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Cc:

Mr. Rafael Dochao Moreno, EU Charge d’Affairs for Cambodia
Mr. Seamus Gillespie, Head of South East Asia Unit, European Commission
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H.E. David Lipman, Ambassador and Head of EU Delegation to Cambodia
H.E. Andrew Mace, Ambassador of United Kingdom to Cambodia
H.E. Dr. Wolfgang Moser, Ambassador of the Federal Republic of Germany to Cambodia
H.E. Christian Connan, Ambassador of France to Cambodia
H.E. Anne Hoglund Ambassador of Sweden to Cambodia
H.E. Heidi Hautala, Member of European Parliament, Chair of the Human Rights Sub-Committee

January 7, 2011

Dear Commissioner de Gucht,

We, the undersigned civil society representatives, are writing to you regarding the Everything But Arms (EBA) initiative and serious and systematic human rights abuses in Cambodia.

This letter follows upon our previous letter of 30 August sent to the European Union Delegation to Cambodia (see Annex 1), and two meetings that we have had with EU officials on this matter, on 4 September in Phnom Penh and 28 October in Brussels, respectively. In these meetings and correspondence, we have sought to bring information about human rights violations connected to the Cambodian sugar industry, and their relation to the EBA initiative, to the attention of the EU and to request clarification about EU policies.

With this letter, we officially request that the European Commission undertake an investigation into these human rights abuses, which we believe justify temporary withdrawal of preferential arrangements from certain Cambodian products, in accordance with Article 15 of Council Regulation (EC) 732/2008.

Article 15 requires “the suspension of preferential arrangements, in respect of all or of certain products originating in a beneficiary country, where it considers that there is sufficient evidence that temporary withdrawal would be justified.”¹ Among the justifications for suspension are “serious and systematic violations of principles” laid down in international human rights conventions, on the basis of the conclusions of the

¹ EC Council Regulation No 732/2008, art 16 [3].

relevant monitoring bodies.² We set out below the reasons why we believe there are sufficient grounds for an investigation.

Serious Human Rights Abuses

In recent years there has been a rapid expansion in the Cambodian sugar industry, with more than 80,000 hectares in economic land concessions (ELCs) being granted to private companies for industrial sugarcane production. We have documented serious human rights abuses directly linked to three specific sugar concessions whose owners are directly benefiting from the EBA initiative. These abuses, described in our letter on 30 August and in greater detail in the enclosed fact sheets (see Annexes 2, 3 and 4), include forced evictions, forcible confiscation of agricultural land, destruction of property, the use of violence against and arbitrary arrest and detention of human rights defenders. The abuses constitute violations of:

- The right of self-determination, including the right not to be deprived of one's means of subsistence;³
- The right to work⁴
- The right to food;⁵
- The right to adequate housing⁶
- The right to health⁷
- The right to education⁸
- The right to freedom from arbitrary arrest and detention⁹
- The right to privacy of the home¹⁰
- The right to peaceful assembly¹¹
- The right to equal protection before the law¹²

The cases described in the annexes are indicative of a broad pattern of human rights abuses stemming from the granting of large-scale agricultural concessions. The human rights monitoring bodies, including the UN Committee on Economic, Social and Cultural Rights, successive UN Special Representatives of the Secretary-General for Human Rights in Cambodia, and the Special Rapporteurs on the Right to Adequate Housing and the Right to Food, have all reported on and expressed deep concern about these abuses, as detailed below.

Forced Evictions Resulting from Economic Land Concessions

It has been widely recognized that forced evictions are amongst the most disempowering violations of human rights and “one of the most supreme injustices any individual,

² EC Council Regulation No 732/2008, art 15 [1a].

³ International Covenant on Economic, Social and Cultural Rights (1966), Article 1

⁴ International Covenant on Economic, Social and Cultural Rights (1966), Article 6.

⁵ International Covenant on Economic, Social and Cultural Rights (1966), Article 11.

