COMMUNITIES FROM KAMPONG SPEU RECEIVE PARTIAL REMEDY FROM ANZ BANK IN LANDMARK AGREEMENT

In cooperation with the Accountability Counsel, BankTrack, Equitable Cambodia, Inclusive Development International (IDI) Centre for Research on Multinational Corporations (SOMO).

Written by Emily GAGER
Equitable Cambodia
Equitable Cambodia (EC) is a national leader in advocating for the protection and defense of housing, land, and natural resource rights in Cambodia. EC was established in 2012 to enhance and safeguard the rights of all Cambodians from a protracted land-grabbing crisis and human rights abuse. Through policy research, advocacy at the national and international level, coalition-building and community organizing, EC endeavors to transform the land and economic development practices of the country into a model that respects, protects, and fulfills the human rights of the Cambodian people. EC accomplishes its goals through three dynamic programs, each striving toward our vision of a Cambodia in which all people are able to enjoy their basic human rights and natural resources are managed sustainably for the common good.

CONTACT DETAILS

Equitable Cambodia (EC):

🏠  #05, Street 145, Village 3, Phsar Daem Thkov, Chamkarmorn, Phnom Penh.
📞  023 - 210 - 805
🌐  www.equitablecambodia.org
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The sugarcane industry continues to be one of the worst offenders in Cambodia's land-grabbing epidemic. Fueled by the Cambodian government's policy of granting large-scale long-term leases (ELCs) over vast quantities of land to private investors to develop massive agro-industrial plantations, the epidemic has resulted in thousands of individuals being forcibly displaced. The European Union's (EU) "Everything But Arms" (EBA) preferential trade policy, providing for tariff free imports in the EU, served as a primary motivator for widespread land grabs.1

Emblematic of this practice was the granting of economic land concessions to Phnom Penh Sugar Co. Ltd. and Kampong Speu Sugar Co. Ltd (together “PPS”) in February 2010. Respectively, the companies were granted adjacent ELC’s of approximately 9000 ha in Thpong District, and 9052 ha in Oral district. Later, in March 2011, a sub-decree was signed allowing additional land in the Oral Protected Area to be reclassified, thereby expanding the KSS concession by 4,700 ha. Despite domestic law in Cambodia placing a 10,000 ha limit on the size of ELC concessions, together these plots totaled over 23,000 ha. The company began to plant sugar cane in 2011 and opened a 150-million-dollar sugar processing factory in December 2012. This period was marked by forced evictions, land seizures and the bulldozing of houses without prior notice or warning.

The concessions encroached on more than 2000 ha of farmland belonging to 1100 families from rural communities, the vast majority of whom had been living in the area for more than 5 generations. Land was seized and houses bulldozed with no prior notice. In addition to the farmland, the concessions overlapped with thousands of hectares of grazing land, water resources and registered community forest that individuals relied upon for the collection of non-timber forest products. Affected families relied upon local government-led processes to seek compensation for damages and harm caused by PPS. However, as they pressed for a resolution they were met with continued intimidation, harassment, and arrests by police officers.

In January 2014, Equitable Cambodia (EC) and Inclusive Development International (IDI) discovered that the multinational banking and financial service company, the Australian and New Zealand Banking Group Limited (ANZ), had issued a $40 million loan to PPS in early 2011. The loan was granted despite publicly available information concerning various human rights abuses linked to PPS. These included ongoing forced evictions orchestrated by PPS, land seizures, arbitrary detention, use of child labour, and unsafe work practices, which led to several deaths on site.2 Through the provision of the loan, ANZ were in breach of their own standards and commitments, including falling short on its human rights obligations, due diligence, and broader financial sector standards.

