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## Consequences of Cambodia's Rubber Boom: Assessing the Governmental, Environmental, and Human Rights Violations in the Industry's Current Regulatory Framework

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# CONSEQUENCES OF CAMBODIA'S RUBBER BOOM: ASSESSING THE GOVERNMENTAL, ENVIRONMENTAL, AND HUMAN RIGHTS VIOLATIONS IN THE INDUSTRY'S CURRENT REGULATORY FRAMEWORK

ROSS NATIVIDAD\*

## INTRODUCTION

Rubber production in Cambodia, stimulated by the creation of economic land concessions (“ELCs”) in the 1990s, is a growing industry that is tapping the country's vastly forested lands.<sup>1</sup> Rubber is now the second largest agricultural export, behind only rice, and exports generated an estimated \$200 million in 2011.<sup>2</sup> Despite the relatively late and erratic development of rubber plantations in Cambodia, they have become one of the driving forces behind the country's emergent economy.<sup>3</sup>

The government has high hopes for the industry. It plans to export more than 1 million tons of rubber and employ a workforce of 1.3 million by 2018.<sup>4</sup> This projected expansion of the rubber industry, according to current Prime Minister Hun Sen, will boost gross domestic product (“GDP”), alleviate unemployment, and reduce rural poverty.<sup>5</sup> Other sources, however, are not as optimistic and cite a number of governmental, environmental, and human rights violations associated with this booming industry.

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<sup>1</sup> Neou Vannarin & Simon Lewis, *Hun Sen Shares Vision of Rubber Plantation Boom*, THE CAMBODIA DAILY (Feb. 22, 2013), <http://www.cambodiadaily.com/archives/hun-sen-shares-vision-of-rubber-plantation-boom-11253/> [https://perma.cc/DS7T-KLQF].

<sup>2</sup> Sok Serey, *Rubber Gives New Bounce to Economy*, RADIO FREE ASIA (Apr. 12, 2012), <http://www.rfa.org/english/news/cambodia/rubber-04122012174332.html> [https://perma.cc/TK6V-EEBE].

<sup>3</sup> Amy Kaslow, *Searching for Economic Hope in Cambodia*, FORTUNE (Aug. 2, 2013), <http://fortune.com/2013/08/02/searching-for-economic-hope-in-cambodia/> [https://perma.cc/BA6Y-JAUW].

<sup>4</sup> See Vannarin & Lewis, *supra* note 1.

<sup>5</sup> *Id.*

Disregard for regulatory framework, forced evictions, inadequate compensation for workers, and destruction of protected property are some of the harms alleged by civil society organizations.<sup>6</sup>

Because the regulatory framework governing rubber plantation operations has been linked to a number of abuses, current laws and policies must be re-examined and improved to safeguard the Cambodian people and environment from adverse effects of the industry.

Part I of this Note examines the historical development and current status of Cambodia's rubber industry—tracing its relatively late and sporadic development from the French colonial period to the current era dominated by ELC companies. This section also discusses the regulatory framework governing the industry, which includes laws and policies enacted by the Ministry of Agriculture, Forestry and Fisheries ("MAFF").

Part II describes recent trends and future projections in the country's rubber industry. This part also discusses technical concerns within the industry. Moreover, this section exposes specific governmental, environmental, and human rights violations linked to the industry. For example, reports from civil society groups show how certain rubber plantations exceed their size restrictions,<sup>7</sup> engage in "land grabbing" practices, and subsequently displace thousands of indigenous families.<sup>8</sup>

Finally, Part III analyzes the current efforts toward combating the alleged abuses and recommends new strategies to strengthen the current laws and policies already in place. Since the government has indicated plans to draft new laws specifically tailored to the industry,<sup>9</sup> it has an opportunity to minimize, and perhaps even prevent, the detrimental effects of rubber plantations.

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<sup>6</sup> INT'L FED'N FOR HUMAN RIGHTS, CAMBODIA LAND CLEARED FOR RUBBER RIGHTS BULLDOZED: IMPACT OF RUBBER PLANTATIONS BY SOCFIN-KCD ON INDIGENOUS COMMUNITIES IN BOUSRA, MONDULKIRI 6–7 (2011) [hereinafter FIDH], available at [http://www.fidh.org/IMG/pdf/report\\_cambodia\\_socfin-kcd\\_low\\_def.pdf](http://www.fidh.org/IMG/pdf/report_cambodia_socfin-kcd_low_def.pdf) [<https://perma.cc/PYB3-UNE3>].

<sup>7</sup> COMPLAINT CONCERNING IFC INVESTMENT IN DRAGON CAPITAL GROUP AND VEIL 6 (2014) [hereinafter Complaint Concerning IFC Investment], available at <http://www.cao-ombudsman.org/cases/document-links/documents/ComplainttoCAOreDragonCapital-HAGL.pdf> [<https://perma.cc/QV2K-6XVP>].

<sup>8</sup> FIDH, *supra* note 6, at 14.

<sup>9</sup> Rann Reuy, *Rubber Draft Law Addresses Regulatory Holes*, THE PHNOM PENH POST (Apr. 26, 2013), <http://www.phnompenhpost.com/business/rubber-draft-law-addresses-regulatory-holes> [<https://perma.cc/A84C-ZLPZ>]; see also REPORT ON RUBBER SECTOR 2013 AND ACTION PLANS (2014), available at <http://bit.ly/1qsmB4U> [<https://perma.cc/2B5E-WQAJ>].

## I. HISTORICAL DEVELOPMENT OF CAMBODIA'S RUBBER INDUSTRY

A. *French Colonial/Pre-ELC Era*

Rubber production in Cambodia began relatively late compared to neighboring regions and other countries in French Indochina.<sup>10</sup> The country's first plantation was built in 1911 in Prey Nop, Kampot, which comprised about 150 hectares ("ha").<sup>11</sup> The next two decades witnessed a "rubber boom"<sup>12</sup> in which French investors set up large-scale plantations in Kampong Cham, Kampong Thom, and Kratie provinces.<sup>13</sup> The basaltic red soils native to these provinces proved to be suitable for rubber production because they had high water-storage capacities and produced high yields despite a long dry season.<sup>14</sup> The total area of plantations grew to 27,000 ha<sup>15</sup> during the "rubber boom" and produced an estimated 13,000 metric tons in 1937.<sup>16</sup>

The Japanese invaded French Indochina in 1940, and, as a result, Cambodian rubber production stalled throughout World War II.<sup>17</sup> After the war, production resumed and output eventually matched and even exceeded pre-war levels, despite the reduced number of plantation workers.<sup>18</sup> In 1949, the first rubber union was formed, and its leaders focused on improving the living standard of plantations workers.<sup>19</sup> Although Cambodia gained its independence in 1953, the industry remained largely controlled by French companies.<sup>20</sup> Private and state-owned

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<sup>10</sup> Mitch Aso, *Rubber and Race in Rural Colonial Cambodia (1920s–1954)*, 12–13 SIKSACAKR. 127, 127 (2010–11), [http://www.academia.edu/5042707/Rubber\\_and\\_Race\\_in\\_Rural\\_Colonial\\_Cambodia](http://www.academia.edu/5042707/Rubber_and_Race_in_Rural_Colonial_Cambodia) [https://perma.cc/VG7Q-8T2Y].

<sup>11</sup> *Id.* at 128.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> See YEM DARARATH, NETH TOP & VUTHY LIC, THE ECONOMY AND ENVIRONMENT PROGRAM FOR SOUTHEAST ASIA, RUBBER PLANTATION DEVELOPMENT IN CAMBODIA: AT WHAT COST? 12 (2011), available at <http://www.eepsea.org/pub/tr/Rubber%20Report-Cambodia-Yem%20Dararath-et-al-Technical-Report.pdf> [https://perma.cc/XAT9-YH7D].

<sup>15</sup> Martin Murray, *White Gold or White Blood? The Rubber Plantations of Colonial Indochina, 1910–40*, 19 J. PEASANT STUD. 41 (Special Issue) (1992).

<sup>16</sup> Aso, *supra* note 10, at 128.

<sup>17</sup> *Id.* at 135.

<sup>18</sup> *Id.* at 136.

