

Business and human rights in ASEAN: Case study of Cambodia

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Abstract

This paper will focus on the business and human rights legislation and initiatives in ASEAN taking Cambodia as an example. But first, the background context on how have human rights violations in doing business been addressed by the international community will be drawn. It will settle the ground for a study on how ASEAN member states collectively and individually focus on this rather new concern. Finally, the case study of Cambodia will highlight how powerful are the multinational companies in setting good, and unfortunately, bad practices among the business community.

I. Introduction: The rise of business and human rights' worldwide concern

In the global context of economic development, human beings and their rights are often at odds with countries and multinational corporations. It has been accepted that businesses¹ and human rights² need each other. Indeed, businesses have to include at least the human rights minimum standards into their internal policies in order to ensure their long-term sustainability. Conversely, human rights need flourishing businesses that will allow people to access, improve, and enjoy their economic and social rights.

However, despite growing interest from the international community and multi-stakeholder initiatives such as the UN Global Compact Initiative³, the link between business and human rights is not always evident. Even the concept of corporate social responsibility tends to be interpreted as meaning environmental protection and social service, and is hardly related to human rights (Plantilla 2014, 1).

The gross total of human rights violations worldwide linked to business creation and development cannot be exactly quantified, but a list of the most wanted corporate offenders has been established by the NGO Global Exchange (Global Exchange 2015). These violations can be observed mainly in the developing countries, many of which are located in Asia.

¹ Business, in this paper, is understood as all businesses, both transnational and others, regardless of sector or country of domicile or operation, of any size, ownership form or structure (OHCHR 2011, 8)

² Human Rights should be understood as rights inherent at all human beings, whatever their nationality, place of residence, sex, national or ethnic origin, color, religion, language, or any other status. Every individual is entitled to enjoy human rights without discrimination (OHCHR 2012, 9).

³ The UN Global Compact Initiative is a strategic policy initiative for businesses that are committed to aligning their operations and strategies with ten universally accepted principles in the four areas:

- Human Rights:

Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights;

Principle 2: make sure that they are not complicit in human rights abuses.

- Labour Standards

Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;

Principle 4: the elimination of all forms of forced and compulsory labour;

Principle 5: the effective abolition of child labour;

Principle 6: the elimination of discrimination in respect of employment and occupation.

- Environment

Principle 7: Businesses should support a precautionary approach to environmental challenges;

Principle 8: undertake initiatives to promote greater environmental responsibility;

Principle 9: encourage the development and diffusion of environmentally friendly technologies

- Anti-Corruption

Principle 10: Businesses should work against all forms of corruption, including extortion and bribery.

Businesses are reported to violate human rights standards of their employees, customers, workers in their supply chains or communities around their operations (OHCHR 2012, 11). Examples of situations where business enterprises may be deemed to have caused adverse human rights impact go from routine racial discrimination to exposure of factory workers to hazardous working conditions without adequate safety equipment through being the sole or main source of pollution in a community's drinking water supply (OHCHR 2012, 17). Human rights violations can also be caused by an enterprise's operations, products or services, or by its business relationships - even where the enterprise itself may not have contributed to it. An example is providing financial loans to an enterprise for business activities that, in breach of agreed standards, result in the eviction of communities (OHCHR 2012, 17).

In 2005, the then-UN Commission on Human Rights adopted the resolution E/CN.4/RES/2005/69 which requested the "*Secretary-General to appoint a special representative on the issue of human rights and transnational corporations and other business enterprises*". Professor John Ruggie was duly named the inaugural Special Representative. He accomplished two mandates which allowed him to establish the foundation for an international non-binding mechanism. Professor Ruggie, in his 2008 report, designed the "*Protect, Respect and Remedy*" Framework which is still used nowadays and has given birth to the *Guiding Principles on Business and Human Rights*.

The "*Protect, Respect and Remedy*" Framework comprises three core principles: (1) the State's duty to protect against human rights abuses by third parties, including business, through appropriate policies, regulation, and adjudication; (2) the corporate responsibility to respect human rights, which means to act with due diligence to avoid infringing on the rights of others; and (3) the need for greater access by victims to effective remedies, judicial and non-judicial (OHCHR 2015, 1).

