

Fact Sheet: Business' Responsibility to Respect Human Rights

Snapshot: As part of its business and human rights series, which discusses the obligations of companies to respect human rights whenever they operate, and the responsibility of States with regards to the activities of companies, CCHR hereby presents an overview of the relevant business' responsibilities to ensure that their operations do not adversely affect human rights. In particular, it describes a number of specific steps which corporations can take, based on the leading standard on business and human rights, the UN Guiding Principles on Business and Human Rights.

Introduction

In the Kingdom of Cambodia (“Cambodia”), investment by national and international businesses is a key driver of the nation’s development. Over the past 20 years, Cambodia has achieved “stellar economic growth and poverty reduction” according to the World Bank,¹ averaging an economic growth of 7.6%. Its economic growth is expected to continue, albeit at a slightly slower pace, with a projected growth rate of 7% for 2019.² However, some business operations, particularly constructions and factories, as associated with human rights damages, such as violations of health and safety regulations violations, land-grabs or restrictions on the right to strike.

The concept of Business Human Rights refers to the sets of laws and regulations applicable to the activities of businesses in order to avoid any detrimental effect of their activities on human rights, and is embodied in the United Nations Guiding Principles on Business and Human Rights (UNGPs).³ Three key principles, called “pillars”, underline this concept: the State duty to protect against human rights violations by businesses; the companies’ responsibility to respect human rights, and the obligation for both the State and companies to provide an effective remedy for any human rights violations. **All enterprises have the same responsibility to respect human rights regardless of ownership.** The Businesses’ responsibility to ensure respect for human rights covers actions by all companies be they national, internationals, multinationals, joint-ventures, , etc. and irrespectively of their size. It also includes state-owned companies or companies acting on behalf of the State (UNGP 14). The present fact sheet aims to give an overview of the business’ responsibility to protect human rights. It has been prepared by the Cambodian Center for Human Rights (“CCHR”), a non-aligned, independent, non-governmental organization (“NGO”) that works to promote and protect democracy and respect for human rights – primarily civil and political rights – throughout Cambodia. Notably, the responsibility to respect human rights applies even where specific legislation is lacking or not effectively enforced. Therefore, **the corporate responsibility to guarantee the respect of human rights exists independently of the State duty to do so.**

Relevant Law

Businesses operating in Cambodia must respect the Constitution of the Kingdom of Cambodia (“Constitution”), which incorporates the Universal Declaration of Human Rights (“UDHR”), the International Covenant on Civil and Political Rights (“ICCPR”), and the International Covenant on Economic, Social and

¹ ‘Cambodia, Sustaining Strong Growth for the Benefit of All, A Systematic Country Diagnostic’, *The World Bank*, May 2017, p. 100, <https://openknowledge.worldbank.org/bitstream/handle/10986/27149/Cambodia-SCD-May-9-SEPCO-05242017.pdf?sequence=5&isAllowed=y> (‘World Bank 2017 Report on Cambodia’).

² ‘Cambodia: Economy’, Asian Development Bank, <https://www.adb.org/countries/cambodia/economy>. As a comparison, France’s economic projected economic growth is of 1,5% for 2019 and 2020 (<http://www.oecd.org/economy/france-economic-forecast-summary.htm>), Japan’s is 1% (<http://www.oecd.org/eco/outlook/japan-economic-forecast-summary.htm>) and Korea’s 3% (<http://www.oecd.org/eco/outlook/korea-economic-forecast-summary.htm>).