⁶ International Covenant on Economic, Social and Cultural Rights (1966), Article 11.

⁷ International Covenant on Economic, Social and Cultural Rights (1966), Article 12.

⁸ International Covenant on Economic, Social and Cultural Rights (1966), Article 13.

⁹ International Covenant on Civil and Political Rights (1966), Article 9.

¹⁰ International Covenant on Civil and Political Rights (1966), Article 17.

¹¹ International Covenant on Civil and Political Rights (1966), Article 21.

¹² International Covenant on Civil and Political Rights (1966), Article 26.

family, household or community can face.”¹³ Forced evictions are “considered a practice that does grave and disastrous harm to the basic civil, political, economic, social and cultural rights of...both individual persons and collectivities.”¹⁴

In its Concluding Observations on Cambodia, the United Nations Committee on Economic, Social and Cultural Rights stated the following about forced evictions and displacement resulting from the granting of economic land concessions in Cambodia:

The Committee is ... concerned about the reports that the rapid increase in economic land concessions in the last several years even within the protected zones, is the major factor for the degradation of natural resources, adversely affecting the ecology and biodiversity, resulting in the displacement of indigenous peoples from their lands without just compensation and resettlement, and in the loss of livelihood for rural communities who depend on land and forest resources for their survival. (art. 1)¹⁵

... The Committee notes with deep concern that the rate of large-scale forced evictions has increased over the last 10 years due to...[inter alia] the granting of concessions over vast tracks of land to private companies. It is also concerned about the lack of effective consultation with, and legal redress for, persons affected by forced evictions, as well as the inadequate measures to provide sufficient compensation or adequate relocation sites to families who have been forcibly removed from their properties. It is also concerned over reports of violence during the evictions, in some cases carried out by the police...(art. 11)¹⁶

This issue was investigated in 2007 by the Special Representative of the Secretary General for Human Rights in Cambodia. According to his report:

Since 1996, successive Special Representatives of the Secretary-General for human rights in Cambodia have expressed concern about the impact of economic land concessions on the human rights and livelihoods of rural communities. The concerns raised over the past decade remain the same today. As a result, economic land concessions continue to impact negatively upon the human rights and livelihoods of rural communities, who depend upon land and forest resources for their survival. Commonly-cited concerns are encroachment on agricultural and grazing land, and loss of livelihoods; encroachment on forested areas and loss of access to non-timber forest products; impact on areas of cultural and spiritual significance; displacement; and environmental destruction ... Instead of promoting rural development and poverty reduction, economic land concessions have compromised the rights and livelihoods of rural communities in Cambodia.¹⁷

¹³ OHCHR, *Fact Sheet No 25, Forced Evictions and Human Rights*.

¹⁴ Theo van Boven, *Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms: Final report submitted by Mr. Theo van Boven, Special Rapporteur*, UN ESCOR, Commission on Human Rights, [21], UN Doc E/CN.4Sub.2/1993/8 (1993).

¹⁵ United Nations Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic Social and Cultural Rights, Forty-second session, 4 – 22 May 2009*, UN Document E/C.12/KHM/CO/1, [15].

¹⁶ *Ibid.*, [30].

¹⁷ United Nations Office of the High Commissioner for Human Rights (UNOHCHR), *Economic Land Concessions in Cambodia: A Human Rights Perspective*, 2007, 1.