In June 2011, in the resolution A/HRC/17/4, the Human Rights Council (HRC) established a Working Group on the issue of human rights and transnational corporations and other business enterprises. The Working Group is comprised of five independent experts⁴ of balanced geographical representation, for a period of three years. In June 2014, in the resolution

⁴ Mr. Michael Addo - Chair; Ms. Alexandra Guaqueta; Ms. Margaret Jungk; Mr. Puvan Selvanathan; Mr. Pavel Sulyandziga.

A/HRC/26/22⁵, the HRC decided to extend its mandate for the second period of three years. Part of that process is the UN Forum on Business and Human Rights that is being held each year in December.

In this context of growing international concerns over human rights fundamental principles enforcement in and by businesses, ASEAN member states are due to integrating into an ASEAN Economic Community (AEC) by the end of 2015. Nonetheless, to date, there remain large gaps to be filled in a small amount of time in order to create a functional and sustainable common economic market—gaps which have been highlighted by the AEC's detractors. The most obvious gap appears between the economic development of each country. The second is the vast difference between each country's human right compliance record, as well as their level of implementation of the law in general. If these issues remain unaddressed by ASEAN and each of its member states, they could damage the realisation and long-term viability of what will become one of the biggest economic entities in the world.

Thus, the current state of the relationship between business and human rights in the ASEAN region should be studied highlighting positive examples of both international and regional initiatives launched by the different stakeholders involved (Section 1). A case study of the state of business and human rights in Cambodia will encompass the need for a better implementation of the UN “*Protect, Respect and Remedy*” Framework as well as the need for a more comprehensive enhancement of private initiatives such as the ILO Better Factories Cambodia Program (Section 2).

⁵ Please note that this resolution includes a request that the UN Working Group prepare a report considering, among other things, the benefits and limitations of legally binding instruments. This resolution, led by Norway, was first lead to opposing a binding mechanism (proposed by another resolution led by Ecuador and South Africa). Its first purpose was to acknowledge HRDs fighting for land against business but this clause was deleted. On 26 June, the UN Human Rights Council adopted Ecuador and South Africa's resolution. The votes were:

- 20 in favour: Algeria, Benin, Burkina Faso, China (made the difference: want only to apply to transnational companies), Congo, Cote d'Ivoire, Cuba, Ethiopia, India, Indonesia, Kazakhstan, Kenya, Morocco, Namibia, Pakistan, Philippines, Russia, South Africa, Venezuela, Vietnam,
- 14 against: Austria, Czech Republic, Estonia, France, Germany, Ireland, Italy, Japan, Montenegro, South Korea, Romania, The Former Yugoslavia, UK, USA),
- 13 abstentions: Argentina, Botswana, Brazil, Chile, Costa Rica, Gabon, Kuwait, Maldives, Mexico, Peru, Saudi Arabia, Sierra Leone, UAE.

On 27 June, the Council adopted by consensus Norway's resolution.

II. Business and human rights in ASEAN

During the April 2015 World Economic Forum on East Asia held in Jakarta, it had been heard that “*ASEAN’s growth will outdo [the] EU[’s] in ten to fifteen years*” (Naidu-Ghelani 2015). With overall aggregate GDP growth of 5.4% between 2000 and 2013 (McKinsey Global Institute 2014: 1), the Association of Southeast Asian Nations⁶ has enjoyed remarkable economic progress in the recent past, whereas European and American economies faced a difficult recovery from the 2007 global financial crisis. ASEAN integration and the creation of an ASEAN Economic Community (AEC) will foster business attraction into the region; an attraction that raises concerns among civil society organisations regarding the cost for which governments are willing to facilitate the establishment of enterprises on their territory.

ASEAN is today at the center of regional economic alliances ranging from APEC and ASEM to the EAS and soon-to-be TPP. ASEAN member states are being courted by the biggest economies as they are the world’s current and/or future biggest potential markets. This, in turn, is leading to massive economic deals that potentially increase the occurrence of human rights violations within ASEAN. To tackle this growing phenomenon, and to ensure the sustainability of businesses’ wealth, initiatives have been taken both by the institutions (Section 1.1.) and private multi-stakeholders (Section 1.2.).