In 2019, EC and IDI filed a joint “Specific Instance” complaint3 to the Australian National Contact Point (NCP) on behalf of 681 affected families in Thpong and Oral districts in Kampong Speu, alleging that ANZ had breached the Guidelines for Multinational Enterprises of the Organization for Economic Cooperation and Development (OECD). The complaint requested that the Australian NCP offer their good offices to facilitate dialogue between ANZ and the representatives of affected families to reach an agreement. The Specific Instance stated the community’s request to have ANZ turn over all profits and interest made from the PPS loan to the affected communities.
When EC and IDI revealed ANZ’s involvement, affected families requested the bank to use their client partnership to convince PPS to provide adequate compensation. ANZ denied the request announcing that they had ended their relationship with PPS in June 2014. ANZ further claimed that they were not legally liable for the actions of PPS as they only provided the loan and were not directly involved with the forced evictions. For the following year, ANZ refused to offer compensation for affected families despite making a profit from their loaning period with the sugar company.

On February 7, 2020, the Independent Examiner of the Australian NCP facilitated a conciliation meeting with all relevant parties, which resulted in a landmark agreement. ANZ agreed to turn over profits made during their loaning period with PPS to Cambodian farmers displaced by the sugar company financed by ANZ.

On February 27, 2020, the Australian NCP released a final statement. The statement detailed ANZ’s acknowledgement that its “due diligence on the project funded by its loan was inadequate and [the bank and its entities] recognizes the hardships faced by the affected communities.” Further, ANZ also agreed to turn over all profits from the loan to the community and to “review and strengthen its human rights policies, including its customer social and environmental screening processes and grievance mechanism”. The bank announced the creation of its grievance mechanism on 3 November 2021.4

EC and IDI worked with community representatives to devise and carry out an inclusive process to distribute the settlement funds to affected families, identifying, and certifying 1,093 families eligible for the funds and taking steps to ensure that they received an equitable share. A portion of the settlement was set aside to fund local development projects, designed by the communities themselves. The distribution process was delayed because of the COVID-19 pandemic but ended in November 2021.

This case presents an interesting example of how mixed approach advocacy can produce positive results. Indeed, the community received compensation from ANZ, enacted its internal policy changes and set up an internal grievance mechanism, and the EU preferential trade scheme was withdrawn from Cambodia on the back of a series of grievous human rights violations.5 However, in stark contrast, the case clearly revealed how corporate powers in Cambodia are often well connected to Cambodia’s ruling party, making advocacy extremely challenging and resulting in many legitimate claims of human rights abuses being ignored.

The case also made clear that these relationships often enable increased harassment and intimidation of impacted communities and rights activists in their attempts to claim and assert their rights. From this view, large gaps remain in terms of communities’ ability to realize justice and assert their full spectrum of rights – such as the right to enjoy their land and the right to freedom of expression and association under Cambodian and international law.
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<th>Date</th>
<th>Event</th>
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<tr>
<td>February 2010</td>
<td>MAFF grants two adjacent Economic Land Concessions (ELC) totaling more than 20,000 hectares to companies controlled by tycoon Ly Yong Phat and his wife (Phnom Penh Sugar and Kampong Speu Sugar — hereafter “PPS”) for a sugar plantation. These two concessions overlapped with land belonging to more than 1,000 families in Tpong and Oral Districts.</td>
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<td>March 2010</td>
<td>Around 500 people from 10 villages travel to PPS’ offices to speak with company representatives. However, representatives refuse to meet, and violence erupts resulting in five temporary company buildings being burned down.</td>
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<td>February 2011</td>
<td>A local human rights group in Cambodia reports that there have been 94 protests by the communities affected by PPS in Tpong and Oral districts.</td>
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<tr>
<td>December 2012</td>
<td>Reports of forced evictions, land seizures and bulldozing of houses as PPS opens 150-million-dollar sugar processing factory</td>
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<td>January 2014</td>
<td>Equitable Cambodia (EC) and Inclusive Development International (IDI) discovered that the multinational banking and financial service company, the Australian and New Zealand Banking Group Limited (ANZ), had issued a $40 million loan to PPS in early 2011.</td>
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<td>October 2014</td>
<td>Equitable Cambodia and Inclusive Development International issue a Specific Instance complaint to the OECD Australian National Contact Point (AusNCP) on behalf of 681 families against ANZ Group.</td>
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<td>August 2015</td>
<td>The AusNCP accepts the complaint and facilitates a mediation process between the parties through a sequence of telephone meetings and email correspondence. However, both parties cannot reach an agreement and conclude that continued discussion serves no further purpose.</td>
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<td>January 2019</td>
<td>Following communications, representative NGOs highlight ANZ’s refusal to settle the dispute by way of returning loan profits to displaced communities.</td>
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<tr>
<td>June 2019</td>
<td>Local officials initiate a new campaign of intimidation and harassment to coerce families into accepting $500 in compensation. The offer of $500 was repeatedly made by both PPS and the authorities despite the vast majority of affected families vigorously rejecting it as inadequate.</td>
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<tr>
<td>February 2020</td>
<td>The Independent Examiner of the AusNCP facilitates a mediation involving representatives of ANZ, representative NGOs and the affected families. All parties jointly set the agenda and the terms for their dialogue. Mediation results in a landmark agreement.</td>
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<td>November 2021</td>
<td>ANZ announces the creation of its grievance mechanism and distribution of the payout is completed.</td>
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Failure of government-led resolution processes

