

CAMBODIA: COMMUNITIES IN PROTRACTED STRUGGLE AGAINST CHINESE SUGAR COMPANIES' LAND GRAB



The landscape in the concession area is being permanently altered as the companies convert rice fields, forests, and streams into vast seas of sugarcane. (Photo: Prame community)

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Tens of thousands of people have been affected by a 2011 land grab in the Cambodian province of Preah Vihear in which five Chinese-owned companies were granted land concessions totaling more than 40 thousand hectares. Families have lost the means to produce food and earn a living as the companies have converted rice fields, forests, pasture land, and streams into sugarcane fields. With the enclosure within the concessions of the sites of at least 19 ancient temples, Cambodia has also lost part of its cultural heritage. Affected communities have engaged in sustained resistance to the destruction of their livelihoods and culture. They have called for the concessions to be cancelled and the land returned to them since the arrival of the companies. So far, they have managed to slow but not stop the onslaught from the concessions – but they have not given up. This brief exposes what the land grabs in Preah Vihear have entailed for communities over the past six years: human rights violations, lost livelihoods and cultural and ecological devastation.

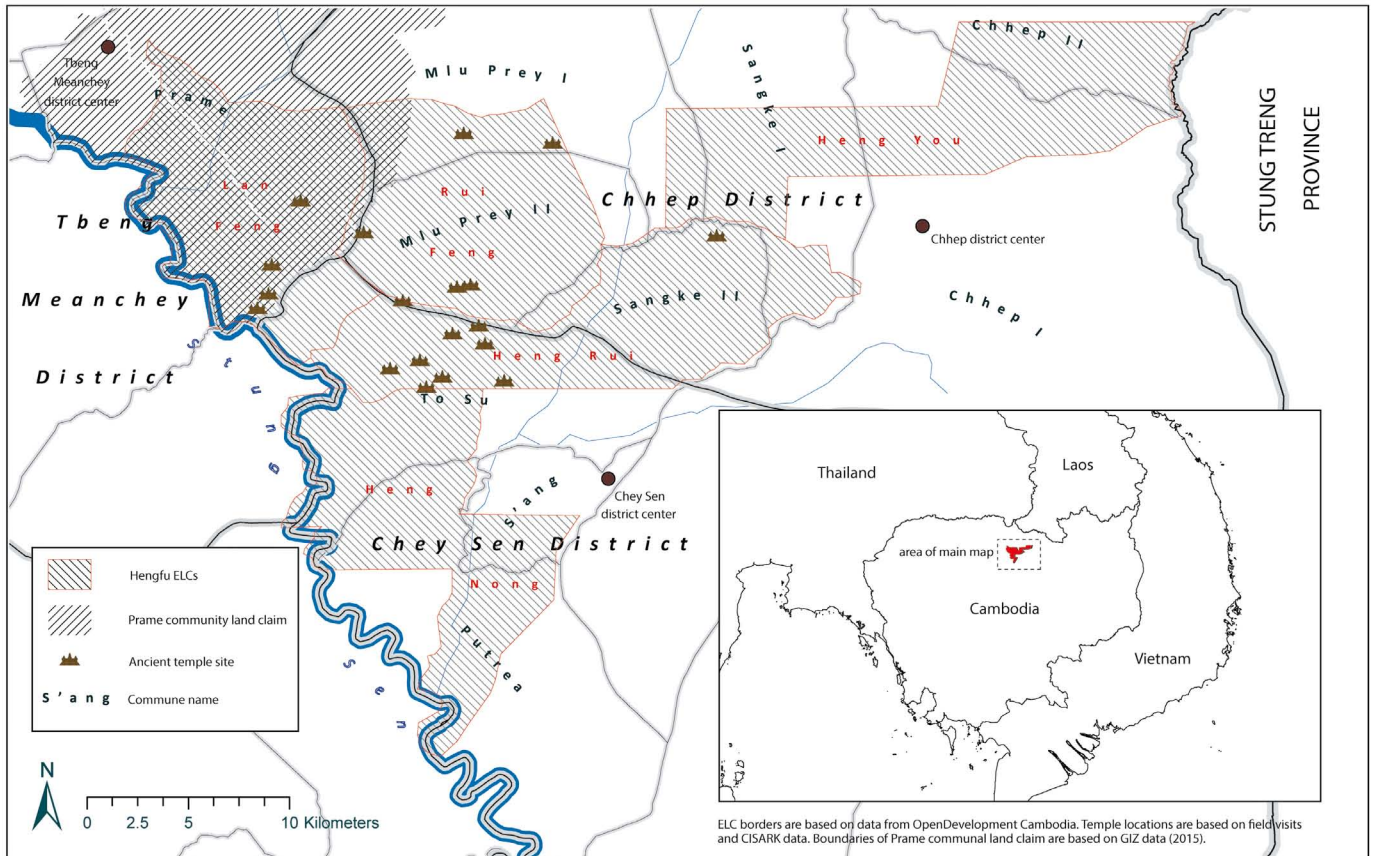
Five companies, all thought to be subsidiaries of a single Chinese company in partnership with another, have economic land concessions (ELCs) covering about 36,000 hectares in the province of Preah Vihear, in northern Cambodia.¹ ELCs in Cambodia are, according to Sub-Decree Number 146 on Economic Land Concessions, areas of land rented by the government to private firms for agricultural or agro-industrial exploitation. Rui Feng, one of the five companies, has built in its concession what it claims is a US\$360 million sugar refinery, and one of the largest in Asia, initially capable of producing 2,000 tons of refined sugar per day.²