II.A. ASEAN institutional initiatives towards a more comprehensive inclusion of human rights in the business activities

For now, the ASEAN Economic Community, which is scheduled to be created on 31 December 2015, envisions the freer movement of goods, services, capital, and people among member states (McKinsey Global Institute 2015, 4). However, only qualified workers⁷ will be guaranteed freedom of movement within ASEAN. Protection to be provided to the large body of migrant -or unskilled- workers remains unaddressed. Thus, the question of the regulation of businesses in this regard will remain the prerogative of each State. Most ASEAN countries are

⁶ Comprised of Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam.

⁷ This includes only accountants, architects, dentists, doctors, engineers, nurses, surveyors and tourism industry workers.

still developing countries and are subject to an increasing number of human rights violations linked to the economic development of their country. This growing economy often impelled by state regulations, are setting governments in the situation of judge and jury regarding the enforcement of human rights regulations.

In 2013, ASEAN signed the Declaration on the Promotion and Protection of the Rights of Migrant Workers (the Migrant Workers Declaration) which aims to establish a framework for the minimum protection of migrant workers and which is based on international human rights principles as well as the ASEAN Human Rights Declaration (AHRD). The Migrant Workers Declaration comes with a Committee that is in charge of promoting the standards. However, this body cannot receive individual communications.

To address the growing migrant workers' rights violations experienced by ASEAN citizens in the region and outside, for instance in Qatar, a civil task force lead by the Law Reform Commission of Thailand (LRCT) has set up a new mechanism which is scheduled to include a court (Thitipak 2015). If such a mechanism is adopted regionally by ASEAN member states, it will be the first of its kind in the world (Wah 2015). However, to date, this mechanism is far from seeing the light of day and the human rights violations experienced by workers as well as by people directly or indirectly affected by businesses continue. It is for this reason that, besides adopting a human rights based-approach to business, some initiatives try to include and foster CSR and human rights policies straight into business enterprises' internal regulations.

ASEAN, as an economic organisation, has developed an entity focusing on the development of businesses and encouraging investments in the region through the ASEAN Business Advisory Council and its regular meetings. However, so far, no meeting has expressly addressed human rights as its main focal point. Only the ASEAN Business Award encourages ASEAN large businesses, SMEs, and young entrepreneurs to compete for excellence in key areas on a yearly basis. The four key areas are growth, employment, innovation, and corporate social responsibility. The fact that ASEAN supports and fosters CSR policies to be included into businesses is a first step towards ensuring respect of human rights minimum standards by all stakeholders involved.

Before going further, the distinction between CSR policies and human rights standards has to be stressed, as these concepts are often confused. States have a legal obligation to respect, protect and fulfill the human rights set out in all binding international human rights instruments they ratify (OHCHR, 10) as well as customary international human rights law, such as the principles drawn by the Universal Declaration on Human Rights (UDHR). However, international human rights treaties generally do not impose direct legal obligations on business enterprises. Legal liability and enforcement for the infringement by businesses of international human rights standards are therefore defined largely by national law (OHCHR, 10). Corporate Social Responsibility is a voluntary undertaking by the businesses to ensure social and economic advantages to their workers as well as the community. CSR is thus regarded as *complementary* to the human rights standards and not as a replacement for them.

The ASEAN Intergovernmental Human Rights Commission (AICHR), established in 2009, holds the role of promoting human rights within the ASEAN member states on the basis of the international human rights standards and the ASEAN Human Rights Declaration signed in November 2012. In this non-binding instrument, the ten ASEAN member states recall their commitment towards the improvement of the rule of law and the respect of human rights in their home country. It has to be noted, however, that the AICHR still has not been empowered with any protection prerogatives such as an investigation or the ability to receive individual complaints. Indeed, the institution is at this stage struggling to fulfill its basic mission of establishing a regional human rights body.

Despite this limited competence, the AICHR is willing to take on its role of human rights promotion and dissemination. In 2014, it issued a study on CSR and human rights in ASEAN. This baseline study recognised that even if ASEAN members states are at different levels of socio-economic development, this should not stop them to fill the gaps and draw a common CSR-human rights guideline for businesses across the region that would take into account the specificity of the regional context. The AICHR recommended that ASEAN member states should accelerate and strengthen the implementation and enforcement of the existing rules and regulations that deal directly with such adverse impacts of business conduct. Finally, the AICHR highlighted that small- and medium-sized enterprises should receive special attention as they

make up the bulk of the economic players in ASEAN, and their activities also have the potential to undermine human rights in the region (AICHR 2014, 21-22).