Communities and supporting NGOs, EC, and IDI, have been engaging for years with the EU to address harms suffered by thousands of rural families in four provinces in Cambodia (Koh Kong, Kampong Speu, Oddar Meanchey and Preah Vihear). The EU Parliament issued resolutions calling on the Commission to act upon the issue, which eventually led to the development of a Terms of Reference (ToR) for an audit process of sugar-related land claims, including the case at hand in Kampong Speu, with the objective of providing families with appropriate remedies. The Cambodian government, however, refused to undertake the audit process, jointly developed under the EU embassy in conjunction with the Cambodian Government’s Inter-Ministerial Working Group (WG), and instead preferred to proceed with its own resolution process in 2017. The process chosen by the government led to unmet promises and on June 14, 2018, about 300 villagers from Amliang and Traphaeng Chor communes in Kampong Speu gathered in front of the Ministry of Land Management, Urban Planning and Construction (MLMUPC) to demand the process be expedited.

When villagers refused to leave until an acceptable response was obtained, officials agreed to hold a meeting the following day in Amliang commune. During this meeting, a Ministry spokesperson attacked the legitimacy of land claims saying that too many people had claimed land in the area. The Ministry spokesperson also stated that seeking NGO support would be meaningless because very few people had land documents to support their claims. In addition, the spokesperson mentioned that other issues needed to be solved before the community’s problems could be addressed and invited villagers to vote for the ruling party at the upcoming elections. Villagers were warned that if they don’t vote for the ruling party, their problems would remain unresolved because they would not hand over the case documentation to anyone. The community representatives reported feeling intimidated throughout this meeting.

Village Level Activities

On 30 June 2018, officials again met with affected households from Traphaeng Chor and Amliang communes. Officials repeated that the government would not resolve disputes for some categories of claimants, including villagers who claim land within the company’s “private land.” Villagers from these areas were told by land ministry officials to instead take up their dispute with the courts, an option that most communities could not afford. Moreover, such complaints would likely not be accepted by the court. Following this, the Kampong Speu deputy governor took one community representative aside, warning him to stop replying to officials in public. The deputy governor told the representative that he was guaranteed to be compensated even though his land is located within the land ‘privately owned’ by the company. Once the representative received clear indications that the deal was for him only and not for all the other villagers in the same situation, he told the deputy governor that he would not accept such an offer.
In November 2018, the provincial WG organized two meetings, at extremely short notice, in Oral and Thpong districts. Only a minority of affected families were invited to attend the meetings and several key community representatives were not invited. Local authorities informed those present that villagers whose land overlapped with the land claimed by sugarcane companies as “private property” would be excluded from the claims process and would therefore not be dealt with by the WG. Attendees were not given any information regarding the next steps government officials planned to take, nor was any estimated timeframe given for the resolution of people’s claims. Moreover, the WG did not provide any indication of when and how the villagers claims that were excluded from these meetings would be dealt with.