<sup>19</sup> *Id.*

<sup>20</sup> SAING CHAN HANG, THE ASIA-PACIFIC RESEARCH AND TRAINING NETWORK ON TRADE, EXPORT COMPETITIVENESS OF THE CAMBODIAN RUBBER SECTOR RELATIVE TO OTHER GREATER MEKONG SUB-REGION SUPPLIERS: A SIMPLE DESCRIPTIVE ANALYSIS 5 (2009),

plantations also began emerging, and that year total production surpassed 20,000 metric tons.<sup>21</sup>

The rubber industry was again halted due to the escalating conflict between the United States and Vietnam and the takeover by the Khmer Rouge.<sup>22</sup> In 1979, production declined to fewer than 10,000 tons,<sup>23</sup> and the total area of plantations was reduced to nearly 50,000 ha.<sup>24</sup> The fall of the Khmer Rouge and ensuing Vietnamese occupation in the 1980s brought about a centralized economic regime that nationalized all rubber plantations.<sup>25</sup> During this time, the industry recovered with technical assistance provided by the Soviet Union.<sup>26</sup>

The Vietnamese withdrew from Cambodia in 1989, and rubber plantations were reorganized into seven state-owned companies (Chup, Peam Cheang, Krek, Memut, Snuol, Chamkar Ondoung, and Boeng Ket), two privately owned plantations, and several smallholder-household plantations.<sup>27</sup> State-owned plantations would eventually comprise over sixty-three percent of the industry, as opposed to the thirty-seven percent that were privately owned.<sup>28</sup> The Cambodian economy relied heavily on state-owned industrial crops, in which rubber contributed an average forty-one percent of GDP from 1994 to 2003, and exports averaged 45,000 tons annually.<sup>29</sup>

## B. *ELCs and Their Legal Framework*

### 1. The Rise of ELCs

Rubber plantations were driven by socialist economic policies for much of the 1980s and early 1990s.<sup>30</sup> However, political regime changes

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available at <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.584.8111&rep=rep1&type=pdf> [<https://perma.cc/XF3C-USA8>].

<sup>21</sup> Aso, *supra* note 10, at 136.

<sup>22</sup> HANG, *supra* note 20, at 6.

<sup>23</sup> JOCELYNE DELARUE & NAOMI NOËL, L'AGENCE FRANÇAISE DE DÉVELOPPEMENT, DEVELOPING SMALLHOLDER RUBBER PRODUCTION: LESSONS FROM AFD'S EXPERIENCE 6 (2008), available at <http://www.afd.fr/webdav/site/afd/shared/PUBLICATIONS/RECHERCHE/Evaluations/Evaluation-capitalisation/26-VA-rapport-cambodge-evaluation-capitalisation.pdf> [<https://perma.cc/CUG6-87TC>].

<sup>24</sup> DARARATH, TOP & LIC, *supra* note 14, at 13; HANG, *supra* note 20, at 6.

<sup>25</sup> HANG, *supra* note 20, at 6.

<sup>26</sup> *Id.*

<sup>27</sup> DARARATH, TOP & LIC, *supra* note 14, at 13; HANG, *supra* note 20, at 6.

<sup>28</sup> DARARATH, TOP & LIC, *supra* note 14, at 2.

<sup>29</sup> *Id.* at 13–14.

<sup>30</sup> *Id.* at 14.

and the liberalization of the national economy have shifted the industry to a more market-based approach.<sup>31</sup> This is evidenced by the government's implementation of the "Rectangular Strategy."<sup>32</sup> Moving away from state-run plans, the policy aims to privatize rubber plantations and promote smallholder cultivation.<sup>33</sup>

In 1993, the government began releasing state-owned rubber plantations to non-government owners, self-managed plantation enterprises, rubber industry associations, and other private actors.<sup>34</sup> Liberal legislative acts, such as the 1994 Investment Law, 1997 Law on Taxation, 1997 Law on Foreign Exchange, and 1997 Labor Law, were adopted that ultimately allowed foreign investors to control 100 percent of the shareholding in a firm.<sup>35</sup> The government also attracted foreign investment through relaxed business restrictions, which included low corporate income taxes, favorable export quotas, formation of special economic zones, and low labor unit costs.<sup>36</sup>

The creation of ELCs contributed to the full retreat of the public sector from the rubber industry. Administered by the MAFF, ELCs are long-term leases given to domestic and foreign companies that use their land grants for agro-industrial purposes like sugar, cassava, acacia, and rubber production.<sup>37</sup> By 2007, MAFF granted approximately 1 million ha of ELCs, which were largely located on indigenous communities' land.<sup>38</sup> Although the 1993 Cambodian Constitution recognizes the right to enjoy private land ownership, the government may deprive citizens of their property on the basis of public interest so long as the government pay

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<sup>31</sup> FIDH, *supra* note 6, at 12.

<sup>32</sup> ROYAL GOVERNMENT OF CAMBODIA, RECTANGULAR STRATEGY FOR GROWTH, EMPLOYMENT, EQUITY AND EFFICIENCY, PHASE III (2013), *available at* [http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/genericdocument/wcms\\_237910.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/genericdocument/wcms_237910.pdf) [<https://perma.cc/9PDG-G9QT>].

<sup>33</sup> ROYAL GOVERNMENT OF CAMBODIA, 2006–2010 NATIONAL STRATEGIC DEVELOPMENT PLAN 46 (2005), *available at* <http://www.paris21.org/sites/default/files/cambodia-nsdp-2006-2010.pdf> [<https://perma.cc/XM8Y-X83K>].

<sup>34</sup> DARARATH, TOP & LIC, *supra* note 14, at 14.

<sup>35</sup> FIDH, *supra* note 6, at 12.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 13.

<sup>38</sup> See MEN PRACHVUTHY, ROYAL UNIVERSITY OF PHNOM PENH, LAND ACQUISITION BY NON-LOCAL ACTORS AND CONSEQUENCES FOR LOCAL DEVELOPMENT: IMPACTS OF ECONOMIC LAND CONCESSIONS ON THE LIVELIHOODS OF INDIGENOUS COMMUNITIES IN NORTHEAST PROVINCES OF CAMBODIA 6 (2011), *available at* [http://www.landgovernance.org/system/files/Cambodia\\_landacquisition\\_impacts\\_indigenouspeople.pdf](http://www.landgovernance.org/system/files/Cambodia_landacquisition_impacts_indigenouspeople.pdf) [<https://perma.cc/Q66B-37AU>].

fair and just compensation.<sup>39</sup> In several cases, the granting of ELCs has led to social unrest, destruction of rural villages, and displacement of families without valid titles to their respective lands.<sup>40</sup>

## 2. The Legal Framework of ELCs

The 2001 Land Law and subsequent government subdecrees provide the legal framework behind the land concessions. Land is divided into five categories: state public property, state private property, private individual property, monastery property, and collective indigenous community property.<sup>41</sup> ELCs can be granted on state private property,<sup>42</sup> which is land that can be privately possessed, owned, and sold.<sup>43</sup> No sale of private land may be made in the absence of a subdecree.<sup>44</sup> State public property refers to land of natural origin or land intended for public interest, such as forests, rivers, and lakes.<sup>45</sup> ELCs cannot be allowed on state public property; however, distinctions between the two categories of land are often imprecise due to incomplete mapping or inadequate land identification.<sup>46</sup> The MAFF may grant ELCs larger than 1,000 ha, but total coverage area cannot exceed 10,000 ha.<sup>47</sup>

Environmental and social impact assessments must also be fulfilled before production begins.<sup>48</sup> For example, MAFF is expected to evaluate the effects on the living standards of surrounding communities and ensure that lawful land holders do not involuntarily resettle.<sup>49</sup> Furthermore, concessionaires must start operations within one year of the ELC being

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<sup>39</sup> FIDH, *supra* note 6, at 26.

<sup>40</sup> VALUE CHAIN UNIT, CAMBODIA MINISTRY OF COMMERCE, RUBBER SECTOR PROFILE 7 (2012) [hereinafter RUBBER SECTOR PROFILE].

<sup>41</sup> FIDH, *supra* note 6, at 26.

<sup>42</sup> INDIGENOUS CMTY. SUPPORT ORG. ET AL., THE RIGHTS OF INDIGENOUS PEOPLES IN CAMBODIA, ANNEX B. LAND LAW 2001 at 16 (Article 58) (2009), available at <http://www.forestpeoples.org/sites/fpp/files/publication/2010/08/cambodiacescripssubmissionapr09eng.pdf> [<https://perma.cc/2P3B-QRHM>].