³ ‘Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework’, 16 Jun 2011, https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

Cultural Rights (“ICESCR”) directly into Cambodian law.⁴ Further, international treaties ratified by Cambodia are directly applicable in domestic law.⁵ In addition, business must respect local laws including the land law⁶ and the labour law.⁷ Notably, in Cambodia, corporations can be held criminally liable.⁸ Last but not least, the International Labor Organization’s conventions, most of which have been ratified by Cambodia, set out key human rights principle relevant to business enterprises insofar as labour rights are concerned.⁹

The UNGPs, although non-binding, constitute the authoritative standard of conduct for corporations, insofar as respect for human rights is concerned. They aim to provide a foundation on which good practices can be built. Principles 11 to 24 outline key principles for the companies to respect human rights, in two ways: by avoiding causing or contributing to negative human rights impacts, and by preventing or mitigating existing human rights impacts directly linked to their operations. Furthermore, principles 29 to 31, provide guidance on companies on how to provide remedies in case of a violation. Those are discussed in detail below. Other relevant authoritative standards include the OECD Guidelines for Multinational Enterprises,¹⁰ the OECD-FAO Guidance for Responsible Agricultural Supply Chains,¹¹ and the Voluntary Guidelines on the Responsible Governance of Tenure.¹² For more details regarding these, please refer to CCHR’s publication: *Business and Human Rights Handbook for Cambodia*.¹³

What Can Businesses Do to Respect Human Rights?

Human Rights law leaves states the freedom to decide the course of action to avoid human rights violations by businesses, as long as it is effective. However, the UNGPs provide a number of examples of actions, such as:

- ❖ To **adopt specific policy mechanisms** which enable prompt identification of potentially adverse human rights impacts concerning particularly at-risk groups, e.g. indigenous people (UNGP 12);
- ❖ To **draft and publish a comprehensive human rights policy** outlining precisely ways they are committed to human rights protection (UNGPs 15), in accordance with the requirements set out in UNGP 16;
- ❖ Create a **due diligence procedure** where abuses can be identified early and remedied (UNGP 17);
- ❖ To **ensure human rights practices are transparent**, and successes and failures are publicized to key stakeholders (UNGP 21);
- ❖ To **allocate sufficient resources** for: the provision of adequate compensation if abuses occur; and continuous re-assessing of the efficacy of human rights monitoring processes (UNGPs 20 & 22);
- ❖ To **adopt procedures that ensure** that where human rights abuses are considered likely, the information is shared to the department of the organization best equipped to **remedy** the impact (UNGP 19);
- ❖ To **seek advice from external experts** on minimizing human rights abuses and set up appropriate dialogue mechanisms to enable constant engagement with at-risk groups (UNGP 18).

⁴ Constitution, Art. 31, [http://sithi.org/admin/upload/law/2008_02_19_Constitution\(EN\)_including%20Amendment%20\(1\).pdf](http://sithi.org/admin/upload/law/2008_02_19_Constitution(EN)_including%20Amendment%20(1).pdf).

⁵ Constitutional Council of the Kingdom of Cambodia, Decision No. 092/003/2007, 10 Jul 2007, https://www.ccc.gov.kh/admin/uploads/dec_2007_92.pdf.

⁶ Available at <http://sithi.org/admin/upload/law/Land%20Law.ENG.pdf>.

⁷ Available at http://www.cambodiainvestment.gov.kh/the-labor-law-of-cambodia_970313.html.

⁸ Criminal Code, Art. 18,

http://119.15.85.2/2Q2W01004809BA4DDE772510D2F855F17E861B81F2EA_unknown_71E456C0EA2346C06685939EDA8CDF1FF309FFC_6/sithi.org/admin/upload/law/Criminal_Code_Book_with_cover_Jan_2014.pdf.

⁹ <https://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm>.

¹⁰ ‘OECD Guidelines for Multinational Enterprises’, OECD, 2011, <http://mneguidelines.oecd.org/guidelines/>.

¹¹ ‘Guidance for Responsible Agricultural Supply Chains’, OECD / FAO, 2016, <http://www.oecd.org/daf/inv/investment-policy/rbc-agriculture-supply-chains.htm>.

¹² ‘Voluntary Guidelines on the Responsible Governance of Tenure’, Food and Agriculture Organization of the United Nations (FAO), 2012, <http://www.fao.org/tenure/voluntary-guidelines/en/>.