The chair of the WG’s told attendees that the main problem with the process was the ‘high number of claimants’ and invited people not to make ‘unreasonable demands’ to facilitate a quick resolution. As a result, according to the WG, the only option was to accept a lump-sum payment of US$300-500, regardless of the actual market value and size of land lost. Attendees were not given the opportunity to comment on the proposed inadequate settlement. Following the speech by the WG chair, attendees were divided into small groups of about 5 families. Officials then called on individual groups to respond to whether they accepted the offer. Some claimants reported feeling intimidated to accept what was presented as a ‘take-it-or-leave-it’ offer and that the tactic of dividing communities in small groups was aimed at breaking community solidarity.

In addition to the above attempts at bribery and coercion of affected families, police stopped a community representative on his way to an international Human Rights Day event and told him that the event was illegal as authorities did not receive prior notification. This indicates that despite the revocation of such notification requirements by the Ministry of Interior’s order dated 27 November 2018, local officials continue to harass human rights defenders involved in community-led activities, including those related to sugar ELCs.

As a result of lack of progress since the November meetings, hundreds of villagers affected by the sugar plantations in Kampong Speu came to Phnom Penh and held a protest outside of the MLMUPC on 4 April 2019. Following a tense day of negotiations, a group of community representatives were allowed to hold a meeting with relevant authorities inside the ministry building. Communities report that because of the meeting, authorities agreed to start working with community representatives to jointly identify legitimate claimants after the Khmer New Year celebrations.
Mediation meetings of Community Representatives

A subsequent community meeting was held at Trapnaing Cho pagoda, on 4 May 2019. At the police station, about 200 meters from the Pagoda, a military police unit of around 80 soldiers armed with shields and batons were present. Initially, the commune police chief prevented the meeting from going ahead, claiming that people didn’t notify authorities about the planned gathering. A community representative referred to a recent Prakas (official order) from the Ministry of Interior relaxing restrictions on giving notice to authorities before organizing community meetings, however this reasoning was not accepted. The community representative subsequently called the deputy district police chief, who then contacted the deputy district chief, who in turn instructed the commune police chief to allow the meeting to go ahead. Following this, a community representative received a message from a WG official stating that another preliminary meeting would be organized with community representatives to again confirm names of families on the government registration list who were represented by the community representatives. It was agreed that this meeting would take place at the end of May 2019.

On 28 May, 14 representatives from 13 villages meet with WG officials at Kampong Speu Department of Land. Although the announced purpose of this meeting was to ensure that all affected families in the community list were also on the government registration list before this verification process began, the WG chairwoman repeated an earlier WG position that certain types of claims would be excluded from consideration and would not be eligible for resolution. This was extremely frustrating for the attendant community representatives as officials had previously agreed to jointly re-assess all families’ claims rather than unilaterally set out contested criteria for eligibility. Claims to be excluded from resolution were stated as follows:

1) Land claims overlapping with the “private land” of sugarcane companies.
2) Claims by families who have a current address registered in a village which is different from the village in which they claim the land-grab occurred.
3) Claims by families who claim land which conflicts with Order 01 titles.
4) Claims by families who have land claims in areas overlapping with two other ELCs producing sugarcane (HLH and Sun Try).
5) Claims by families whose claims of size of land loss in the community lists is different from the size of land loss in the government registration list.
Community representatives expressed that the WG’s exclusion criteria were substantially unfair and did not reflect the government’s prior commitment to work with communities to jointly identify legitimate claimants, as authorities first promised to do during the meeting at the MLMUPC on April 4, 2019. Community representatives added that if those groups were excluded from the resolution process, then the whole community would continue to mobilize against the unjust outcomes of the government-led process.

At the time of writing, the illegitimate practice of coercively offering wholly unfair and inadequate cash compensation continues. Village chiefs from Srae Kin, Plouch, Kreng Tbaing, Chrok Tiek, and Cheuteal Chhrom, from June 1 2019, began making public announcements in the villages instructing people to go to the Oral District Hall, and collect their $500 “donation”, stating that it would be the last opportunity to receive any money for their lost land, and they would not be able to obtain any compensation in the future if they declined. Faced with extreme economic uncertainty stemming from forced evictions linked to sugarcane industrial plantations, approximately 50 families were intimidated to the point where they reluctantly decided that they had no option other than to accept the $500 “donation” regardless of their actual losses.