<sup>43</sup> INDIGENOUS CMTY. SUPPORT ORG. ET AL., *supra* note 42, Annex B. Land Law 2001, at 6 (Article 17); FIDH, *supra* note 6, at 26.

<sup>44</sup> INDIGENOUS CMTY. SUPPORT ORG. ET AL., *supra* note 42, Annex B. Land Law 2001, at 6 (Article 17); PRACHVUTHY, *supra* note 38, at 14–15.

<sup>45</sup> FIDH, *supra* note 6, at 26.

<sup>46</sup> *Id.*

<sup>47</sup> INDIGENOUS CMTY. SUPPORT ORG. ET AL., *supra* note 42, Annex B. Land Law 2001, at 6 (Article 59).

<sup>48</sup> DARARATH, TOP & LIC, *supra* note 14, at 16.

<sup>49</sup> FIDH, *supra* note 6, at 27.



granted.<sup>50</sup> A Technical Secretariat has been appointed to oversee ELC compliance with governmental regulations and determine whether the land concession should be cancelled due to a violation of contract terms.<sup>51</sup>

The government plans to draft new laws specifically tailored to the rubber industry to better regulate plantation activities and address issues of quality management.<sup>52</sup> According to MAFF officials, the new laws will provide a comprehensive legal framework that covers all stages of rubber production—from planting and harvesting to processing for export.<sup>53</sup>

As Cambodia readied itself for the Association of Southeast Asian Nations (“ASEAN”) Economic Community in 2015, which created a single and common market among the ten ASEAN countries,<sup>54</sup> stakeholders in the industry saw the new laws as a way to improve the quality of rubber exports.<sup>55</sup> The proposed laws would limit the different kinds of rubber trees farmed on plantations and, consequently, standardize and increase the marketability of Cambodian rubber exports.<sup>56</sup> As of April 2013, around eighty percent of the drafted law had been completed before it was eventually submitted to the MAFF.<sup>57</sup>

## II. CURRENT SITUATION AND VIOLATIONS LINKED TO CAMBODIA'S RUBBER INDUSTRY

### A. *Recent Developments and Trends*

The concerted efforts to privatize the rubber industry have been met with transformative results. By 2008, six of the seven state-owned plantations had privatized while the last state-run estate was divested a year later.<sup>58</sup> The industry employs roughly 100,000 people,<sup>59</sup> and total coverage area of plantations has increased to 300,000 ha by some estimates.<sup>60</sup> Plantations span fourteen provinces, such as Kampong Cham, Kratie,

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<sup>50</sup> INDIGENOUS CMTY. SUPPORT ORG. ET AL., *supra* note 42, Annex B. Land Law 2001, at 17 (Article 62).

<sup>51</sup> FIDH, *supra* note 6, at 27.

<sup>52</sup> Reuy, *supra* note 9.

<sup>53</sup> *Id.*

<sup>54</sup> *ASEAN Reaffirms 2015 Goal for Economic Community*, KYODO NEWS INT'L (Feb. 27, 2014), <http://www.globalpost.com/dispatch/news/kyodo-news-international/140227/asean-reaffirms-2015-goal-economic-community> [<https://perma.cc/GBS2-JYDV>].

<sup>55</sup> Reuy, *supra* note 9.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> FIDH, *supra* note 6, at 12; HANG, *supra* note 20, at 6.

<sup>59</sup> Vannarin & Lewis, *supra* note 1.

<sup>60</sup> Serey, *supra* note 2; Vannarin & Lewis, *supra* note 1.



Kampong Thom, Ratanakiri, Mondulhiri, Battambang, Preah Vihear, and Pailin.<sup>61</sup> Kampong Cham, heavily influenced by French colonial rubber companies in the 1920s, is the most important province for rubber production with more than 90,000 ha under cultivation.<sup>62</sup> Its geographic location also allows for easy trade access into Vietnam.<sup>63</sup>

Rubber production has also consistently increased and, in 2011, an estimated 44,969 tons were produced—making Cambodia the world's ninth largest producer of rubber.<sup>64</sup> Cambodia's main export destinations are Vietnam, China, Malaysia, and Singapore, and exports were valued at \$170 million in 2013.<sup>65</sup>

Presently, three categories of rubber growers have emerged: privately owned plantations, smallholder plantations, and ELC companies.<sup>66</sup> Private plantations consist of the seven state-owned rubber estates that were denationalized in 2008 and 2009.<sup>67</sup> In 2011, private estates produced approximately 20,000 tons of rubber, and total plantation area spanned nearly 51,000 ha.<sup>68</sup>

Smallholder, or household-owned, plantations typically consist of one or two plots of land, averaging 2.8 ha in total area.<sup>69</sup> Smallholder operations have increased in number and size since their formation in the early 1990s—largely due to government policies that allocate parts of the former state-owned plantations to rural farmers.<sup>70</sup> Between 2006 and 2011, the area of smallholder plantations jumped from 25,000 ha to 85,000 ha,<sup>71</sup> and smallholders now account for forty-five percent of all rubber plantations.<sup>72</sup> There are currently more than 21,000 smallholder families nationwide, producing an estimated 36,000 tons of natural rubber.<sup>73</sup>

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<sup>61</sup> CAMBODIA INV. BD., REPORT ON THE PRIVATE SECTOR IN CAMBODIA 9 (2011), *available at* <http://www.cambodiainvestment.gov.kh/content/uploads/2011/09/Chapter7.pdf> [<https://perma.cc/3ME4-CCGG>].

<sup>62</sup> RUBBER SECTOR PROFILE, *supra* note 40, at 10.

<sup>63</sup> *Id.*

<sup>64</sup> Serey, *supra* note 2; RUBBER SECTOR PROFILE, *supra* note 40, at 5.

<sup>65</sup> HANG, *supra* note 20, at 1; *Rubber Price Decline Stokes Worry*, KHMER TIMES (May 14, 2014), <http://www.khmertimeskh.com/news/1483/rubber-price-decline-stokes-worry/> [<https://perma.cc/4K6R-X32W>].

<sup>66</sup> RUBBER SECTOR PROFILE, *supra* note 40, at 8.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> CAMBODIA INV. BD., *supra* note 61, at 10.

<sup>72</sup> Vannarin & Lewis, *supra* note 1.

<sup>73</sup> CAMBODIA MINISTRY OF COMMERCE, CAMBODIA'S DIAGNOSTIC TRADE INTEGRATION

ELCs are large-scale, agro-industrial operations granted to foreign and local investors.<sup>74</sup> As of 2012, ninety-four rubber-producing ELC companies have been contracted.<sup>75</sup> ELCs have planted nearly 120,000 ha of rubber plantations,<sup>76</sup> while more than 450,000 ha of untapped land have been allotted for future investment.<sup>77</sup>

### *B. Future Projections*

During the 2013 Cambodia Outlook Conference, Prime Minister Hun Sen expressed his plans for a rapid expansion of the country's rubber industry.<sup>78</sup> He projects 840,000 ha of rubber plantation will be tapped and that one in ten Cambodians will be working in the industry by 2018—creating 1.3 million jobs.<sup>79</sup> Since the Prime Minister considers trees on rubber plantations to be part of the country's forest cover, he believes the industry is sustainable for the environment and that plantations will replenish the 1.5 million ha of land already converted to ELCs.<sup>80</sup>

The government has also prioritized the development of small (fewer than 5 ha) and intermediate (5–50 ha) rubber plantations in an attempt to combat rural poverty.<sup>81</sup> The Ministry of Economy and Finance was equally optimistic in its projections and claimed that Cambodia has the potential to export more than 1 million tons of rubber by 2020—a figure that would match production levels with the competing Vietnamese market.<sup>82</sup> The Prime Minister expects Cambodia's industry to become larger than Vietnam's because of its diminishing lands available for rubber plantations.<sup>83</sup>

Non-government observers of the industry show more conservative estimates of growth. According to Radio Free Asia, rubber plantations

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STRATEGY 2014–2018 333 (2014) [hereinafter CAMBODIA'S DIAGNOSTIC TRADE INTEGRATION STRATEGY].