¹³ ‘Business and Human Rights Handbook for Cambodia’, CCHR, 2016,

http://cchrcambodia.org/admin/media/report/report/english/2016_Handbook_BHR_English.pdf

Most importantly, all the activities put into place by the companies to prevent and mitigate adverse impacts on human rights must be tracked, in order to assess their effectiveness (UNGP 20). In particular, it must be based on objective indicators, and be built on the feedbacks of internal and external sources, including affected stakeholders.

What Can Businesses Do to Remedy Human Rights Violations?

Principles 25 to 31 of the UNGPs specifically deal with the need to provide an effective remedy for human rights violations by businesses. What is essential is that the process is impartial and fair,¹⁴ and that the remedy be effective – that is, that the remedy must actually lead to a redress of the violation, rather than being a mere procedure with no results. Further, the process must be accessible, meaning that individuals must be aware of it, and must be able to use it without undue hindrance.¹⁵ To be truly effective, a remedy must also involve the cessation of an ongoing violation.¹⁶ Similarly, those found responsible for a human rights violation must be brought to justice by the State.¹⁷ According to the UNGPs, businesses must also take an active part in ensuring that individuals whose rights are adversely affected by their operations can obtain an effective remedy.¹⁸ In particular, they should establish or participate in effective grievance mechanisms (UNGP 29), which provide a channel for those directly affected by its operation to raise their concerns. Those also allow for issues to be identified early, thereby preventing problems from escalating.

Case Study: Land Dispute with Socfin-KCD, Bu Sra Commune, Pech Chreada District, Monduliri Province

Since 2008, rubber company Socfin-KCD has been involved in a land dispute involving villagers from six villages¹⁹ in Bu Sra²⁰ Commune, Pech Chreada District, Monduliri Province, in the North-East of Cambodia. More than 800 families have been affected,²¹ most from the Pu Nong group,²² an indigenous community. Today, several hundred families are still involved in a land dispute resolution process.

Some of the villagers interviewed by CCHR alleged that they were not properly consulted or informed about the project; that their land was taken without their consent; that their properties were destroyed; that they were intimidated by the authorities when trying to protest Socfin-KCD's operations and that they were not given a proper remedy for the taking of their land and the human rights violations associated thereto. Villagers interviewed reported having lost access to natural resources such as sources of water, animals, and fishing areas, and therefore their livelihood, and faced several mental health issues including depression and stress as a result.

From the early stages and unlike many companies involved in land disputes in Cambodia, Socfin-KCD has actively participated in the dispute resolution process. Even though to date, the dispute is not resolved, these efforts are worth to be highlighted as they constitute good practice which CCHR hopes will inspire other private actors.

Key actions include:

- Training Socfin-KCD's staff on business and human rights and on indigenous people's rights.²³
- Sharing the company's best practices and lessons-learned with other stakeholders: in December 2017, Socfin-KCD joined the Business & Human Rights and Sustainable Agri-Business workshop organized in Monduliri Province by the United Nations Office of the High

¹⁴ UNGP 25.

¹⁵ UNGP 26.

¹⁶ 'General Comment No. 31, Nature of the general legal obligation imposed on States parties to the Covenant', *UN Human Rights Committee*, May 2004, para. 15, ('UN HRC General Comment No. 31')

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAgHk7yhsiYoiCfMkoiRv2FVaVzRkMjTniRO%2Bfud3cPVrcM9YR0iW6Txaxgp3f9kUfPWoq%2FhW%2FTpKi2tPhZsbEJw%2FGeZRASjdFwUjQRnbJEaUhbY31WiQPI2mLFDe6ZSwMMvmQGVHA%3D%3D>

¹⁷ UNHRC General Comment No. 31, para. 18.

¹⁸ UNGP 19.

¹⁹ Pu Tuet, Pu Reang, Bu Sra, Lam Meh, Pu Cha and Pu Lu.

²⁰ Also spelt Bousra, Busra.

²¹ 'Cambodia - Land Cleared For Rubber Rights Bulldozed: The impact of rubber plantations by Socfin-KCD on indigenous communities in Bousra, Monduliri', FIDH, Oct 2011, p. 19, https://www.fidh.org/IMG/pdf/report_cambodia_socfin-kcd_low_def.pdf ('FIDH Report').