The first ELCs in Cambodia were granted in 1995. By 2012, they covered more than eleven percent of the surface area of Cambodia, with mining concessions covering almost as much.³ ELCs are supposed to be located on state-owned land serving no public purpose. However, they frequently enclose people's houses and farmland, and invariably land that has been used by communities to support their livelihoods in different ways, often for generations.⁴ The government has touted ELCs as a mechanism for bringing about development, yet they have destroyed local livelihoods and what jobs have been created have often gone to people from outside the local area. Cambodian ELCs have been consistently condemned by human rights organisations

and by the United Nations Cambodia Office of the High Commissioner for Human Rights.⁵

In 2012, recognising the enormous detrimental impacts ELCs were having on communities, the Prime Minister announced a moratorium on the granting of new ELCs.⁶ He also announced what became known as the leopard skin strategy, which included reducing the size of ELCs by granting individual titles to families for land within the concessions and setting aside some land for future generations. In addition, he called for review of all existing ELCs and cancellation of those not complying with the law or the concession contract. These measures were all formally articulated in *Order 01 on Measures for Strengthening and Increasing the Effectiveness of the Management of Economic Land Concessions*, or simply Order 01.

Problems associated with ELCs have continued following the implementation of Order 01,⁷ and this is especially true in the case of the sugarcane concessions in Preah Vihear. The communities affected by these five concessions remain defiant in their struggle against the companies and their concessions, resisting the destruction of their livelihoods and culture which continues unabated. They do this within the context of an overall worsening of the human rights environment in Cambodia.⁸



Map: the Chinese sugarcane concessions in Preah Vihear province.

The five Chinese companies and their sugarcane concessions

According to research conducted in 2016 by an international NGO,⁹ the five companies (Heng Nong, Heng Rui, Lan Feng, Heng You, and Rui Feng) appear to be subsidiaries of a single company, Hengfu Group Sugar Industry (Hengfu), in partnership with Zhanjiang Huada Trading Company Limited (Huada). Both Hengfu and Huada are based in Guangdong, China.¹⁰ The five share a single office in Phnom Penh, and the contracts that have been found for three of the companies show that the concessions were all granted on the same date – 8 November 2011.