<sup>74</sup> RUBBER SECTOR PROFILE, *supra* note 40, at 8.

<sup>75</sup> CAMBODIA'S DIAGNOSTIC TRADE INTEGRATION STRATEGY, *supra* note 73, at 333.

<sup>76</sup> *Id.*

<sup>77</sup> RUBBER SECTOR PROFILE, *supra* note 40, at 8.

<sup>78</sup> Vannarin & Lewis, *supra* note 1.

<sup>79</sup> *Id.*; Neou Vannarin, *Hun Sen Hopes for Increased Rubber Exports*, THE CAMBODIA DAILY (May 16, 2013), <http://www.cambodiadaily.com/archives/hun-sen-hopes-for-increased-rubber-exports-24502/> [<https://perma.cc/V54X-EYL6>].

<sup>80</sup> Hun Sen, Opening Address at the 2013 Cambodia Outlook Conference: Securing Cambodia's Future: Food, Energy and Natural Resources (Feb. 20, 2013), *available at* <http://cnv.org.kh/?p=3475> [<https://perma.cc/ZR86-PCZV>].

<sup>81</sup> DELARUE & NOËL, *supra* note 23, at 15.

<sup>82</sup> Vannarin & Lewis, *supra* note 1.

<sup>83</sup> Vannarin, *supra* note 79.

could total 400,000 ha and export 300,000 tons by 2020.<sup>84</sup> A representative from the International Monetary Fund ("IMF") also assessed that Cambodia's economy had the potential to grow at seven percent in the medium term in 2013 due to the government push but would still be vulnerable to internal and external weaknesses in the industry.<sup>85</sup>

*C. Technical Concerns Within the Industry*

1. Global Surplus, Decreasing Demand for Cambodian Rubber

Despite the promising trends in the country's rubber industry, a number of challenges could weaken the competitiveness and marketability of Cambodian rubber. One such issue is the growing surplus of rubber worldwide, which is steadily decreasing the demand for Cambodian rubber.<sup>86</sup> According to a representative of Chop Rubber Plantation, a major rubber exporter, the global oversupply of natural rubber reduced their prices significantly from \$3,100/ton to \$2,100/ton in 2013.<sup>87</sup> Domestic demand for rubber is also very low and studies have revealed that "there is currently very little domestic use in secondary or tertiary industries for Cambodia's natural rubber (sic) products."<sup>88</sup>

2. Shortage of Skilled Workers for Rubber Tapping

Although Cambodia's relatively low-cost labor is a competitive advantage, the quality of the workforce could constrain the industry's anticipated growth.<sup>89</sup> As more rubber trees continue to mature and become ready for production, the country will encounter a shortage of experienced and skilled workers capable of tapping them.<sup>90</sup> The process of rubber tapping requires specialized training and is a delicate process by which

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<sup>84</sup> Serey, *supra* note 2.

<sup>85</sup> Vannarin & Lewis, *supra* note 1.

<sup>86</sup> Hor Kimsay & Anne Renzenbrink, *Cambodian Rubber Earnings Fall*, THE PHNOM PENH POST (July 31, 2013), <http://www.phnompenhpost.com/business/cambodian-rubber-earnings-fall> [<https://perma.cc/8FHN-MG34>].

<sup>87</sup> *Id.*

<sup>88</sup> CAMBODIA'S DIAGNOSTIC TRADE INTEGRATION STRATEGY, *supra* note 73, at 338.

<sup>89</sup> *Id.* at 336. The report cites a 2007 study finding that the rubber sector "employed around 27,000 people directly and up to 40,000 indirectly when taking into account seasonal workers and subcontracted workers. However, given the significant expansion in production capacity and exports since 2007, it is likely these estimates under-estimate the current size of the sector's workforce."

<sup>90</sup> *Id.*

latex is collected from a small incision made in the bark of a rubber tree.<sup>91</sup> Consequently, the lack of skilled tappers in the country could lead to rubber trees being left untapped or even permanently damaged—resulting in diminished yields.<sup>92</sup>

### 3. Marginal Processing Capacities and Inferior Quality of Cambodian Rubber

Processing capacity is another key concern for the booming industry. Processing technologies for natural rubber are limited in Cambodia; modern facilities that can process natural rubber products in large quantities and at satisfactory standards for export are scarce.<sup>93</sup> The high cost of electricity deters investment in national processing facilities<sup>94</sup> and, as a result, contributes to the current situation where semifinished products from Cambodian plantations must be exported to Vietnam for further processing.<sup>95</sup> In 2003, the cost to process rubber in Cambodia averaged around \$97/ton, compared to \$70/ton in Vietnam and \$60/ton in Indonesia.<sup>96</sup>

Furthermore, the quality of Cambodian rubber has been categorized as an inferior grade to those produced in competing countries.<sup>97</sup> Trade markets classify Cambodian Specified Rubber (“CSR”) 5L below the international standard of Technically Specified Rubber (“TSR”) 5L.<sup>98</sup> Rubber producers in Cambodia, therefore, not only hamper their competitiveness in international trade but also risk revenue losses by not improving their production quality.<sup>99</sup> The Prime Minister cautioned that failure to upgrade rubber quality would adversely affect the industry and result in losses valued at about \$600 million by 2020.<sup>100</sup>

### 4. Trade-Related Disadvantages

Cambodia lags behind other countries in the greater Mekong region, except for Lao People's Democratic Republic, in terms of total

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<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> CAMBODIA'S DIAGNOSTIC TRADE INTEGRATION STRATEGY, *supra* note 73, at 337.

<sup>94</sup> DELARUE & NOËL, *supra* note 23, at 11.

<sup>95</sup> CAMBODIA'S DIAGNOSTIC TRADE INTEGRATION STRATEGY, *supra* note 73, at 337.

<sup>96</sup> DELARUE & NOËL, *supra* note 23, at 11.

<sup>97</sup> Serey, *supra* note 2.

<sup>98</sup> HANG, *supra* note 20, at 1.

<sup>99</sup> Serey, *supra* note 2.

<sup>100</sup> *Id.*

rubber export production.<sup>101</sup> Cambodia exported 54,000 tons of rubber worth approximately \$158 million in 2012; these figures are relatively small compared to Vietnam, where rubber exports totaled upwards of 1 million tons and amounted to \$2.8 billion.<sup>102</sup>

Trade facilitation remains a significant concern for the industry.<sup>103</sup> Cambodia is a low-yield producer, but high-cost processor compared to its regional neighbors.<sup>104</sup> Excessive export taxes, cash flow restrictions among processors and producers, unofficial fees, and high transportation costs have been cited as trade-related constraints that are weakening the competitiveness of Cambodian rubber both regionally and globally.<sup>105</sup>

#### D. Violations

##### 1. Encroachment onto State Public Property

According to Article 58 of the 2001 Land Law, land concessions can only be granted on state private property.<sup>106</sup> However, a number of rubber plantations have been found to cover and destroy forested areas in the country which are classified by current land laws as state public property under Article 15.<sup>107</sup> Examples of public property in Cambodia include any property that has a natural origin (forests, courses of navigable or floatable water, natural lakes, banks of rivers, and seashores); any property that is developed for general use (quays of harbors, railways, and airports); any property that is allocated to render a public service (public schools, administrative buildings, and public hospitals); and any property that constitutes a natural reserve protected by the law.<sup>108</sup>

A well-known Vietnamese rubber producing ELC company in Ratanakiri province, Hoang Anh Gia Lai ("HAGL"), has been linked to this

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<sup>101</sup> HANG, *supra* note 20, at 14.

<sup>102</sup> Vannarin, *supra* note 79.

<sup>103</sup> HANG, *supra* note 20, at 1.

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> INDIGENOUS CMTY. SUPPORT ORG. ET AL., *supra* note 42, Annex B. Land Law 2001, at 16 (Article 58); *see also* Complaint Concerning IFC Investment, *supra* note 7, at 6.

<sup>107</sup> INDIGENOUS CMTY. SUPPORT ORG. ET AL., *supra* note 42, Annex B. Land Law 2001 at 5 (Article 15); Complaint Concerning IFC Investment, *supra* note 7, at 6 (referring to a complaint to the World Bank, filed in February 2014, against the Vietnamese company, HAGL, for allegedly violating environmental and human rights regulations in their rubber plantations in both Cambodia and Laos).