²² Also spelt Bunong, Bu Nong, Punong, Phnong, Phnong.

²³ In its 2017 Sustainability Report, Socfin S.A. refers to an external grievance management procedure in Cambodia, which was officially presented to the local communities and authorities, and which included a summary in Khmer, "Sustainability Report, 2017, Responsible Tropical Agriculture", *Socfin*, p. 27, https://www.socfin.com/sites/default/files/2018-12/2017%20Socfin_Sustainability%20Report_LR_0.pdf ('Socfin Cambodia 2017 Sustainability Report').

Commissioner for Human Rights ('OHCHR'). Company representatives presented Socfin Cambodia's approach to Business and Human Rights in practice to the participants which included NGOs, businesses and local authorities.²⁴

- Adopting an external grievance management procedure, updated with the support of the UN OHCHR in 2017, which was presented to the indigenous communities in the local Pu Nong language.²⁵
- Adoption of a responsible management policy, putting human rights and respect of local communities at the core of its work, adopted in March 2017,²⁶ and of an associated implementation plan.²⁷
- A January 2017 commitment to the sustainable management of its rubber plantations in Mondulkiri.²⁸
- Involvement in a mediation process to find a resolution to the land dispute, which is ongoing since November 2016.²⁹
- Publishing a publicly available "transparency board" by Socfin-KCD's mother company, the Socfin Group, which outlines its commitments, the progress related to the implementation of the responsible management policy as well as maps of its concessions.³⁰ The Socfin Group also publishes grievances logged under its grievance management procedure.³¹
- The adoption of a policy against child labour since the beginning of its operations in Cambodia, and of a new regulation proscribing the hiring of new employees under 18 years old, in October 2018.³²
- Participation in a Tripartite Committee composed of elected representatives of the community, local authorities and the company to share information about the plantations.
- Participation in bi-yearly multi-stakeholder meetings put into place by OHCHR, between 2015 and 2017, to promote transparency through the sharing of information and enhance the coordination of actions by the different actors.
- Identifying, mapping and protecting Pu Nong sacred lands on the ELC,³³ namely sacred forests, cemeteries, and spirit forests, and supporting communal land titling process for these areas since 2009.
- Supporting the communities surrounding the plantation, including by constructing educational facilities for the children of their employees on the rubber plantations, renovating other schools, constructing a health centre on the ELC, supporting the renovation of public health centers in the commune, and providing drinking water and electricity.³⁴
- Creating the Pu Nong Administration, an in-house department dedicated to facilitating communications with the Pu Nong community.³⁵ It composed of three Pu Nong individuals from different villages in Bu Sra commune, and a permanence is available in Socfin-KCD's office, so that the communities can directly contact Socfin-KCD.

²⁴ Source: e-mail communications with Socfin-KCD.

²⁵ Socfin Cambodia 2017 Sustainability Report, p. 8, Point f.

²⁶ 'Socfin Group policy for responsible management', *Socfin*, 22 Mar 2017, https://www.socfin.com/sites/default/files/2018-12/2017_03_22_Policy_responsible_management.pdf; Socfin Cambodia 2017 Sustainability Report, p. 22.

²⁷ 'Policy Implementation Plan', Socfin Group, <https://www.socfin.com/sites/default/files/2018-11/2017%2007%2010%20Policy%20Implementation%20Plan.pdf>.

²⁸ 'SOCFIN in Cambodia commits to a sustainable management of its rubber plantations in Mondulkiri', *Socfin*, 9 Jan 2017, <https://www.farmlandgrab.org/uploads/attachment/2017-09-01--SOCFIN-Cambodia-commits-to-a-sustainable-management.pdf>.