Another institutional initiative comes from local judicial systems that have started to try non-ASEAN as well as ASEAN based multinationals for human rights violations occurring in another ASEAN country. This aspect will be studied in the Section 2.1, with examples of cases about violations happening in Cambodia.

As already mentioned, under international law, the promotion and protection of human rights are first and foremost a State obligation. Businesses and other stakeholders are bound by the national law -either from their home country or the country in which they operate- and should not take advantage of legal voids where they may exist. Being cognisant of this necessity, some stakeholders have set up initiatives leading to the promotion and enforcement of the guiding principles on business and human rights as well as CSR policies.

II.B. Positive impact of multi-stakeholders initiatives in the ASEAN

Worldwide initiatives on human rights and business assist in bolstering the aforementioned weak legal framework already existing. Intergovernmental organisations such as the UN or OECD, as well as private international organisations such as ISO, Global Reporting Initiative, and the International Financial Corporation separately launched complementary initiatives providing guidelines for companies on how to integrate human rights in their operations at home or abroad (Plantilla 2014, 2).

One of the first initiatives launched, in 2000, was the United Nations Global Compact. This is a voluntary global platform which convenes businesses and UN agencies, labour, and civil society in support of human rights, labour, the environment and anti-corruption (OHCHR 2011) in order to lead to the development, implementation and disclosure of responsible and sustainable corporate policies and practices (Foundation for the Global Compact 2015). To this

date, the UN Global Compact has gathered around 7,500 businesses in over 140 countries⁸ as well as over 3,900 non-business stakeholders such as civil society organizations, labor unions, business associations, foundations, communities, cities, and academic institutions (UN Global Compact 2013). One of the strengths of the UN Global Compact is the development of more than a hundred local networks around the world, six of which are located among the ASEAN countries (UN Global Compact 2014, 5). “*Local Network are the soul and foundation of the Global Compact*” according to Jan Eliasson, UN Deputy Secretary-General (UN Global Compact 2014, 32).

UN Global Compact local networks can be found in Indonesia, Malaysia, Singapore and Vietnam, and are emerging in Myanmar and the Philippines. These networks are still on the rise—in terms of participants and activities—compared to the North East Asian countries but they are the most pro-active when it comes to learning activities (UN Global Compact 2014, 17 and 22). For instance, Indonesia hosted a 2014 regional meeting which focused on the launch of the Post-2015 Business Engagement Architecture.

The strong value-add of local networks is their relative advantage in terms of strengthening relationships between stakeholders at a local level. Local networks take into account issues at the local level, for instance regarding minorities’ rights and land rights. There is also room to build bridges between local networks at a regional level as well as foster the emergence of such networks in the neighbouring countries. This is where the already-existing ASEAN member states’ UN Global Compact local networks have a role to play in encouraging countries like Cambodia, Thailand or Laos to create a local network within the UN Global Compact. Such creation will encourage the efforts to tackle corruption and will help these countries in improving their human rights records, which are currently three of the lowest in the region. The Cambodian case will be studied in Section 2.

Much popular within the ASEAN countries is the International Organisation for Standardisation and its International Guidance Standard on Organisation Social Responsibility, better known as ISO 26000. The ISO 26000 “*helps clarify what social responsibility is, helps*

⁸ About 187 business participants are ranked in the Financial Times Global 500 of the world’s largest businesses (by market capitalization), and roughly 56% percent of business participants are small and medium-size enterprises (UN Global Compact 2013).

businesses and organisations translate principles into effective actions and shares best practices relating to social responsibility, [... and is] aimed at all types of organisations regardless of their activity, size or location” (ISO 2014, 2). The ISO 26000 is built around the concept that human rights and labour practices are core areas of social responsibility. Moreover, monthly meetings have been organised in all the ASEAN member states in the past three years. The main objectives of these meetings were the dissemination of the guidance among private and public stakeholders, including media, and advising businesses on the ways of ensuring both at the same time competitiveness and sustainability of their businesses.

The success of the ISO 26000 within the context of ASEAN could be explained by the fact that being a private initiative, it is not comprised of a remedy framework, even not a non-judicial mechanism such as a mediation or arbitration mechanism. These mechanisms however, are part of the recent improvement of workers’ rights in Cambodia.