<sup>108</sup> INDIGENOUS CMTY. SUPPORT ORG. ET AL., *supra* note 42, Annex B. Land Law 2001 at 5 (Article 15).

illegal exploitation of state public property for agro-industrial purposes.<sup>109</sup> HAGL's concessions have "blocked access to and destroyed ponds and streams used by local communities," which is specifically prohibited by Article 58.<sup>110</sup>

## 2. Breach of Land Size Restrictions

Rubber ELCs have also been known to exceed their size restrictions. As stated in Article 59 of the 2001 Land Law, a land concession may not exceed more than 10,000 ha; unless a specific exemption is granted by a government subdecree, a concession that exceeds the limit will be reduced.<sup>111</sup> Furthermore, "the issuance of land concession titles on several places relating to surface areas that are greater than [10,000 ha and under the name of] one specific person or several legal entities controlled by the same natural persons is prohibited."<sup>112</sup> In other words, one person may not control multiple concessions that, when aggregated, total more than 10,000 ha.

HAGL land concessions cover a cumulative surface area of approximately 47,370 ha, which is nearly five times the legal limit of concession holdings.<sup>113</sup> Despite claiming to have sold three of its concessions, HAGL "has admitted to currently holding concessions over a surface area of 28,422 [ha]," which is a clear violation of the hectarage limitations pursuant to Article 59.<sup>114</sup>

HAGL's breach of size restrictions is representative of many ELCs that disregard the current regulatory framework through deceitful business practices.<sup>115</sup> For example, according to a study by the International Federation for Human Rights ("FIDH") on rubber plantations in Mondulkiri province, "[m]any concessions granted exceed the 10,000 ha limit, and the grant of contiguous land to companies with different names but pertaining to the same group has reached hundreds of thousands of ha, although MAFF affirms that it has been reviewing those which exceed

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<sup>109</sup> Complaint Concerning IFC Investment, *supra* note 7, at 6.

<sup>110</sup> *Id.*; INDIGENOUS CMTY. SUPPORT ORG. ET AL., *supra* note 42, Annex B. Land Law 2001 at 16 (Article 58).

<sup>111</sup> INDIGENOUS CMTY. SUPPORT ORG. ET AL., *supra* note 42, Annex B. Land Law 2001 at 16–17 (Article 59).

<sup>112</sup> *Id.*

<sup>113</sup> Complaint Concerning IFC Investment, *supra* note 7, at 6.

<sup>114</sup> *Id.*; INDIGENOUS CMTY. SUPPORT ORG. ET AL., *supra* note 42, Annex B. Land Law 2001 at 16–17 (Article 59).

<sup>115</sup> See also FIDH, *supra* note 6, at 13.

this limit since 2009.”<sup>116</sup> Basically, in order to bypass the government’s size restrictions on ELCs, rubber-producing companies will buy adjacent lands to their respective concessions and then register with MAFF under different company names.<sup>117</sup>

### 3. Disregard for Environmental Impact Assessments

Rubber ELCs frequently violate Article 6 of the 1996 Law on Environmental Protection and Natural Resource Management by failing to conduct environmental impact assessments (“EIAs”) prior to commencing project operations.<sup>118</sup> According to this government subdecree, EIAs must be conducted “for all public or private projects involving activities . . . [such as] projects for agro-industry, wood and paper production, mining, chemical plants, textiles, power plants, tourism, and infrastructure.”<sup>119</sup>

An EIA is a structured investigation that seeks to predict the effects that a project or policy may have on the surrounding environment; the EIA will focus on topics such as: “overview of the project or agro-industry company; methodology and scope of the study; full project description and action plan; description of existing environmental resources (including physical, ecological, and socio-environmental resources); environmental impact mitigation measures; environmental management plans; economic analysis compared with environmental costs; and conclusions and recommendations.”<sup>120</sup>

A 2007 report by the United Nations Representative of the Secretary-General for Human Rights in Cambodia found evidence that agro-industry projects in the country are generally approved without a proper EIA being conducted.<sup>121</sup> Rubber-producing ELCs such as the

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<sup>116</sup> *Id.* The report also suggests that “[t]he number of disputes involving ELCs are [a] testament to the fact that land is not being clearly identified as State public land (and therefore available for investments) prior to allocation.”

<sup>117</sup> *Id.*

<sup>118</sup> See also Complaint Concerning IFC Investment, *supra* note 7, at 6.

<sup>119</sup> See also *Environmental Law and Environmental Impact Assessments*, OPEN DEV. CAMBODIA, <http://www.opendevdevelopmentcambodia.net/briefing/eia/> [<https://perma.cc/PM3V-QCDT>] (last visited Mar. 27, 2016).

<sup>120</sup> *Id.*; see also EUROPEAN UNION DELEGATION TO CAMBODIA, COUNTRY ENVIRONMENT PROFILE OF THE ROYAL KINGDOM OF CAMBODIA (2012), available at [http://eeas.europa.eu/delegations/cambodia/documents/publications/country\\_env\\_profile\\_cam\\_april\\_2012\\_en.pdf](http://eeas.europa.eu/delegations/cambodia/documents/publications/country_env_profile_cam_april_2012_en.pdf) [<https://perma.cc/B2CP-YWXX>].

<sup>121</sup> SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL FOR HUMAN RIGHTS IN CAMBODIA, ECONOMIC LAND CONCESSIONS IN CAMBODIA: A HUMAN RIGHTS PERSPECTIVE 10 (June



Vietnamese company HAGL in Ratanakiri province and the joint venture company between Cambodia and France, Socfin-KCD, in Mondulakiri province have allegedly breached the EIA requirements, according to reports by civil society organizations.<sup>122</sup>

For example, Socfin-KCD failed “to take all necessary measures to ensure violations would cease . . . [and] to work policies to ensure respect of economic, social and cultural rights of the Bunong [who are the indigenous people in Mondulakiri affected by Socfin-KCD’s agro-industry projects].”<sup>123</sup> On a similar note, HAGL has been criticized for not possessing any kind of documentation proving the performance of EIAs prior to commencement of their rubber plantation operations.<sup>124</sup>

One possible reason for the ineffectiveness of EIAs is that they are often outsourced to private consultants, who have been hired by the rubber land concession owners.<sup>125</sup> According to a report by the European Union Delegation to Cambodia, EIAs are “rarely carried out according to the letter or the spirit of the law,” and the Cambodian government will usually approve the assessments after payment of the service fee.<sup>126</sup>

#### 4. Exploitation of Indigenous Communities’ Property Rights

Rubber ELCs have reportedly disregarded indigenous land tenure rights, guaranteed by Sub-Decree No. 146 on Economic Land Concessions, which allow the country’s recognized indigenous communities to give or withhold their consent to any use of their land by outsiders.<sup>127</sup>

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2007), available at [http://cambodia.ohchr.org/WebDOCs/DocReports/2-Thematic-Reports/Thematic\\_CMB12062007E.pdf](http://cambodia.ohchr.org/WebDOCs/DocReports/2-Thematic-Reports/Thematic_CMB12062007E.pdf) [<https://perma.cc/YWE9-VB3F>] (reporting that “thorough and genuine environmental and social impact assessments have generally not been undertaken beforehand.”).

<sup>122</sup> FIDH, *supra* note 6, at 6–7 (explaining how “[i]n 2007, the European company Socfinasia entered into a joint venture with KCD [Socfin-KCD], of which it now owns 80% and ensures its operational management . . . [and how] Socfinasia is owned mainly by the French industrial group Bolloré and Belgian families Fabri and de Ribes”); Complaint Concerning IFC Investment, *supra* note 7, at 6.

<sup>123</sup> FIDH, *supra* note 6, at 7, 16. The province of Mondulakiri is located on the eastern border of Cambodia and is the largest, yet least populated, province in the country. Ninety-four percent of the province is forested land. The ‘Bunong’ refers to the people who live in the Bousra indigenous communities of Mondulakiri. According to census figures in 2008, Bousra had a total population of 3,925 people in 849 family households.

<sup>124</sup> Complaint Concerning IFC Investment, *supra* note 7, at 32.

<sup>125</sup> EUROPEAN UNION DELEGATION TO CAMBODIA, *supra* note 120, at 31.

