rights.

The UNGPs state that the “responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States’ abilities and/or willingness to fulfill their own human rights obligations, and does not diminish those obligations.” *This means KSL has a responsibility under the UNGPs to respect human rights obligations in their business enterprise operations through subsidiaries in Cambodia, independent of the Cambodian government’s obligations to protect human rights.*

ASEAN Human Rights Institutions’ movement for human rights protection

With the growing operations of corporations across borders, and the accompanying effects on human rights promotion and protection, there is now an increased recognition of the need for a regional approach to responding to human rights issues and an intensified effort to monitor the activities of corporations abroad, especially when it has been proved that no effective and prompt domestic remedies and protections for violations are available. Along with the national human rights institutions (“NHRIs”) of Malaysia, Indonesia and the Philippines, the Thai NHRC is currently engaged in the Project on Human Rights and Business: Human Rights, Right to Development and Indigenous Peoples under the South East Asia National Human Rights Institutions Forum (“SEANF”). For this forum, the Thai NHRC hopes to lead a discussion on how human rights institutions can advance the application of human rights principles such as the UN Guiding Principles for Business and Human Rights and various principles on the right to development through its investigations, especially of transboundary cases. Cases such as Koh Kong, Hatgyi, Hongsa and Xayaburi provide examples of the need to look into the role of Thai public and private actors in alleged human rights violations related to Thai activities abroad.

Independent Reports on Economic Land Concessions in Cambodia

The SCPR notes that there have been independent reports confirming human rights violations associated with the economic land concessions (“ELC”) in Cambodia, specifically in Koh Kong. In 2007, the United Nations Cambodia Office of the High Commissioner for Human Rights issued the report “*Economic land concessions in Cambodia – A human rights perspective*”, which described the impacts of the two land concessions in Koh Kong.

On 11 May 2012, the UN Special Rapporteur for Human Rights in Cambodia made a public statement about his investigation into the human rights impacts of ELCs in Cambodia. The Special Rapporteur found that while there are some legal protections in Cambodia governing the granting and management of land concessions, “*the legal framework on paper is one thing; the implementation of the law is another.*”

The SCPR is therefore taking the alleged violations of human rights by KSL’s subsidiaries in Cambodia very seriously.

Preliminary Findings

Evidence gathered from the SCPR’s investigation so far allows for a reasonable belief that human rights principles and instruments were breached in this case, and that the Thai parent company is involved in the operations of its subsidiaries in Koh Kong, where these breaches took place. We identify breaches of the right to life and self-determination, in particular. The SCPR also identifies a failure to uphold the people’s right to development, which includes their right to participate in, contribute to, and enjoy economic, social, cultural and political development, and through which most other human rights and fundamental freedoms can be fully realized. The SCPR has completed the investigation and is in the process of drafting the final report which will be endorsed by the NHRC in due course accordingly.

The Commission is a constitutional organization pursuant to the Constitution of Thailand B.E.2550 (2007) committed, under the democratic regime, to ensure that communities and their natural resources remain protected, and that various human rights principles are applied in meeting the economic, social and environmental pillars for fairness and sustainable development.



Dr. Niran Pitakwatchara
Commissioner
National Human Rights Commission of Thailand
July 25, 2012