²⁹ 'Briefing note on Business and Human Rights: preventing, mitigating and remedying land-related rights violations in the Kingdom of Cambodia: seven areas for improvement', CCHR, Dec 2018, https://cchrcambodia.org/index_old.php?title=Briefing-Note-on-Business-and-Human-Rights-Preventing-Mitigating-and-Remedying-Land-Related-Rights-Violations-in-the-Kingdom-of-Cambodia-Seven-Areas-for-Improvement&url=media/media.php&p=analysis_detail.php&aid=83&id=5&lang=eng.

³⁰ Socfin Transparency Dashboard, <http://tftmemberdashboard.com/socfin/>.

³¹ Socfin Transparency Dashboard, <http://tftmemberdashboard.com/socfin/progress/grievances/>.

³² Socfin-KCD *Code of Employee & Business Conduct* (Section on human rights and the workplace), and in the *Internal regulation* (Section 2). (Official memo available upon request).

³³ Socfin Cambodia 2017 Sustainability Report, p. 29.

³⁴ Socfin Cambodia 2017 Sustainability Report, pp. 14-15.

³⁵ Socfin Cambodia 2017 Sustainability Report, p. 28.

Conclusion & Recommendations

By taking simple steps, corporations and states can improve their human rights record, promote sustainable development and save time, money and effort by avoiding, or significantly reducing, the risk of disputes.

Recommendations to Companies

- R1.** Exercise **due diligence** prior to starting any operation in Cambodia, in accordance with Principles 15, 17 and 18 of the UNGPs;
- R2.** **Conduct ESIA**s, make them available to affected communities and to the public in a timely manner, and put into place **mechanisms to monitor their implementation**, in accordance with international human rights standards such as Principle 18 of the UNGPs, and following the IFC's requirements;³⁶
- R3.** Identify affected communities, ensure **meaningful consultations** and respect the principle of **Free Prior and Informed Consent**, and **engage** with affected communities and CSOs involved in land dispute resolution; and,
- R4.** **Effectively remedy all human rights violations** and ensure that any remedy meets the effectiveness requirements of Principle 31 of the UNGPs.

Recommendations to the RGC

- R5.** Unequivocally **require ESIA**s before allowing any development, infrastructure project or SEZ, require that they are made available to affected communities and to the public in a timely manner, and demand that **mechanisms to monitor their implementation** are put into place in accordance with international human rights standards, including Principle 18 of the UNGPs, and the IFC;
- R6.** **Reconsider the contracts of companies** operating ELCs or SEZs, require those who have not done so to conduct an ESIA, to establish a mitigation plan for the risks identified and to monitor its implementation, and demand that they provide an effective remedy;
- R7.** Ensure that **meaningful consultations with communities** affected by land dispute take place prior to any contract being given, that they are kept apprised of the developments, and ensure that the principle of **Free Prior and Informed Consent** is respected;
- R8.** Develop and adopt a **National Action Plan on Business and Human Rights**, in consultation with civil society, to disseminate and implement the UNGPs;
- R9.** **Effectively remedy all human rights violations** and ensure that any remedy meets the effectiveness requirements of Principle 31 of the UNGPs;
- R10.** **Ensure timely resolutions of land disputes**, in accordance with international standards such Article 3 (a) of the ICCPR, and Principle 26 of the UNGPs; and,
- R11.** Ensure that **remedies respect international standards**, including the UN Basic principles and guidelines on development-based evictions and displacement, and meets the effectiveness requirements of Principle 31 of UNGPs.

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³⁶ According to the International Finance Corporation ('IFC'), a social and environmental impact assessment process must include, amongst others, a social and environmental management plan (also known as corrective action plan), which defines the resources, roles and responsibilities required to manage the impacts identified in the ESIA and implement mitigation measures. It must include a description of the activities planned to mitigate impacts, a time line and an identification of resources, together with a communication plan indicating the implementation progress, and monitoring requirements; see IFC, 'A guide to biodiversity for the private sector, the social and environmental impact assessment process', <https://www.ifc.org/wps/wcm/connect/296ae980488551f5aa0cfa6a6515bb18/ESIA.pdf?MOD=AJPERES>.