<sup>126</sup> *Id.*

<sup>127</sup> ROYAL GOVERNMENT OF CAMBODIA, SUB-DECREE NO. 146 ON ECONOMIC LAND CONCESSIONS 2005 (unofficial trans.) [hereinafter SUB-DECREE NO. 146 ON ECONOMIC LAND

Indigenous communities use a customary land tenure system, wherein collective ownership of property is recognized among the villagers.<sup>128</sup> The types of lands shared among the indigenous villagers include residential areas, grazing lands, community forests, spirit forests, burial grounds, reserved lands for future generations, farming and orchard plots, and rice fields.<sup>129</sup>

The 2001 Land Law authorizes indigenous communities to manage their land in accordance with their respective traditional customs.<sup>130</sup> However, because of ineffective implementation of existing regulations and an absence of government outreach to indigenous communities, several indigenous villages affected by rubber-producing concessions were not recognized as having collective ownership over their respective lands.<sup>131</sup> Collective titles have been issued to only eight indigenous communities out of an approximate total of 455.<sup>132</sup> As a result, several lands belonging to indigenous communities are acquired by private interests and then illegally converted into agro-industrial projects.<sup>133</sup>

This is a common occurrence in Mondulkiri province, where the joint venture rubber company Socfin-KCD was granted multiple concessions on the Bousra indigenous community's land.<sup>134</sup> Ninety percent of the population in Bousra are subsistence farmers, who practice shifting cultivation and engage in the gathering of non-timber forest products.<sup>135</sup> They practice a form of religious animism "[involving] the protection of spirit forests and burial grounds for their ancestors."<sup>136</sup> Moreover, ninety-nine percent of Bousra villagers who were polled in an extensive survey

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CONCESSIONS], available at [http://www.cambodiainvestment.gov.kh/sub-decree-146-on-economic-land-concessions\\_051227.html](http://www.cambodiainvestment.gov.kh/sub-decree-146-on-economic-land-concessions_051227.html) [<https://perma.cc/N25J-67M9>].

<sup>128</sup> Complaint Concerning IFC Investment, *supra* note 7, at 4 (citing how "the concept of collective ownership over their territory and resources is central to the communities' identity.").

<sup>129</sup> *Id.*

<sup>130</sup> SUB-DECREE NO. 146 ON ECONOMIC LAND CONCESSIONS, *supra* note 127; FIDH, *supra* note 6, at 35.

<sup>131</sup> FIDH, *supra* note 6, at 35–36, 48.

<sup>132</sup> Complaint Concerning IFC Investment, *supra* note 7, at 5.

<sup>133</sup> See also GLOBAL WITNESS, RUBBER BARONS: HOW VIETNAMESE COMPANIES AND INTERNATIONAL FINANCIERS ARE DRIVING A LAND GRABBING CRISIS IN CAMBODIA AND LAOS 38 (2013), available at <https://www.globalwitness.org/en/campaigns/land-deals/rubber-barons/> [<https://perma.cc/9PQ6-LAVH>].

<sup>134</sup> FIDH, *supra* note 6, at 6, 35.

<sup>135</sup> *Id.* at 6.

<sup>136</sup> *Id.*

indicated that they considered themselves to be an indigenous group in Cambodia and preferred to have collective ownership over their lands.<sup>137</sup>

Despite the Bousra villagers' legitimate claim to their communal lands,<sup>138</sup> they have faced several challenges to attaining indigenous status in the country. For example, the villagers in the Bousra community usually do not have the proper legal representation or "the necessary tools to be in a position" to acquire a collective title from the government.<sup>139</sup> In addition, the arrival of Khmer (the non-indigenous, majority ethnic group in Cambodia) families in the community at the end of the 1990s has weakened the Bousra claim for indigenous status.<sup>140</sup>

Article 23 of the 2001 Land Law provides interim protection measures for indigenous populations that have yet to register with the government or that are in the process of registering, such as the Bousra community.<sup>141</sup> The Bousra villagers, however, have not benefitted from these protective measures and have only encountered political, administrative, and procedural obstacles to securing a collective title.<sup>142</sup> Socfin-KCD has ignored any government provisions created to protect indigenous communities' lands and has proceeded forward with its rubber plantation operations.<sup>143</sup>

As a result, Socfin-KCD now manages at least two concessions within the Bousra village community that comprise over 7,000 ha.<sup>144</sup> In fact, according to FIDH's study on rubber plantations in Monduliri province, the creation of rubber concessions on indigenous lands have affected over 850 families living within the Bousra community and have led to several instances of forced eviction.<sup>145</sup>

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<sup>137</sup> See *id.* at 27, 35 (citing a survey undertaken by civil society organizations such as Cambodian Human Rights and Development Association ("ADHOC"), Community Legal Education Centre ("CLEC"), Indigenous Community Support Organization ("ICSO"), and Caritas Cambodia, which interviewed 733 families).

<sup>138</sup> See *id.* at 35 (citing that an "analysis made by a consultant in ethnology and sociology hired by Socfin-KCD . . . also concluded that the Bunong people could be qualified as indigenous.").

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> SUB-DECREE NO. 146 ON ECONOMIC LAND CONCESSIONS, *supra* note 127; FIDH, *supra* note 6, at 36 (stating that in 2011, seven communities in Bousra had initiated the registration process, three of which were already eligible to apply as legal entities and eventually petition the government for collective ownership over their indigenous lands).

<sup>142</sup> FIDH, *supra* note 6, at 6.

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

## 5. Involuntary Resettlement

Even if rubber ELCs do not recognize indigenous communities' collective ownership over their respective lands, Sub-Decree No. 146 requires that company representatives have public consultations with the residents of indigenous communities in order to discuss solutions for resettlement.<sup>146</sup> According to the subdecree, the proposed land concessions must present solutions for resettlement issues and the government "shall ensure that there will not be involuntary resettlement by lawful land holders and that access to private land shall be respected."<sup>147</sup>

Similar to the disregard for EIAs and the exploitation of indigenous property rights, the government has been ineffective and unsuccessful in the relocation of indigenous residents affected by ELCs.<sup>148</sup> In the case of HAGL, in addition to hindering indigenous communities' land tenure rights in Ratanakiri, the Vietnamese rubber company failed to conduct public consultations with the communities and did not propose any resettlement plans before commencing its agro-industry projects.<sup>149</sup>

Similarly, in the case of Socfin-KCD, the joint venture rubber company breached its contract with the MAFF by failing to solve resettlement issues "within the period of not later than one year from the date of signing the contract."<sup>150</sup> Indigenous residents in Mondulakiri province have complained that systematic land grabbing activities started before any negotiations for equitable compensation were finalized.<sup>151</sup> According to the FIDH report, a majority of the indigenous populations affected by Socfin-KCD's agro-industry projects confirmed that they had no choice but to sell their land.<sup>152</sup> In fact, over seventy percent of these residents "accepted, for lack of a real choice, insufficient and inadequate monetary

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<sup>146</sup> SUB-DECREE NO. 146 ON ECONOMIC LAND CONCESSIONS, *supra* note 127 (citing Article 4: "Land that has solutions for resettlement issues, in accordance with the existing legal framework and procedures. The Contracting Authority shall ensure that there will not be involuntary resettlement by lawful land holders and that access to private land shall be respected"); *see also* Complaint Concerning IFC Investment, *supra* note 7, at 35.

<sup>147</sup> *See also* SUB-DECREE NO. 146 ON ECONOMIC LAND CONCESSIONS, *supra* note 127, at Art. 4.

<sup>148</sup> Complaint Concerning IFC Investment, *supra* note 7, at 6, 35.

<sup>149</sup> *Id.*

<sup>150</sup> FIDH, *supra* note 6, at 38; *see also* MAFF ELC CONTRACT, APPENDIX 2, *available at* [https://www.fidh.org/IMG/pdf/report\\_cambodia\\_socfin-kcd\\_low\\_def.pdf](https://www.fidh.org/IMG/pdf/report_cambodia_socfin-kcd_low_def.pdf) [<https://perma.cc/23X5-RVP3>].

<sup>151</sup> FIDH, *supra* note 6, at 7.