The Special Representative highlighted as an example the case of the Sre Ambel sugar concession in Koh Kong province:

The Koh Kong Sugar Industry Company and Koh Kong Plantation Company concessions were granted without public consultation in August 2006. They cover land in Sre Ambel and Botum Sakor districts that villagers have farmed since 1979. The clearing of rice fields and orchards belonging to villagers in Sre Ambel district has affected over 400 families; some have little or no land remaining for farming, and are surviving on last year's rice harvest. The concession has also restricted the availability of grazing land for villagers' livestock, and company security guards have reportedly seized or shot cattle straying into the concession area. Villagers are now reported to be facing difficulties in repaying loans taken out under micro-credit schemes, due to the loss of sources of income. Both companies have expanded their activities despite efforts to resolve the dispute, including the establishment of a provincial working group and an agreement that further bulldozing activity would be suspended until the dispute was resolved.¹⁸

This case was also the subject of a Joint Allegation Letter (JAL) to the Cambodian Government by the UN Special Rapporteurs on Food and Adequate Housing on 2 May 2007. The letter noted forced evictions for the purposes of commercial agriculture and loss of or limitations on access to agricultural land and sources of livelihood, including the destruction of local villagers' rice fields and orchards to make way for a sugarcane plantation.¹⁹

Since the publication of the Special Representative and the submission of the JAL, the Koh Kong Sugar Industry Company and Koh Kong Plantation Company have illegally confiscated more than 5000 hectares of land belonging to local farmers. This long-running dispute has left hundreds of families landless and chronically food deprived. Meanwhile, the Senator who obtained this concession has been granted at least 40,000 hectares in additional sugar concessions in two other provinces, which have driven hundreds of more families into impoverishment.

Lack of Effective Remedies and Repression of Human Rights Defenders

Despite legislative protections and constitutional and statutory recognition of rights, affected and at-risk families are unable to protect their rights or seek legal recourse because of the weak and corrupt state of legal institutions in Cambodia.²⁰

Successive Special Representatives of the Secretary-General for Human Rights in Cambodia, as well as the Committee on Economic, Social and Cultural Rights, have expressed concern at the lack of effective remedies for violations of human rights, including forced evictions and illegal confiscation of land and property.

¹⁸ *Ibid*, 12.

¹⁹ UN Special Rapporteur on the Right to Food, *Pressures on Access to Land and Land Tenure and their Impact on the Right to Food: A review of submissions received (December 2009-March 2010) and of Letters of Allegations and Urgent Appeals sent between 2003-2009 by the United Nations Special Rapporteur on the Right to Food*, 18.

²⁰ Land and Housing Working Group, *Land and Housing Rights Parallel Report* (submitted to the UN Committee on Economic, Social and Cultural Rights by NGO coalition), May 2009.

According to the Special Representative of the Secretary-General for Human Rights in Cambodia:

Effective recourse for affected communities has remained elusive, and their concerns have gone largely unheeded by the Government. Relevant authorities and the judicial system have not fulfilled their duty to uphold and protect the rights of rural communities to own land and use forest resources. They have also failed to comply with and enforce the Land Law, Forestry Law and related sub-decrees. This does not reflect positively on the accountability of state institutions and access to an effective remedy.²¹

According to the Committee on Economic, Social and Cultural Rights:

The Committee regrets that, despite the constitutional guarantees, it has not been established that Covenant provisions can in practice be invoked before or directly enforced by the State party's national courts, tribunals or administrative authorities. In this regard, the Committee notes with concern, the lack of effective remedies for violations of human rights including economic, social and cultural rights, thereby undermining the State party's ability to meet its obligations under the international human rights treaties that it has ratified including the International Covenant on Economic, Social and Cultural Rights.²²

The monitoring bodies have consistently found that rather than providing effective remedies, Cambodia's police, military and courts are routinely used as instruments to intimidate and persecute defenders of land and housing rights. Following his mission to Cambodia in 2006, the UN Special Rapporteur on Adequate Housing reported:

The main trend today is the use of threats and intimidation by local authorities and private developers leading to dubious deals and involuntary relocations or resettlements without fair and just compensation. This includes the use of military police and police forces, the threat to use force, the use of misinformation and rumours, incrimination of representatives for being "political", or for committing criminal offences as well as limiting access of affected families to their houses and discouraging villagers to organize meetings.²³

... Cases of physical violence seem to be more frequent in the provinces, especially in remote and rural areas.²⁴

The Committee on Economic, Social and Cultural Rights was deeply alarmed at this trend:

... The Committee expresses its deep concern about the culture of violence and impunity prevalent in the State party and the repression of human rights activists defending economic, social and cultural rights, particularly those defending housing and land rights. The Committee is also concerned about reports that the court system has been used to legitimize forced evictions and falsely prosecute

²¹ UNOHCHR, 2007, *Op cit.*, 22.