III. Case study: Business and human rights in Cambodia

Following the United Nations’ intervention in the early nineties and the reestablishment of democracy and rule of law in the country, the Kingdom of Cambodia’s economy has been growing steadily over the past few years. For the past decade and a half there has been an economic boom, with an average growth of 8% every year. Furthermore, the Cambodian Ministry of Economy and Finance has indicated that Cambodia had a 7.3% and 7.6% growth in 2012 and 2013 respectively⁹. According to the 2014 World Bank Cambodia Report, the country’s real growth for 2014 was estimated at 7.2%, and the country’s real economic growth rate for 2015 is expected to reach 7.5%¹⁰. Most of this growth is due to the development of small and medium enterprises (SMEs)¹¹. However, according to the latest Transparency International Cambodia’s report, Cambodia's full growth potential is limited by corruption. As many as 60%

⁹ More data available at <http://www.mef.gov.kh/>.

¹⁰ More data available at <http://www.worldbank.org/en/country/cambodia>.

¹¹ Since 2005, a common definition of SMEs is used in Cambodia. Indeed, the SME sub-committee of the Royal Government of Cambodia (RGC) proposed that all ministries and institutions understand SMEs as enterprises comprised of 11 to 50 employees and USD50,000 to 250,000 of assets for small enterprises, and comprised of 51 to 100 employees and USD250,001 to 500,000 of assets for medium enterprises (TIC 2015, 12).

of SME CEOs who responded to a Transparency International study in Cambodia identified corruption as an external factor impeding the progress of their company (TIC 2015, 6).

In the meantime, Cambodia's human rights record remains unsatisfactory according to both civil society organisations and the United Nations. The UN chose to extend the position of UN Special Rapporteur on the situation of human rights in Cambodia for at least one more year in March 2015, by appointing Professor Rhona Smith as the new Special Rapporteur¹². During the last Universal Periodic Review of Cambodia, Human Rights Watch submitted several recommendations to the UN pertaining to the human rights situation in Cambodia. Some of these included the establishment of an independent commission to investigate irregularities in the 2013 national elections in Cambodia, the opening of the media sector to independent and opposition voices, and a lifting of all arbitrary bans on freedom of peaceful assembly and association (Palatino 2015).

Furthermore, based on the 2014 ASEAN SME Policy Index, Cambodia is the single-worst ASEAN member state in terms of worst performance and practice, ranking equal worst (alongside Brunei and Laos) in terms of institutional framework (ERIA 2014, 17). It is therefore essential to highlight the current efforts and reforms led by the Royal Government of Cambodia (RGC) to improve the functioning of the country's institutions to assist the lawful economic development of the country (Section 2.1). Complementary initiatives from the private sector and international organisations have, so far, succeeded in raising the profile of some business and human rights' good practices as well as in pinpointing bad practices and singling out enterprises grossly violating human rights in the country (Section 2.2.).

III.A. RGC's initiatives to bolster business development respectful of human rights

The fundamental legal basis that bound the Kingdom of Cambodia to ensure the respect of human rights on its territory can be found in Article 31 of the Constitution which enshrines international human rights obligations. Article 31 states that "*The Kingdom of Cambodia shall*

¹² Prof. Rhona Smith succeeded to Prof. M. Surya Subedi who was appointed in 2008 as fifth Special Rapporteur on human rights in Cambodia.

recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women's and children's rights” (Kingdom of Cambodia 1993, 7). The Guiding Principles on Business and Human Rights are grounded in recognition of States’ existing obligations to respect, protect and fulfil human rights and fundamental freedoms. Therefore, the standards on business and human rights are directly applicable to the Kingdom of Cambodia through their international legal commitments and domestic law (OHCHR 2011, 10).

Some of the key business sectors relevant to the Cambodian context include, but are not limited to: agribusiness (such as sugar, rubber, cassava and acacia plantations); industrial production in both urban and rural areas (especially related to factories and economic land concessions); extractive industries (such as mining, oil, and gas); tourism and hospitality (such as hotels and restaurants); infrastructure and other development projects (such as the building of roads and railroads); employment services (including agencies for recruitment of domestic work); energy projects (such as hydropower dams and coal-fired plants); and other SMEs, including family-run businesses (OHCHR 2011, 10).