Affected communities have repeatedly denounced the severe flaws of this government-led process, pointing to bias in eligibility criteria, a complete lack of transparency surrounding procedural steps, lack of inclusiveness such as independent observers or NGO monitors, arbitrary exclusion of certain claims from the process and an absence of appeal mechanisms thereby, and continued harassment and intimidation of community land activists.

Reaching a landmark agreement with ANZ

The resolution reached with ANZ, while no remedies, goes some way to allowing the communities affected by PPS to begin to rebuild and serves to fill part of the major gaps evident in the government led remediation process. Moreover, it confirms the duty of banks to take responsibility for harmful investments. The NCP, in both its 2018 draft statement, and its 2020 final statement, made a series of findings concerning decisions and approaches taken by ANZ that were inconsistent with the Guidelines. Notably, the Australian NCP pointed out that during the loaning period, there was “publicly available information at the time (in 2010) that suggested the existence of risks associated with ANZ’s former client [PPS] and its project”. Numerous media articles detailing the original land grab and ongoing human rights abuses had been published before the decision to go ahead with the loan. Notably, in 2010, protests by affected villagers against the project obtained public attention, drawing civil society representatives into the dispute. Thus, the Australian NCP concluded that it was difficult to reconcile ANZ’s actions and decisions to continue with PPS as a client in 2011.
During 2019, when local government led remediation process were underway, ANZ claimed that their only responsibility was to monitor the government-remediation process as part of their commitment to the following ANZ stated standards:

- Confirming our 'zero tolerance for improper land acquisition (incorporated in a public 'ANZ land acquisition position statement')
- Committing to considering remediation processes if we identify we have caused or contributed to adverse impacts or are linked to negative human rights impacts via our products and services.
- Confirming our expectation that our customers resolve issues identified where they are associated with adverse human rights impacts (consistent with our' sensitive sector' policies also upgraded in 2015)

However, following a conciliation meeting with all relevant parties facilitated by the Independent Examiner of the Australian NCP in early 2019, a landmark agreement was reached. ANZ agreed to turn over profits made during their loaning period with PPS to Cambodian farmers displaced by the sugar company financed by ANZ. ANZ confirmed that the "gross profit earned from the loan" would be given to affected families to "help alleviate the hardships faced by the affected communities and support their efforts toward rehabilitation". ANZ also affirmed in its resolution its commitment to "review and strengthen its Human Rights Policy... customer social and environmental screening process, and specific grievance mechanisms" to align with the UN Guiding Principles on Business and Human Rights.

Both representative NGOs and community representatives have been working together to distribute the settlement funds from ANZ to the families in Kampong Speu. Further, both NGOs have been advising ANZ through an external advisory group to create the world’s first human rights complaint mechanism established by a commercial bank.

ANZs landmark agreement serves as an example of why all banks should not turn a blind eye and loan money to corporations that blatantly abuse people's fundamental human rights. It shows that in circumstances where evidence points to commercial banks contributing to human rights violations through their lending activities, they have the responsibility to remedy the harm done to affected communities. However, as recognized by the NCP the agreement does not "in any way replace Phnom Penh Sugar's responsibility" to fully compensate the communities for the harm caused as a result of the land grab.7
Unresolved claims for land returns/replacements

There has been little to no change in terms of the Cambodian government’s willingness to provide relief to communities in Oral and Thpong districts since notification of the partial withdrawal of EBA trade preferences in August 2020. Thousands of affected families continue to endure a prolonged period waiting for engagement with the local WG to have their claims for land return/replacement. The wait continues despite assurances from the MLMUPC in a January 2020 meeting in Phnom Penh that the WG would recommence dispute resolution. At that meeting, the WG representative informed community members that the resolution process would begin after the decision on the withdrawal of EBA trade preferences on February 12, 2020, suggesting that this would occur in early March at the latest. Community representatives were dubious that such action would happen and requested and received a hand-written note of confirmation from a MLMUPC representative as proof. No recommencement of the resolution process has happened at the time of writing.