Given that China is Cambodia's largest source of foreign direct investment by far, these concessions are of paramount importance for the Cambodian government. They are a sign of the economic and diplomatic ties between the two countries and Cambodia's eagerness to attract Chinese companies to invest in local agro-industry.¹¹

The same NGO found that both Hengfu and Huada are primarily owned by, and receive financing from, Chinese entities, both state-owned and private. But they have also received loans from foreign banks, including BNP Paribas (France) and Korea Development Bank

(South Korea). In addition, Overseas-Chinese Banking Corporation (OCBC), a high-profile bank in Singapore, winner of multiple enterprise awards and member of the UN Global Compact, owns shares in a company named Avic Trust, which in turn owns shares in Huada.

The concessions initially totalled 42,422 hectares, greatly exceeding the legal limit of 10,000 hectares for a single entity. The leopard skin strategy, announced just one month after the companies' operations began in April 2012, was implemented in many of the affected villages, and the concessions were reduced in size. According to people who viewed presentations of them, separate reviews were later conducted of at least some of the five ELCs, and serious violations of the companies' contracts were identified. But reviews did not result in further significant changes in the size of the concessions. There has been no official word of the reviews, let alone an official report. In total, 6,660 hectares have been excised from the original area of the five concessions, according to available documents,¹² though community members claim that much of the excised land has gone to local officials working with the companies.

The companies reportedly hope to sell sugar primarily to the European Union, and also to India and China.¹³ The sugar-processing factory was opened in April 2016.

After an initial run, there was a period of inactivity, reportedly due to shortage of sugarcane and other factors,¹⁴ but it began operations again in February 2017. In the future, the factory is supposed to produce ethanol, compost fertiliser, and electricity from biomass, in addition to sugar.¹⁵

Bitter taste for Preah Vihear communities

The Cambodian government has justified ELCs in general on the basis that they are supposed to bring employment and generate state revenue. Those are primary purposes identified in Sub-Decree number 146 on Economic Land Concessions. They are part of governmental efforts to transform small-scale farmer landscapes into agro-industrial ones. In practice, this is a transformation that is achieved at great human cost, with little recognisable benefit to communities in the concession areas.¹⁶

As shown in the map above, the five sugarcane concessions cover land in ten communes¹⁷ in Chhep, Chey Sen, and Tbeng Meanchey districts in Preah Vihear province, though these are not the only communes where people are affected by them. Field visits in March and April 2017 revealed that the companies had already cleared land within 25 villages in these communes. According to official commune database data, the total population of the 25 villages was 22,934 in 2012.

Not long ago, almost all of the inhabitants of the entire area of these concessions and that surrounding it were Kuy,¹⁸ one of Cambodia's most populous indigenous peoples. Today, as a result of migration and cultural assimilation, most people in these villages self-identify as Khmer, which is the majority ethnic group in Cambodia, although most have Kuy heritage. The populations of seven villages overlapped by the concessions, however, still strongly identify as Kuy.¹⁹

Cambodian law allows indigenous communities to acquire collective titles for their lands, but only at the level of individual villages, and then only for certain types of land: cultivated land, residential land, spirit forests, burial forests, and land reserved for future expansion of agriculture. Obtaining collective title is extremely difficult and currently only 14 indigenous communities nationwide have succeeded in doing so.²⁰ The security the titles provide is also limited.²¹ Nonetheless, communities in four of the seven Kuy villages have begun the process of getting titles. In Prame commune, the communities in three villages submitted their initial applications as early as 2009. In August 2012, just four months after the companies began their operations, their self-identification as indigenous communities was formally recognised.²² In February 2014, they passed the second

hurdle, recognition as legal entities.²³ But years later, they are still waiting for authorities to accept preliminary maps of their community territories.²⁴ As can be seen in the map above, there is considerable overlap between their land claims and the concessions. Still lacking titles, these communities submitted a request for interim protection of their communal land, but such protection has been denied.