As of today, there are more than thirty laws and regulations¹³ that are applicable to the business sectors in Cambodia, the main issue remaining their dissemination and implementation by the RGC and the local authorities. These laws have, among other things, created the Anti-Corruption Unit and other online procedures which are intended to tackle corruption and speed up business registration and tax declaration. These mechanisms’ lack or absence of knowledge by the business -especially by the Micro and SMEs- are deeming the ease and cost of doing business in Cambodia as well as they are encouraging bad practices among governmental officials (TIC 2015, 6-7). However, for businesses that are trying to run a *clean business* by fully following the legislation, it is rather difficult to have a competitive business and therefore to survive compared to the *unclean businesses*¹⁴. Efforts have to be made by the RGC together with

¹³ A non-exhaustive list of laws and regulations is provided by OHCHR in its 2011 publication titled “*Guiding principles on business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework*”, pages 16-17.

¹⁴ Accordingly to all stakeholders involved in the Panel discussions, Transparency International Cambodia, National Conference on Business Integrity, 27 May 2015.

Chambers of Commerce in Cambodia (such as EuroCham and AmCham¹⁵) and the businesses to facilitate the transition from unregulated or partly regulated enterprises to clean enterprises.

Corruption is simultaneously both the symptom and cause of Cambodia's weak rule of law which is unfortunately leading to human rights violations. For instance, in the matter of business, corruption is leading to general abuses by law enforcement officials (e.g. in matter of fee registration of taxes), lack of access to information or lack of access to remedy (OHCHR 2011, 10-11). The most common human rights violations are land grabbing, poor working conditions, trafficking and slavery (CCHR 2010) which the RGC has started to address for example by raising the minimum wage of garment factory workers and reforming the land titling process.

III.B. Good and bad practices in the Kingdom: Highlighting private initiatives fostering human rights standards implementation into businesses operations

One skill businesses most acutely need in order to ensure the sustainability of their income and profit is the ability to assess and consider the risk of starting, developing, pursuing their operations. The Guiding Principles refer to this as the risk mitigation. Businesses have the responsibility to prevent and address negative impacts to which they are linked (OHCHR 2011, 12). If businesses do not respect human rights or offer effective remedies if their operations result in the violation of human rights, they will increase the risk of attracting bad publicity (OHCHR 2011, 12). The infamous '*name and shame*' strategy also used by the international community vis-à-vis state human rights violators has also been developed towards the biggest companies in order to force them to comply with the minimum human rights standards (Global Exchange 2015; Heng and Roberston 2014). Such advocacy strategies have been used in Cambodia to raise the cases of the workers operating in famous brands' supply chains, and have been successful. For instance, international campaigns against the suppliers of Nike, H&M and Walmart have resulted in the brands acknowledging the violations and, in turn, forcing their suppliers to compensate their workers (Pearlman 2013).

¹⁵ EuroCham is the European Chambers of Commerce in Cambodia; AmCham is the American Chambers of Commerce in Cambodia.

It is poignant at this point to recall that Cambodia was set to be the garment-industry model. A dozen ago, the United Nations' International Labour Organization (ILO) launched the *Better Factories Cambodia* program to manage Cambodia's booming garment trade. This program is the first of its kind in the world and involves Better Factories Cambodia monitors factories, trains management and workers, and provides guidance and advice on factory improvements that help enterprises preserve profits while respecting workers' rights. The program, initiated in 2001 by an agreement between the United States and the RGC, is based on the eight core ILO Conventions which Cambodia has signed¹⁶ (CCHR 2010, 31). The fact that the RGC support this initiative is a big step towards businesses' compliance to ILO Conventions and therefore basic human rights for the workers.

In its 2015 report, BFC highlighted the fact that its online transparency database concurs and encourages businesses operating in Cambodia to translate the ILO Conventions into their internal regulations and their *modus operandi* (BFC 2015, 2-3). Sharing this database with the RGC have conducted to involve the Ministry of Commerce and the Ministry of Labour and Vocational Training to join BFC teams during visits organised to factories from the Low Compliance list¹⁷. The report, along with the BFC website, highlights factories' good practices with the aim of inspiring others to do so.

