

## **Case Brief:**

### **Class Action Lawsuit by Cambodian Villagers Against Mitr Phol Sugar Corporation**

**October 14, 2022**

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. The complaint was the first ever class action lawsuit filed in the Thai courts by plaintiffs from another country for abuses committed by a Thai company outside of Thailand. Having already cleared a number of procedural hurdles, the class action lawsuit is expected to go to trial in 2023. This brief provides a summary of the lawsuit.

#### **I. The parties**

The plaintiffs, Hoy Mai and Smin Tit, are two Cambodian citizens residing in Samrong District, Oddar Meanchey Province, in northwestern Cambodia. The plaintiffs represent a class of approximately 711 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.

Four of the villages had existed for decades. The fifth, O’Bat Moan, was established in 2003 as an extension of Bos village. Typically, the plaintiffs and other class members had lived and worked in the area of these villages for their entire lives. Most households in the class had agricultural land of five hectares, which was provided to them by the Cambodian government in a series of allocations from 1995 to 2005.<sup>1</sup> Prior to their evictions, the plaintiffs and other class 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 Vongkusolkit family through the holding company Mid-Siam Sugar Company Limited. 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 Company Limited, which was responsible for all the harms suffered by the plaintiffs and class members, and two other companies, Tonle Sugar Cane Company Limited and Cambodia Cane and Sugar Valley Company Limited.

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<sup>1</sup> Under Cambodian land laws, possession rights of the type held by class members have legal protections equal to ownership rights.

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 Cane and Cambodia Cane and Sugar Valley, included other senior Mitr Phol executives and/or members of the Vongkusolkit family, including Krisda Monthienvichienchai (President of Mitr Phol), Komkrish Nagalakshana (Vice President of Mitr Phol), Buntoeng Vongkusolkit (Managing Director of Mitr Phol), Supavee Vongkusolkit and Ataphol Vongkusolkit.

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 granted three 70-year economic land concessions for industrial sugarcane production in the Samrong and Chongkal districts of Oddar Meanchey province to the three companies linked to Mitr Phol. The three concessions together totaled 19,736 hectares, nearly double the maximum size allowed by Cambodian law,<sup>2</sup> and were all clearly connected.

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 class members’ land was taken from them for the Angkor Sugar concession.<sup>3</sup> Most affected households lost five hectares of rice fields on average, and many also lost other agricultural and grazing land, as well as the associated crops that sustained their livelihoods including rice, watermelons, maize, cassava, sweet potatoes and

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<sup>2</sup> 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 hectares] in favor of one specific person or several legal entities controlled by the same natural persons is prohibited.” While Mitr Phol later claimed that it did not own all three companies (*see* “Mitr Phol Group response to alleged human rights abuses and seizure of land by sugar companies in Cambodia” (24 Jul. 2012), *available at*: <https://www.business-humanrights.org/en/latest-news/mitr-phol-group-response-to-alleged-human-rights-abuses-and-seizure-of-land-by-sugar-companies-in-cambodia/>), 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 Phol was in charge of all three.

<sup>3</sup> The facts have been documented in numerous reports. *See, e.g.*, Sherchan Depika, ActionAid Cambodia and Oxfam GB, *Cambodia: The Bitter Taste of Sugar Displacement Dispossession in Oddar Meanchey Province* (May 2015), *available at*: [https://cambodia.actionaid.org/sites/cambodia/files/finalized\\_the\\_bitter\\_taste\\_of\\_sugar\\_displacement\\_and\\_dispossession\\_in\\_oddar\\_meachey\\_2015\\_1.pdf](https://cambodia.actionaid.org/sites/cambodia/files/finalized_the_bitter_taste_of_sugar_displacement_and_dispossession_in_oddar_meachey_2015_1.pdf); Equitable Cambodia and Inclusive Development International, *Bittersweet Harvest: A Human Rights Impact Assessment of the European Union’s Everything But Arms Initiative in Cambodia* (2013), *available at*: [http://www.inclusivedevelopment.net/wp-content/uploads/2013/10/Bittersweet\\_Harvest\\_web-version.pdf](http://www.inclusivedevelopment.net/wp-content/uploads/2013/10/Bittersweet_Harvest_web-version.pdf); Amnesty International, *Evictions and Resistance in Cambodia: Five Women Tell Their Story*, pp. 10-19 (2011), *available at*: [https://www.amnesty.ch/de/themen/armut-und-menschenrechte/zwangsraeumung/dok/2011/ai-report\\_eviction-and-resistance-in-cambodia.pdf](https://www.amnesty.ch/de/themen/armut-und-menschenrechte/zwangsraeumung/dok/2011/ai-report_eviction-and-resistance-in-cambodia.pdf).

soybeans. Compensation, when it was provided, was generally a plot of inferior, often uncleared 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 to make way for the concession. 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 class members' livelihoods, which were based in part on harvesting and selling non-timber forestry products such as resin and mushrooms. 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 Angkor Sugar 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. Their rice crops, which they were about to harvest, were reportedly looted by company staff and security forces, 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 of them, plaintiff Hoy Mai, was pregnant at the time and gave birth during her eight months of imprisonment.

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.