<sup>152</sup> *Id.*

compensation, while [the] others who chose to be reallocated on a new parcel of land were left without any indication on where such parcel would be.”<sup>153</sup>

As a result of these forced evictions and lack of adequate consultation and compensation, indigenous populations affected by ELCs have become even more vulnerable in Cambodian society. For example, in the case of the Bousra community in Mondulhiri province, the indigenous villagers have been deprived of their farming lands and, consequently, must now rely on commercial markets to sustain their livelihoods. Moreover, the destruction of their various spiritual and burial ground sites has threatened the very well-being and self-identity of the Bousra indigenous community.<sup>154</sup>

## 6. International Human Rights Violations

In addition to breaching laws enacted by the Cambodian government, rubber ELCs have violated an array of international human rights set forth in customary law doctrine and multilateral treaties ratified by Cambodia.<sup>155</sup> Under international human rights law, states are required to do the following:

States have an obligation to *respect*, *protect* and *fulfill* human rights. The obligation to *respect* means that States must refrain from interfering with or impeding the enjoyment of human rights. The obligation to *protect* requires States to protect individuals and groups against human rights abuses committed by third parties, including businesses. Finally, the obligation to *fulfill* refers to States' obligations to take positive measures to ensure the enjoyment of basic human rights, [sic] UN treaty bodies, which provide authoritative guidance on the interpretation of international human rights treaties, have stated that home States (i.e., States where companies are domiciled in their territory and/or jurisdiction) . . . should take measures to prevent abuses abroad committed by companies within their jurisdiction as part of their obligation to protect. This exercise

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<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> *Id.* at 23.

of due diligence as an obligation incumbent upon States has been confirmed by the UN Human Rights Committee, which affirmed that States have to take appropriate steps to prevent, punish, investigate and redress harm by private entities.<sup>156</sup>

As seen through their disregard for EIAs,<sup>157</sup> exploitation of indigenous communities' property and land tenure rights,<sup>158</sup> and forced resettlement procedures,<sup>159</sup> Socfin-KCD's operations in Mondulakiri province and HAGL's in Ratanakiri province provide a representative sample of how the government of Cambodia has been unable to comply with international obligations and, therefore, has disregarded its obligation to respect, protect, and fulfill the enjoyment of Cambodians' basic human rights.<sup>160</sup>

On top of international human rights laws, several rights guaranteed by the International Covenant on Civil and Political Rights<sup>161</sup> ("ICCPR") have been breached by actors within the Cambodian rubber plantation industry. For example, the ICCPR "protects the freedom of expression and the right to access to information [Article 19], equality before the law [Article 14], the right to an effective remedy [Article 2.3(a)] as well as special protection to national minorities, including indigenous peoples [Article 27]."<sup>162</sup> In fact, the Human Rights Committee "has highlighted

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<sup>156</sup> *Id.* (emphasis added).

<sup>157</sup> See *infra* Part II.D.3.

<sup>158</sup> See *infra* Part II.D.4.

<sup>159</sup> See *infra* Part II.D.5.

<sup>160</sup> See also SURYA P. SUBEDI, REPORT OF THE SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS IN CAMBODIA 47 (2012), available at [http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Documents/A-HRC-27-70\\_en.doc](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Documents/A-HRC-27-70_en.doc) [<https://perma.cc/7M5J-W8KN>] (Dr. Subedi, the UN Special Rapporteur for human rights in Cambodia, cites a variety of human rights violations such as: "the destruction of the environment due to bulldozing, clearing of land and planting of non-native crops and trees; the lack of consultation with local communities, contributing to their marginalization and conflicts with companies and local authorities; the undermining of efforts to register indigenous peoples as legal entities so that they can preserve their culture, language and traditional agricultural practices, and apply for collective land title; encroachment on farm land and areas of cultural and spiritual significance; the loss of traditional livelihoods and the perpetuation of a gross income disparity (rural poor as compared with wealthy concessionaires and those benefitting financially from the concessions); lack of access to clean water and sanitation; forced evictions, displacement and relocation of people from their homes and farm lands, creating difficulties with finding or sustaining employment/income-generation and access to basic services; sub-standard labour conditions.").

<sup>161</sup> FIDH, *supra* note 6, at 23.

<sup>162</sup> *Id.*

that Article 27 requires States to protect indigenous peoples' rights to own, develop, control and use their communal lands, territories and resources and recognized their right to restitution (or, if not possible, a just, fair and prompt compensation) if deprived of their lands and territories traditionally owned."<sup>163</sup>

In Mondulhiri province, Socfin-KCD's denial of the Bousra indigenous community's right to fair compensation<sup>164</sup> and, in Ratanakiri province, HAGL's destruction of religious spirit forests of indigenous communities<sup>165</sup> not only reveal the Cambodian government's inability to regulate the rubber industry but also reveal the repeated violation of substantive rights guaranteed by the ICCPR.<sup>166</sup>

### III. POLICY RECOMMENDATIONS AND EVALUATIONS

Due to the governmental, environmental, and human rights violations linked to Cambodia's rubber plantation industry, the current regulatory framework must be reevaluated and new policies must be enacted to protect the well-being of both citizenry and country. As observed in the representative case studies analyzed in this Note, rubber ELCs are systematically exploiting protected forested areas and destroying indigenous communities in their rush for rubber.<sup>167</sup> The following analyzes the current efforts to combat the alleged abuses and also recommends new strategies to strengthen the current laws and policies already in place.

#### A. *Recent Efforts to Regulate the Industry Are Discouraging*

In 2012, the Cambodian government released a draft Law on the Management and Use of Agricultural Land that proposed a number of alarming policies regarding the regulation of ELCs.<sup>168</sup> Instead of focusing its efforts on minimizing ELC-related abuses, according to the Cambodian

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<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> Complaint Concerning IFC Investment, *supra* note 7, at 33.

<sup>166</sup> See FIDH, *supra* note 6, at 48 (stating how "Cambodian authorities at the top level blatantly circumvent their own legislation to allow concessions to be granted on land occupied by indigenous communities and protected areas.").

<sup>167</sup> See also GLOBAL WITNESS, *supra* note 133, at 38.

<sup>168</sup> LICADHO, BRIEFING PAPER: CAMBODIA'S DRAFT LAW ON THE MANAGEMENT AND USE OF AGRICULTURAL LAND 1 (2012), available at <http://www.licadho-cambodia.org/reports/files/169LICADHOBriefingDraftAgriculturalLaw-English.pdf> [<https://perma.cc/3LSF-VPC9>].



League for the Promotion and Defense of Human Rights (“LICADHO”),<sup>169</sup> “[t]he draft law as currently written could be used as legal cover for land-grabbing and for those who wish to exploit and personally profit from Cambodia’s land and resources.”<sup>170</sup> The draft law, in other words, would further blemish the rubber industry’s record on governmental, environmental, and human rights violations.

For example, the new laws would eliminate an array of citizens’ private property ownership rights and, subsequently, abolish all current legal and environmental limitations on ELCs.<sup>171</sup> The draft law, furthermore, imposes criminal liability and prison sentences for any violation of the proposed laws.<sup>172</sup> Moreover, the draft law creates a new “agricultural land lease” framework that overrides many of the regulatory safeguards created under the 2001 Land Law.<sup>173</sup>

In light of the severe implications the draft law will have if passed, civil society organizations have expressed their concerns and recommended that the proposed laws be significantly revised before their ratification.<sup>174</sup>

*B. Proposed Recommendations to Improve the Industry’s Current Regulatory Framework*

The government has publically announced its intention to draft new laws specifically tailored to the rubber industry to better regulate plantation activities and address issues of quality management.<sup>175</sup> MAFF officials stated that the new laws would provide a comprehensive legal framework that encompasses every stage of rubber production—from planting and harvesting to export processing.<sup>176</sup> However, as of April 2013, the drafting of the new laws has not been completed and only eighty percent has been finalized.<sup>177</sup>

Although the Cambodian government has yet to implement any significant changes to the current regulatory framework, this provides an advantageous opportunity for the government to consider a variety of novel and well-documented policy recommendations that are proposed below.

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<sup>169</sup> LICADHO is a Cambodian human rights organization established in 1992. LICADHO has a main office in Phnom Penh along with twelve other provincial offices.

<sup>170</sup> LICADHO, *supra* note 168.

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> *Id.* at 2.