Factories are not the only businesses in Cambodia to receive a special attention from the RGC and the international community. Indeed, one of the other important area of business in Cambodia is the sugar, sadly commonly known as blood sugar.

Since the start of the '*Everything but Arms*' treaty by the European Union, Cambodia has experienced a "sugar rush" (Ruom 2013). Signed in 2006, the treaty allows for all sugar produced in Cambodia to be exempt from tax when entering the EU which led to the attraction of powerful investors. One such investor is the major Australian bank ANZ (and its Cambodian

¹⁶ ILO Convention 29 – Forced Labor Convention (1930); ILO Convention 87 – Freedom of Association and Protection of the Right to Organise Convention (1948); ILO Convention 98 – Right to Organise and Collective Bargaining Convention (1949); ILO Convention 100 – Equal Remuneration Convention (1951); ILO Convention 105 – Abolition of Forced Labour Convention (1957); ILO Convention 111 – Discrimination (Employment and Occupation) Convention (1958); ILO Convention 138 – Minimum Working Age Convention (1973); ILO Convention 182 – Worst Forms of Child Labour Convention (1999).

¹⁷ Factories with the lowest compliance levels fall into the Low Compliance category. Out of the 14 factories originally included in this group, two made 19 verifiable improvements in recent months and, as a result, one factory has moved off the Low Compliance list. Of the remaining 13 factories, three joined the list in this cycle and 10 remain on the list from the last report (BFC 2015, 1).

subsidiary ANZ Royal) which is accused of doing profit on the back of the suffering of Cambodian farmers¹⁸. Human rights organizations have reported that more than 12,000 people have been forced off their land to make way for this development. Crops have been razed, animals have been shot, homes have been burned to the ground, thousands of people have been left destitute, and some people have been thrown in jail for daring to protest (Ruom 2013). Given no option but to accept inadequate compensations, villagers gave up their homes and farmlands (Ruom 2013).

In response to these gross and systematic human rights violations, the clean sugar campaign has been launched. The campaign gathers affected communities and non-governmental organizations with the objectives of stopping human rights abuses and environmental damage caused by the Cambodian sugar industry; bringing a just resolution for the individuals and communities who have been harmed by the industry; and ensuring that the agricultural development and trade policies benefit smallholder farmers and local communities. In 2014, the campaign has found traction with Coca-Cola and PepsiCo which both pledged “zero tolerance” for land grabbing in their supply chains, and which are conducting audits of their supply chains (Sochua 2014).

In addition, in March 2013, a lawsuit was filed in the United Kingdom against Tate & Lyle, one of the world's biggest sugar companies. No less than two hundred Cambodian farmers are suing the company for violating their rights under Cambodian law (Ruom, 2013). In April 2014, this action it was followed by a call for action from prominent Cambodian National Rescue Party MP Mu Sochua to the United Kingdom (Sochua, 2014). The latest development in this case indicates that Cambodian farmers have refused to settle with the company and the lawsuit is accordingly set to be fought in the UK courts.

These past examples highlight that political will from some of the most powerful companies can successfully lead to tackle human rights violations and clean up the relationship between business and human rights. Conversely, without political will from the rest of the most powerful companies, labor activists have reported many factories in which occur serious human rights violations (O’Keeffe 2013).

¹⁸ More information on <http://www.cleansugarcampaign.net/>.

IV. Conclusion

With multinational corporations being more and more sensitive to their need to meet human rights standards, there is hope that their attitude may trickle down to their suppliers and to local SMEs in the ASEAN member states. Global businesses have also the power to "level up" the human rights standards set in place by national laws. Therefore, they will be a key player in implementing the ASEAN practice of the Guiding Principles on business and human rights. The fulfillment of the AEC could not be completed without an agreement, or at least common guidelines, between all the ASEAN member states regarding the way of doing business and the respect of human rights basic principles. This is a need for which civil society organisations have been advocated the past months. Nevertheless, such document is not on the ASEAN secretariat's agenda.

The case study of Cambodia highlights the difficulty of developing countries to foster their economic development while ensuring the fulfillment of their citizens' rights. It seems that there are too many competing considerations that draw states away from their obligation of defending the poorests' basic needs. And this is the main reason that regional guidelines within the AEC would lower the risk of doing business in the ASEAN while reducing -or at least not creating new- human rights violations linked to companies' modus operandi.

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