### **III. Other attempts to remedy the violations**

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. In June

2015, Bonsucro quietly readmitted Mitr Phol and subsequently dismissed a second complaint filed in February 2016 without taking any action.<sup>4</sup>

In May 2013, Cambodian NGOs Equitable Cambodia and LICADHO submitted a complaint on behalf of 602 affected families to the Thai National Human Rights Commission. While the Commission was investigating, Mitr Phol requested the Cambodian government to cancel its concessions, all three of which were cancelled on August 9, 2015.<sup>5</sup> Two months later, in October 2015, the Commission issued its investigation report, which found Mitr Phol directly responsible for the forced evictions and associated human rights violations and called on the company to “correct and remedy the impacts,” despite having ceased operations in Cambodia.<sup>6</sup> At a press conference, commissioner Niran Phitakwatchara said that the land grabs had resulted in the “collapse of the community.”

### **III. Legal claims**

Although the harms occurred in Cambodia, 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 Mitr Phol no longer has a presence in Cambodia even through subsidiaries. The plaintiffs therefore are seeking to claim their right to an effective remedy in the justice system of Thailand.

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, under the Thai Conflict of Laws Act (1938), section 15, 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 complaint contends that the defendant’s

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<sup>4</sup> Following Bonsucro’s decision to dismiss the second complaint against Mitr Phol, in March 2019, Inclusive Development International, Equitable Cambodia and LICADHO filed a complaint against Bonsucro with the UK National Contact Point for Responsible Business Conduct for failing to hold its member company accountable for gross human rights abuses. In January 2022, the National Contact Point found that Bonsucro had violated its international human rights responsibilities and breached the OECD Guidelines for Multinational Enterprises when it readmitted Mitr Phol as a member. UK National Contact Point, Final statement: IDI, EC and LICADHO complaint to UK NCP about Bonsucro Ltd (11 Jan. 2022), *available at*: <https://www.gov.uk/government/publications/idi-ec-and-licadho-complaint-to-uk-ncp-about-bonsucro-ltd/final-statement-idi-ec-and-licadho-complaint-to-uk-ncp-about-bonsucro-ltd>.

<sup>5</sup> Mitr Phol also closed Angkor Sugar Company that year.

<sup>6</sup> National Human Rights Commission of Thailand, Report on the Results of Investigation No. 1003/2558 (12 Oct. 2015), *available at*: <https://www.inclusivedevelopment.net/wp-content/uploads/2021/11/Final-Investigation-Report-of-the-Thai-National-Human-Rights-Commission-ENGLISH.pdf>.

actions as described above, which caused harms to the plaintiffs and class members in Cambodia, amounted to tortious acts as defined in the Cambodian Civil Code.<sup>7</sup>

Additionally, the complaint argues that 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.<sup>8</sup> 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 affirms that forced evictions are a gross violation of the right to adequate housing, permissible only in exceptional circumstances, if there are no feasible alternatives, following meaningful consultations and in accordance with due process of law. The forced evictions and related harm caused by the defendant therefore amount to serious violations of human rights.

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. 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.

#### **IV. Procedural History**

Plaintiffs filed the class action lawsuit on March 28, 2018. The Thai court accepted the case and set a date for the parties to attempt mediation on September 6, 2018. The plaintiffs attended in good faith, but Mitr Phol refused to engage.

On June 12, 2019, the Bangkok South Civil Court held a hearing regarding whether a class action was appropriate in this case. The lower court denied class status, and plaintiffs appealed. On July 31, 2020, the Court of Appeal overturned the lower court's decision, enabling the lawsuit to proceed as a class action. In February 2021, the Bangkok South Civil Court officially announced permission for the class action lawsuit. The [announcement](#) summarizes the case and the class characteristics, as well as the claimed compensation formula.

Mitr Phol filed a motion to dismiss, which the Bangkok South Civil Court denied on August 30, 2021. On April 4, 2022, the Court of Appeal affirmed the decision of the lower court [denying](#) Mitr Phol's motion to dismiss the case, allowing it to proceed to trial.

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<sup>7</sup> 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." Thai Civil and Commercial Code, section 420, has a similar provision, stating: "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."

<sup>8</sup> Cambodia acceded to the ICECSR in 1992. Thailand acceded to the ICECSR in 1999.

The next hearing is scheduled on January 25, 2023, and the trial is expected to start later that year.

## V. Remedies

As a result of the defendant's tortious acts, the plaintiffs and class 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 provides for damages for tortious acts based on economic losses as well as mental or emotional distress.<sup>9</sup> Plaintiffs are also seeking damages for human rights violations. Both plaintiffs demand the defendant to pay compensation to the 1st plaintiff in an amount of 4,042,604 baht (approximately US\$106,000), and to the 2nd plaintiff in an amount of 1,802,600 baht (approximately US\$47,000), with 7.5 percent interest per year from the date of filing the lawsuit. A formula for calculating damages for each class member is included in the Thai court's [class announcement](#).

The long delay in justice and Mitr Phol's failure to provide remedies to the displaced families some 15 years after the harms occurred have resulted in immeasurable and irremediable intergenerational harm. Smin Tit, one of the plaintiffs in this case said, "While we are moving closer to securing justice through the Thai courts, the process is painfully slow for our families and children who have grown up in poverty because, after more than a decade, we have not been compensated for our stolen land."

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<sup>9</sup> 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."