<sup>174</sup> *Id.* at 9–10.

<sup>175</sup> Reuy, *supra* note 9.

<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

1. Ensure Tougher, Transparent Enforcement Procedures for the Current Regulatory Framework

Despite the prevalence of violations linked to Cambodia's rubber plantations, the existing laws governing the industry,<sup>178</sup> when enforced, can provide safeguards from governmental, environmental, and human rights abuses. Government officials in Cambodia, however, are frequently accused of authorizing land grabbing practices with "complete disregard for laws designed to protect people and the environment."<sup>179</sup> In addition, the political elite are often linked to, and even control ownership over, many of the prominent rubber ELCs in the country.<sup>180</sup>

By imposing civil and criminal sanctions on government authorities who do not enforce current laws, such as those failing to enforce the legal size restrictions of ELCs or those neglecting the land tenure rights of indigenous communities, the industry will become better equipped to respect the rule of law and will provide stronger mechanisms to prevent future violations caused by government corruption. As suggested by Global Witness, an international NGO that has conducted extensive studies on Vietnamese and Cambodian rubber companies and their suspected land-grabbing practices, governments must ensure that it can respond to grievances by the public.<sup>181</sup> Regulation of the rubber industry would become more transparent, and private citizens would have more opportunities to obtain adequate reparation for harm suffered.<sup>182</sup> Essentially, Cambodian government officials should respect their duty to protect and uphold, not exploit, existing laws governing rubber plantations. By doing so, the industry would be better positioned to protect both human and environmental rights of those affected by the plantations.

2. Learn From and Apply Regulatory Policies from Other Countries in the Mekong Region

Thailand, Indonesia, and Vietnam have been the world's largest producers of natural rubber since 1993.<sup>183</sup> Incorporating some of the laws

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<sup>178</sup> Referring primarily to the 2001 Land Law and associated subdecrees.

<sup>179</sup> GLOBAL WITNESS, *supra* note 133, at 38.

<sup>180</sup> *See id.* (stating that the political elite in Cambodia have "connections with HAGL . . . and appear to be hiding their beneficial ownership of these rubber plantations behind complex layers of shell companies through opaque concession management processes.").

<sup>181</sup> *Id.* at 39.

<sup>182</sup> FIDH, *supra* note 6, at 49.

<sup>183</sup> *Natural Rubber*, IHS, <https://www.ihs.com/products/natural-rubber-chemical-economics-handbook.html> [<https://perma.cc/E988-7BTZ>] (last visited Mar. 27, 2016). Thailand is the

and policies governing rubber production in Thailand and Vietnam, two of Cambodia's neighboring countries in the Mekong Region, should be applied to Cambodia's own regulatory framework.

The government of Thailand has formally passed legislation that provides relatively stricter protection of the country's forested lands.<sup>184</sup> Examples of these legislative measures include:

(1) The Forest Act of 1941, which governs the management of state forests, regulates logging and sets procedures for licenses and royalty payments; (2) The National Parks Act of 1961, governing the designation, management and protection of National Parks; (3) The National Reserved Forests Act of 1964, governing the designation, management and protection of National Reserved Forests; (4) The Commercial Forest Plantation Act of 1992, which requires the registration of commercial forests and regulates the cutting and sale of timber in commercial plantations; (5) The Forest Plantation Act of 1992, which facilitates the creation of private-sector plantations on degraded forest; and (6) The Community Forest Bill of 2007, which gives forest-dwelling communities who can prove they lived in the forest prior to 1997 rights to preserve and manage forest land under strict guidelines.<sup>185</sup>

For example, the National Reserved Forests Act of 1964 classified 9,394,151 ha, or about 59% of the country's forest lands, as "national conserved forests," which is a designation protecting them from clearing, degradation, and occupation.<sup>186</sup> In fact, by 2005, 103 national parks, 84 forest parks, 55 wildlife sanctuaries, 16 botanical gardens, and 55 arboreta were "all protected and strictly controlled" by the above-mentioned laws.<sup>187</sup>

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world's largest producer of natural rubber, accounting for thirty-four percent of the world's production in 2013. Indonesia, the second-largest producer, accounted for twenty-six percent while Vietnam ranked third.

<sup>184</sup> INT'L FORESTRY COOPERATION OFFICE, ROYAL FOREST DEPT. & MINISTRY OF NATURAL RES. & ENV'T, *FOREST MANAGEMENT IN THAILAND* 8 (2011), available at <http://www.forest.go.th/foreign/images/stories/FOREST%20MANAGEMENT%20IN%20THAILAND.pdf> [<https://perma.cc/9ZLG-C3VT>].

<sup>185</sup> U.S. AGENCY FOR INT'L DEV., *USAID COUNTRY PROFILE: PROPERTY RIGHTS AND RESOURCE GOVERNANCE IN THAILAND* 15 (2010), available at [http://usaidlandtenure.net/sites/default/files/country-profiles/full-reports/USAID\\_Land\\_Tenure\\_Thailand\\_Profile.pdf](http://usaidlandtenure.net/sites/default/files/country-profiles/full-reports/USAID_Land_Tenure_Thailand_Profile.pdf) [<https://perma.cc/3N2L-BSK9>].

<sup>186</sup> INT'L FORESTRY COOPERATION OFFICE, *supra* note 184, at 8.

<sup>187</sup> *Id.*

Furthermore, in Vietnam, the government “is actively participating in various international initiatives such as the Reducing Emissions from Deforestation and Forest Degradation (“REDD+”).”<sup>188</sup> Involvement in such initiatives requires Vietnam to “establish and effectively operate mechanisms that address drivers of deforestation and degradation, including the drivers of natural forest conversion for rubber plantation.”<sup>189</sup>

Therefore, through its participation in REDD+, the Vietnamese government is pressured to strengthen the inspection and regulation procedures of rubber-producing companies in the country; for instance, “companies with a license to convert forest land to rubber plantations must be obliged not only to comply with basic regulations on environmental impact assessment but must also conduct wider consultation processes with local communities.”<sup>190</sup> By joining international initiatives such as REDD+, the Vietnamese government not only introduces effective mechanisms to combat deforestation but also promotes the sustainability of forested lands in the country.<sup>191</sup>

The Cambodian government should borrow from Thailand’s passage of strict legislation on the protection of forested lands and, additionally, should consider joining international initiatives like REDD+ that compel both governments and companies to address deforestation concerns, as seen in Vietnam. Although violations have also been linked to certain rubber companies in Thailand and Vietnam,<sup>192</sup> Cambodia’s regulatory framework can benefit from its neighbors by implementing these strategies that have proven to be relatively effective in promoting environmental sustainability in their respective countries.

## CONCLUSION

The rubber industry in Cambodia has fluctuated between periods of growth and decline throughout recent history. Current production levels, export revenues, and total coverage area and number of plantations indicate the emergence of another rubber boom. The government is seeking to profit from the industry’s promising trends; with the privatization

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<sup>188</sup> XUAN PHUC & TRAN HUU NGHI, RUBBER EXPANSION AND FOREST PROTECTION IN VIETNAM VIII (2014), available at [http://www.forest-trends.org/documents/files/doc\\_4671.pdf](http://www.forest-trends.org/documents/files/doc_4671.pdf) [https://perma.cc/BY78-HFAC].

<sup>189</sup> *Id.*

<sup>190</sup> *Id.*

<sup>191</sup> *See id.* at 40.

<sup>192</sup> *See* PHUC & NGHI, *supra* note 188, at 12; *see also* U.S. AGENCY FOR INT’L DEV., *supra* note 185, at 3.

of state-owned plantations, passage of legislation supporting foreign investment, and implementation of the "Rectangular Strategy," Cambodia is poised to contend with other competing markets in the greater Mekong region.

However, the current laws and policies governing rubber plantations do not sufficiently address the human rights, governmental, and environmental concerns linked to the industry. Existing rubber plantations in the country have exploited indigenous communities' property and land tenure rights, engaged in forced resettlement procedures, and violated an array of international human rights set forth in customary law doctrine and multilateral treaties ratified by Cambodia.

By creating tougher, more transparent enforcement procedures and applying well-established policies from its neighboring countries in the Mekong region, Cambodia's rubber industry will be better positioned to fulfill its potential without endangering the livelihood of others.