²² *Ibid* [12].

²³ UNOHCHR, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living*, 2006, 17.

²⁴ *Ibid*, 13.

housing rights defenders. (art. 11)²⁵

The Special Representative of the Secretary-General for Human Rights in Cambodia again cited the Sre Ambel sugar concession as an example of this repression:

For example, since May 2006, villagers in Sre Ambel district, Koh Kong province, have protested against the presence and activities of Koh Kong Sugar Industry Company and Koh Kong Plantation Company. In September 2006, protests at the concession site were met with violence by armed company security guards, who are military personnel, resulting in the shooting and injury of a female villager, and assault of four other villagers.²⁶

Systematic Human Rights Abuses

It is estimated that at least 3 million hectares – more than half of Cambodia’s total arable landmass - has been granted for the development of agro-industrial plantations, hydropower and mining projects.²⁷ The human rights organization Licadho has received complaints of land-grabbing in connection with these concessions affecting the lives and livelihoods of more than 250,000 people over the past five years alone.²⁸

We submit that the policy of promoting large-scale commercial plantations through the granting of ELCs is systematically violating the human rights of affected rural communities due to the Government’s consistent failure to implement the social and environmental safeguards contained in the legal and regulatory framework. As the Special Representative of the Secretary General for Human Rights in Cambodia reported:

At the root of these concerns is poor enforcement of and compliance with the requirements of the Land Law and Sub-Decree on Economic Land Concessions, which govern the grant and management of economic land concessions. Essential pre-conditions to the grant of concessions, such as the registration of land as state private land and conduct of public consultations and environmental and social impact assessments, have not been met. Likewise, restrictions on the size and ownership of economic land concessions have not been properly enforced. Individuals have used different companies to acquire interests in multiple concessions, contrary to the Land Law, and to obtain adjacent concessions for the same purposes, circumventing the 10,000 hectare size limit. Concessions have been granted over forested areas and former forest concessions, contrary to the Forestry Law and forestry regulations. Despite these breaches of the law, there has been no systematic review of concessions, as required by the Sub-Decree on Economic Land Concessions. Further, the judicial system has failed to uphold the rights of affected communities and respect for the law, and to hold companies accountable for their actions.

Request for Investigation

²⁵ *Ibid.* [31].

²⁶ UNOHCHR, 2007, *Op cit.*, 17-18.

²⁷ www.sithi.org

²⁸ Licadho, *The Myth of Development*, 2009.

We are aware that, during a recent meeting on this matter with the Ambassadors of EU Member States, there were discussions about the Cambodian Government conducting an investigation into allegations of human rights abuses in relation to the sugar industry. We welcome the discussions between the EU and the Cambodian Government about these issues; however, we urge the EU not to rely on the veracity of any investigation conducted by the Cambodian authorities. Cambodia is notorious for its culture of impunity and the abuses that are the subject of the investigation have either been committed by organs of the State or by powerful Government officials, so an investigation conducted by the Cambodian Government is highly unlikely to be impartial. Moreover, such an investigation would not in any case substitute for the application of Articles 17 and 18 of the GSP Regulation.

We urge the Commission to undertake an independent investigation, in accordance with the procedures laid down in the GSP Regulation, into the question of whether temporary withdrawal of EBA-status for Cambodian sugar and potentially other agricultural products is justified.

We trust that the information contained in this letter and its annexes provides sufficient grounds for the Commission to institute an investigation under Article 15.

We look forward to a response to this request for an investigation within one month of receipt of this letter.

Sincerely,

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