In most of the villages overlapped by the concessions, indigenous and non-indigenous alike, families have lost land they had cultivated as well as land set aside for cultivation in the future and land used for other purposes. A situation common in many villages was the company encircling a family's land with sugarcane, leaving no access to the land and telling them they would be fined or arrested if the sugarcane burned. Next, the company offered a small amount of compensation and the family felt they had no option but to give up their land and accept the compensation. Families ended up receiving as little as the equivalent of US\$250 per hectare. Even the individual family plots titled under the government's leopard skin strategy were not safe from the companies. In four villages, people with such titles reported being forced to sell their land to the company, and in all four, people also reported the company seizing some titled land without paying anything.²⁵

Livelihoods of both Kuy and Khmer communities depend on more than the small individual plots that were titled under the leopard skin strategy or that authorities have been willing to recognise since. Almost all families grow rice, and the concessions include some of the most important rice producing areas in Preah Vihear province.²⁶ But families also depend on forest areas for resin tapping and collection of other non-timber forest products, and on streams for fish. Most significantly, a sizeable number of families in the villages earn most of their cash income by tapping ancient *Dipterocarpus* trees that grow wild in the forest for the resin. Most families raise cattle or buffalos, letting them graze in collectively used spaces.²⁷ All these sources of livelihood are threatened as forests, streams, ponds, rice fields, and open areas have been converted into sugarcane fields. The companies have cut tens of thousands of resin trees, telling people they would cut the trees whether or not they accepted the minimal compensation offered.²⁸ As ponds and streams have disappeared, so have aquatic animals which people relied on for food in the past. Much of the land used for grazing cattle and buffalos is gone.²⁹ In Chey Sen, community members even reported that a Chinese company foreman shot and killed a resident's buffalo for food (ultimately paying compensation for it). Sophal, a



One of the communities confiscated some of the companies' bulldozers and kept them in their village.

(Photo: Mlu Prey II community)

woman from one of the affected villages in Chhep district, said:

"Our livelihoods have significantly been affected by the clearing of the forest, no more forest products can be collected. We lost our time by spending it monitoring the companies who are demolishing our young rice fields. Our rice yields are also reduced because of the lack of land for agriculture, and the cost for local rice has also reduced because the company can also grow rice and sell it at a cheaper price."

Community members have complained about harmful chemicals used on the sugarcane fields flowing into streams they rely on for water.³⁰ And in March 2017, around the same time as the factory began processing sugar again, fish began dying in large numbers in the Stung Sen river downstream of it. Community members blamed effluence from the company's operations.³¹ While authorities initially denied that the company was to blame, eventually they recognised it.³² O Preal, a stream into which waste from the factory flows directly and which in turn flows into Stung Sen, has no more aquatic life and is considered essentially dead.³³

The impacts of the concessions on food security are significant. People are losing access to wild-growing foods, and the environmental destruction is undermining the food system far beyond the concessions. The poisoning of fish is affecting people living both inside and downstream from the ELCs. The loss of important rice growing areas will affect overall rice production in the province. In exchange, the companies produce sugar for export, contributing nothing to food production for the people of Preah Vihear or Cambodia.

While local livelihoods have been impacted by the concessions, few people overall from the ten communes are employed by the companies. In three villages, large numbers of community members have worked for the company; some explained that they had nothing else to do. Elsewhere, just a handful per village have worked for the company. Even in these three villages, opportunities for employment have decreased over time. The companies' need for labour has been greatest during early operations such as clearing land. In contrast, harvesting sugarcane, for example, requires relatively little labour since most is done using machinery.

People in many villages have expressed their reluctance to work for the companies. Some local residents

Violations of International and Cambodian Law

The Constitution of the Kingdom of Cambodia states that Cambodia shall “recognise and respect [...] the covenants and conventions of human rights.” Yet these five concessions entail egregious violations of the Covenant on Economic, Social, and Cultural Rights (ESCR) and the Covenant on Civil and Political Rights (CPR), to which Cambodia is signatory. Community members have been evicted from their land, their livelihoods and culture have been destroyed, and their efforts to resist have been criminalised.