It is reasonable to assume that the COVID-19 pandemic has caused delays with the process. However, it is also suitable for communities to expect some level of communication regarding recommencement during the last nine months. Unfortunately, since February 2020, there has been very little to no meaningful communications regarding land returns/replacements.

Communities and partner NGOs are concerned about any potential government or bad faith actors' interference into the compensation process established under ANZs decision to provide restitution due to their involvement with the land grab. Local and commune-level officials have refused to provide documentation such as residency certificates required by communities to open bank accounts to receive settlement funds. Nonetheless, partner NGOs are working diligently to push the process forward despite difficulties.
Lessons Learned

Mixed Advocacy Approach to Tackle Unequal Power

The Kampong Speu case presents an interesting example of how mixed approach advocacy can produce some results, although it also shows how corporate power in Cambodia is still protected by government that many legitimate claims of human rights abuses are ignored, and often lead to increased harassment and intimidation of impacted communities, and rights activists. Whilst some positives have undoubtedly stemmed from community advocacy, such as the profit distribution from the lender ANZ, internal lending policy changes, and a withdrawal of human rights abuse incentivising trade preferences, large gaps remain, in terms of communities’ ability to realize real justice - especially related to their right to enjoy their land rights protected under Cambodian and international law, their freedom of association, and their associated economic and social rights under the International Covenant on Economic, Social and Cultural Rights.

- The foundation of this initiative was mediating and negotiating relationships of unequal power, between local authorities and governments. It is essential to have a highly qualified mediator who understands power imbalances and for the supporting organizations to establish roots and spend some time in the affected communities to be able to understand their point of view and aid in the compensation process.

"When [the banks own] human rights standards were applied to [their] commercial relationship with its former client PPS, it is arguable that most (if not all) of them would not be satisfactorily met. For instance, with the knowledge of the dispute [is] well underway, there arguably should have been substantial questions and concerns in the minds of the ANZ credit decision-makers."
Important outcomes related to corporate power were also realized by the community as part of the review of Cambodia’s trade preferences under the EU’s EBA scheme. A leaked draft EU commission report specifically mentioned injustices faced by the Kampong Speu communities, which recognized that both the EU and the Cambodian government were complicit in incentivising dangerous and harmful land grabbing, in order for political elites to benefit, whilst creating very little employment for local Cambodians. This serves to increase political pressure on the Cambodian government to respect, promote, and remedy human rights abuses, and serves as a reminder to multinational corporations that human rights violations cannot be tolerated under a properly functioning and equitable international trade arrangements. However, the Cambodian government has shown no willingness to take the claims of the disaffected villagers from Kampong Speu seriously, and continues to drag its feet with its own self-initiated audit process.

Time and Persistence

Despite these achievements after a total of more than five years, the profit distribution from ANZ while going some way to helping communities have the necessary resources to begin to re-build their lives, provides only a short term livelihood support, the fundamental problem of corporate and government complicity with land grabbing still remains a totally unacceptable and hideous reality for thousands of farming communities in the developing world. As a result, more work is needed in terms of preventing harms before they occur, and ensuring that all agricultural development programs are inclusive and equitable for the poorest and most vulnerable stakeholders, namely, local communities.

- EC alone spent over five years to achieve results and there is still work to be done
- Intensive workshops and trainings must be conducted with communities and grassroots partners. Grassroots NGO may need significant capacity building at all stages
- Follow-up assistance and staff time will be required at inconsistent intervals, especially during the money distribution phase.
NGO Coordination and Communication

It was crucial to have multiple partners with varied skills to enact this intervention with adequate knowledge and connections to both local authorities and international actors. IDI and EC were essential NGOs with the big picture of advocacy and strategic decisions as well as representatives for affected communities at an international level. Having two main NGOs may be the reason of the delayed process, taking five years to reach results and compensation for affected communities. EC played a vital intermediary role to ensure affected communities were aware of the process by disseminating regular information and updates during the long waiting periods, which were crucial to maintain community solidarity and commitment to the process.