The UN Declaration on the Rights of Indigenous Peoples (UNDRIP), which Cambodia voted in the UN General Assembly to ratify, clarifies the way rights stipulated in other human rights instruments are to be interpreted in the case of indigenous peoples. A central right outlined in UNDRIP is the right of indigenous peoples to their territories and resources. Article 10, for example, states that “Indigenous peoples shall not be forcibly removed from their lands or territories,” and Article 26 that “Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired”. UNDRIP also stipulates that indigenous peoples’ free, prior and informed consent (FPIC) must be secured for projects or policies that may impact on them. But the communities in Preah Vihear received no information about the concessions prior to the arrival of the bulldozers, and the communities’ territories have been obliterated.

The 2001 Cambodian Land Law limits the total area of ELCs that can be granted to a single entity to 10,000 hectares. It is clear that the five subsidiary companies were registered in order to flout this limitation. Protections of individual and communal land rights in the law have also been ignored.

Article 4 of Sub-decree number 146 on Economic Land Concessions (issued in 2005) states that environmental and social impact assessments and public consultations with local residents must be completed before land can be granted as an ELC, that there may be no involuntary resettlement of lawful landholders, and that access to private land must be respected. None of these provisions has been respected.

said they are not used to working as wage labourers, and some that they did not want to work for the companies because they were angry at them for taking their land.³⁴ Current and former workers from six of the villages declared they had not been paid on time, and sometimes had not been paid in full.

Observation suggests that most of the workers employed by the companies come from other provinces. Some of them reported that they had ended up going home without compensation.³⁵ In February 2017, the situation became so severe that workers reportedly started selling company diesel because they were not being paid their salaries. At least two people accused of selling the stolen diesel were severely beaten by employees of Heng Rui, one of the companies.³⁶ Workers have also been beaten on other occasions.³⁷ Overall, the companies appear to have a systemic pattern of flouting labour laws to keep operating expenses low. In 2014, for example, local police found Lan Feng, one of the companies, to be employing child labour as young as 12 years old.³⁸

At least one sacred forest has disappeared, to be replaced by sugarcane.³⁹ As shown in the map above, the concessions also swallow up the sites of at least 19 ancient temples. Field observations revealed that the

companies ploughed and planted sugarcane around at least 15 of them. In most cases, they left just one or two hectares for each temple. At one site, there was evidence that the company had ploughed over the remains of the temple and planted sugarcane on top of it one time, though the temple site itself is now protected by guards.⁴⁰

Demanding back what is theirs

The communities affected by the sugarcane concessions are engaged in a sustained and determined challenge to the five companies, though there is some variation among villages. And while there is no formal organisation, the communities are increasingly coordinating across the ten communes.⁴¹ Short-term and specific demands vary, but, overall, the communities are calling for the concessions to be cancelled and the land returned to them.⁴²

The communities have used diverse tactics in resisting the sugarcane companies. In most cases, they began by confronting the bulldozer and backhoe drivers clearing their land, and that led to negotiations with local authorities.⁴³ They have also filed written complaints against the companies to provincial officials and



Community members physically blocking the clearing of their land. (Photo: Sangke II community)

national government institutions, though to little avail.⁴⁴ Communities in Prame commune have taken to the Preah Vihear provincial court, filing complaints against the companies and against bulldozer drivers working for one of them,⁴⁵ but the court has not acted on the complaints.

Community members have also been outspoken in media interviews, press conferences, radio appearances, and public forums.⁴⁶ They have made their views known, but there has been no observable impact on the companies' operations.

In one village, residents complained initially but were quiet after they received some compensation, which they felt forced to accept. In all other directly impacted villages, struggles against the company – sometimes involving a few people, sometimes many – have been ongoing.

In most villages, direct action has been an important part of the communities' strategy from the beginning. They have been able to force bulldozer and backhoe drivers working for the companies to stop ploughing temporarily by surrounding them and, in several cases,

bringing the bulldozers back to their village.⁴⁷ In an incident in Chey Sen district in 2016, people from six villages blocked a road and forced company trucks to stop, to force negotiation of a resolution.⁴⁸ People in all three districts have camped out on their land to make it easier to guard against clearing by the companies, clearing by the companies, and in one case the Prame communities stayed for three months, from January to March, 2014.⁴⁹ On two occasions, they have pulled out sugarcane that the company planted on their rice fields.⁵⁰ But the direct actions have come with a high price, and in several cases charges were filed in the Preah Vihear provincial court against community members who were involved.⁵¹

When nothing else has worked, people have turned to the local spirits. Twice they have held ceremonies to call upon the spirits to curse the companies, in May 2015⁵² and again February 2017.⁵³

Although the companies' sugarcane fields still occupy much of the communities' land and clearing of land by the companies continues, the resistance has produced some results. In March 2013, in Prame commune, one of the companies agreed to stop clearing residents' land

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Minutes of a meeting held on 16 March 2013 in Prame commune, in which a representative of Rui Feng promised that the company would "absolutely suspend clearing of concession land that impacts on residents' land" and "clearly resolve [the problems] for the residents before continuing to clear land". It was immediately broken and the company has continued to clear land since.

until a resolution with the communities was reached (see the document below). And in January 2015, following the seizing of two bulldozers by communities in Prame, the companies promised to cease clearing temporarily.⁵⁴ Neither promise was ever upheld.

Also in Prame, Preah Vihear's single member of parliament visited the site where one of the companies had ploughed over the ruins of an ancient temple and unearthed ancient artefacts. He instructed officials to protect the site and they painted red marks on trees to

designate the site. Soon after, however, the company began ploughing the off-limits area again.

In Sangke II commune, in Chhep district, while not conceding the larger struggle, community members demanded that 1,549 hectares of land be set aside for a community forest. Although government authorities demonstrated a willingness to accede to the demand, however, no official decision has been announced yet. Another 51 hectares that people in one village in the commune had asked to have set aside for them was nearly completely cleared and planted in sugarcane by the company.

Residents in To Su commune, Chey Sen district, reported that following the road block mentioned above, government authorities measured an area of 694 hectares to be set aside for the community in one village and 1,535 hectares for another. However, the company has continued to clear the land. The community in one village in Putrea commune was able to reoccupy 87 hectares of land cleared by Heng Nong company.

Finally, perhaps in recognition of the conflicts with communities, the Prime Minister stated in April 2016, when attending the opening ceremony of the sugar factory, that the companies should not receive additional land as they have requested, but should instead buy sugarcane from community members who plant it on their own land.⁵⁵

What is the future of these concessions?

The Chinese government has attempted to regulate the environmental and social impacts of Chinese overseas investments, particularly since 2013.⁵⁶ These efforts do not seem to be having a significant effect in this case, reinforcing the conclusion that the so-called responsible agricultural investment approach is not

stopping land grabbing.⁵⁷ Communities in Preah Vihear have been left to apply pressure themselves through petitions, media work, direct action, and other means to slow the land grab and eventually drive the investors out. They have succeeded in exposing land grabs for what they really are: violent, devastating, and unlawful.

Some of the residents in affected villages think the companies are in a precarious situation. They note that problems faced by workers trying to get paid have increased, as have incidents of workers being beaten by people working for the companies. They say that community members who willingly sold or rented land to the companies have not yet received payment for those transactions. As a consequence, those community members are having second thoughts about the companies and want their land back. Local authorities working for the companies have also been heard complaining about not being paid in full for their services.⁵⁸ In addition, the 2017 fish kill-off in Stung Sen river,⁵⁹ a major tributary of the Tonle Sap lake that is the lifeblood of the country, and itself critical to Preah Vihear province, has brought unwanted negative attention to the concessions.

As of this writing, the five companies have not finished clearing their entire concessions, which have been downsized by approximately 15% from the area that was originally granted to them. And they are not clearing land as vigorously as they did previously. Perhaps this is a result of community resistance, perhaps of fear of the spirits the communities called upon in February, perhaps of anticipation of the upcoming local elections, held in June 2017.

The rainy season, when in past years the companies have suspended their clearing operations, will also buy the communities some time to plan their next moves.

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