- Although it is important to have organizations cooperating at the international, national, and regional levels, their number should be limited. Further, strong coordination must be insured at the field level through the presence of the national lead organization with assistance of local NGOs.
- Without international pressure created by direct contact from local NGOs representing affected communities the process would never have gone forward. However, this is an expensive and time-consuming process

Negotiation with local and national authorities

There were tensions with provincial, commune and village level officials at the start of the process. For years, local authorities showed support and favored the company at the expense of communities and there was long-standing mistrust and agitation. Once local officials were brought into the process and began initiating their own process compensation was received but not at an adequate level, in which affected communities had no choice but to accept.

- Negotiation with national and provincial authorities is vital as soon as the mediation process begins.
- For the first steps of mobilizing villages, interface with local level officials may or may not diffuse tensions but will result in compensation even if not adequate.
Conditions for Replication

- The company must be sufficiently vulnerable to their investors.
  - Companies with state backing or deep connections to their national governments are more difficult to pressure to provide adequate compensation.
  - International pressures are an effective the strategy that is worth pursuing. However, multiple pressure points at local levels are also effective.
- Organizations with different sets of contacts and influences are necessary. This intervention requires organizations with international, national, and field-level expertise.
- The instigating organization(s) must have sufficient monetary, human capital and knowledge of land rights and remediation processes, both locally and internationally to enter the process.
- EC alone spent over six years on this case to achieve results. Organisations must therefore be certain that they have the funding and human capital to engage with the process over time.
- Intensive workshops and trainings must be conducted with communities and grassroots partners. Grassroots NGO may need significant capacity building at all stages.
- Follow-up assistance and staff time will be required at inconsistent intervals, especially during the money distribution phase.

Money Distribution Update

From May 25 – June 3, 2021, EC has been working closely with community representatives and 1086 (out of 1096 total) affected families from three communes—Tropaing Cho, Raksmey Samaky, and Amlaing to withdraw the profit distribution from ANZ from three ACLEDA bank branches (Anlong Chrey, Samrong, and Tropaing Kroleng). EC noted that only ten families remain who have not withdrawn the fund from the bank. Six families are currently under quarantine and will withdraw the fund from the bank after they have completed their quarantine period. One family in Chrork Rorsey Village has not confirmed whether they will withdraw the funds, but EC will follow up with the family shortly.

According to IDI and EC, the first week of November 2021 marked the completion of the second distribution process and an end to the disbursing the funds by ANZ. Along with ANZ’s launch today of a new grievance mechanism to address human rights-related complaints, this brings closure to a landmark human rights case.
“With this money, the more than one thousand families forcibly evicted from their land by Phnom Penh Sugar are rebuilding.... It doesn’t undo the years of suffering they’ve endured, but it is a significant help to families in getting back on their feet after many years, and we are thankful that ANZ fulfilled its promise. In the meantime, we urge the government to expedite the land resolution process to end this longstanding land dispute.”

- Eang Vuthy, Executive Director of Equitable Cambodia.

Challenges Faced During Money Distribution

Although affected families have taken money out the bank safely, there were some challenges faced in the process of withdrawal, such as:

- May 26, a family living in Sreken village, Tropaing Cho commune could not withdraw money from the bank as the husband was in jail therefore, bank staff prevented withdrawal of the funds. The Community Committee dealt with situation with support from EC and the family will withdraw money after her husband has been released from jail and has completed his quarantine period.
- May 26, a woman in Chrok Reosey village, Amlaing commune was unable to walk and as a result the bank staff prevented withdrawal of the funds. EC aided and helped support and the family has resolved the issue and after following the wife’s recovery from the sickness and withdrew money June 2.
- May 27, Ngeng Moa, affected family and proxy Ngeng Khim, siblings, living in Dorkpor village, Raksmeay Samaky. After the proxy received money from the bank, the proxy demanded to share money in equal amounts with the affected family. Following mediation by the reps, the parties agreed to divide the money equally to end the conflict.
- May 27, two families in O’Angkom villages, Amlaing their husband or wife had passed away recently after opening joint bank accounts. Both families had death certificates issued by local authorities (commune chief). However, bank staff denied them access to their money on the basis that their spouse, the second signatory to the account, was not in attendance. To deal with this issue, the bank staff gave them a death certification form to fill out. After they completed the form, bank staff suggested bringing the form to the commune office for certification. Consequently, the bank released money for two families after the bank staff received the certification of the death form.

- May 28, due to a technical problem with duplicated bank account ID provided by EC, one family in Pis village received two shares of the money, while one family received nothing. For this case, EC worked closely with community reps and bank staff to deal to handle the situation. Following the mediation by the community reps, the family who received double shares agreed to return money to the other family who received nothing. Those families are sibling (Vang Sivin and Vang Sivon)

- On June 8, Tropaing Cho commune police chief questioned affected families in Svay Teap. The question that was asked to Hin Yorn was whether they received ANZ money. Yorn responded that “YES” they have received the money like other families. After, the same police chief asked to see her bank account card, requesting to take a photo of her bank account card. Yorn questioned the police chief asking him why he wanted a photo of the bank account card. The police chief told her that he just wanted to make sure Yorn has received the same money as others. Yorn agreed to have her bank account picture taken and after the police chief continued to meet with other families in Chher Tiel Chrom village also requesting to take photo of the communities’ bank account. Community reps refused to let him take photos and asked what his purpose of taking the pictures was. After the police failed to take more photos, the police chief left the village immediately.

According to the ANZ money distribution procedure, any families who believed that they are also part of affected families, have the right to file a complaint within 30 days following the first money distribution process. Since the May 21, after the first round of money distribution, a village community committee, Chrok Russey village, Amlaing commune received one complaint on June 7, while other villages received nothing. The committee will have a meeting soon to discuss the complaint
Conclusion

Moving Forward

The landmark agreement concluded on February 27, 2020, affirms ANZ’s commitment to the precedent of redress to affected families. ANZ confirms that the "gross profit earned from the loan" will be given to affected families to "help alleviate the hardships faced by the affected communities and support their efforts toward rehabilitation". ANZ also affirms in the resolution its commitment to "review and strengthen it's Human Rights Policy... customer social and environmental screening process, and specific grievance mechanisms" to align with the UN Guiding Principles on Business and Human Rights.11

Both representative NGOs have been working together to distribute the settlement funds from ANZ to the families in Kampong Speu. Further, both NGOs have been advising ANZ through an external advisory group to create the world's first human rights complaint mechanism established by a commercial bank which was announced on 3 November 2021.

ANZ’s landmark agreement serves as an example of why all banks should not turn a blind eye and loan money to corporations that blatantly abuse people's rights. In the circumstances where the evidence points to the banks contributing to these human rights violations through their lending activities, they have the responsibility to remedy the damages and harm experienced by the affected parties. However, this does not "in any way replace Phnom Penh Sugar's responsibility" to compensate the communities for their damages fully as stated by The Australian National Contact Point.12
Implications for the Commercial Banking Sector

By November 2021 with the help of IDI and EC, all the distribution of the funds, which ANZ agreed to pay in 2020,13 was successfully completed. Further, ANZ the same month launched a new grievance mechanism* to address human rights-related complaints, bringing closure to a landmark human rights case.

ANZ’s final decision sets precedents for the banking sector, taking responsibility for their actions by acknowledging its financial contribution to the families who were harmed by Phnom Penh Sugar and launching a new human rights grievance mechanism. ANZ’s actions serves a great example for its peer banks to strengthen their human rights due diligence, and solidify the norms for financial institutions to take responsibility to contribute to remedy when they have contributed to harm.

* ANZ’s Grievance Mechanism Framework is the first framework for human rights complaints among large commercial banks to include a commitment to reporting outcomes. In November 2019, BankTrack’s Human Rights Benchmark identified just one bank, National Australia Bank, with a complaint channel in place for human rights related grievances that is open all who are impacted by the bank’s finance; however, this channel does not include a commitment to reporting outcomes. See banktrack.org/hrbenchmark,
References and Suggested Reading


References and Suggested Reading


10. ANZ payment to displaced Cambodian families brings landmark human rights case to a close, available at https://equitablecambodia.org/website/article/3-2450.html


