

The background of the page is a light gray color with a repeating pattern of small, stylized birds in flight, scattered across the upper half of the page. The birds are depicted in various orientations, suggesting movement and flight.

Business and Human Rights in
ASEAN: Case Study of Cambodia

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Abstract

This paper will focus on the existing initiatives in ASEAN to tackle human rights violations in business development with Cambodia as a case study. Under international law, the promotion and protection of human rights are first and foremost a state obligation. Businesses and other stakeholders are bound by the national law, either from their home country or the country in which they operate, and should not take advantage of legal voids where they may exist. Cognisant of this necessity, some stakeholders have set up initiatives leading to the promotion and enforcement of the guiding principles on business and human rights as well as corporate social responsibility policies. By highlighting those initiatives, this paper considers whether those initiatives could lead to a more sustainable

development, even in countries with a poor record of human rights and/or economic development. Although Cambodia is one the poorest and most corrupt countries in ASEAN, it is also the only country running an innovative program with the International Labor Organisation called *ILO Better Factories Cambodia*. This plus the good access to first hand resources is why the author chose Cambodia as a case study. The body of evidence gathered in the paper leads to the conclusions that ASEAN needs to enhance the development of CSR policies and urge the region's businesses to join regional and global forums such as the UN Global Compact Initiative where they would get the tools to do so. Fostering human rights protection in business development will lead to more sustainable economic development for the ASEAN countries.

Keywords: Human rights in ASEAN, Corporate Social Responsibility, ILO's Better Factories Cambodia, UN Global Compact Initiative, Human rights protection.

Introduction: The general case for business and human rights

In the global context of economic development, human beings and their rights are often at odds with the interests of countries and multinational corporations (Lazala, 2015). However, it is widely accepted that both businesses¹ and human rights² need each other. Indeed, businesses have to include at least the minimum standards of human rights into their internal policies in order to ensure their long-term sustainability. Conversely, human rights need flourishing businesses that will allow people to access, improve, and enjoy their economic and social rights.

However, despite growing interest from the international community and multi-stakeholder initiatives such as the UN Global

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

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

Compact Initiative³, the link between business and human rights is not always evident. Even the concept of Corporate Social Responsibility (CSR) tends to be interpreted as environmental protection and social service but not as human rights (Plantilla, 2014, p. 1).

The gross total of human rights violations worldwide linked to business creation and development cannot be exactly quantified even though reports from civil society are piling up. For instance, a list of the most wanted corporate offenders has been established by the NGO Global Exchange (Global Exchange, 2015). Those violations can usually be observed in developing or newly industrialized countries, many of which are located in Asia.

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

Human Rights:

Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; Principle 2: make sure that they are not complicit in human rights abuse.

Labour Standar:

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

Principle 4: the elimination of all forms of forced and compulsory labor; Principle 5: the effective abolition of child labor; Principle 6: the elimination of discrimination in respect of employment and occupation.

Environment:

Principle 7: Businesses should support a precautionary approach to environmental challenges; Principle 8: undertake initiatives to promote greater environmental responsibility; Principle 9: encourage the development and diffusion of environmentally friendly technologies.

Anticorruption:

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

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

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

The Protect, Respect and Remedy Framework comprises three core principles: (1) the state's duty to protect against human rights abuses by third parties, including business, through appropriate policies, regulation, and adjudication, (2) the corporate responsibility

to respect human rights, which means to act with due diligence to avoid infringing on the rights of others, and (3) the need for greater access by victims to effective remedies, judicial and non-judicial (OHCHR, 2015, p. 1).

In June 2011, in the resolution A/HRC/17/4, the Human Rights Council (HRC) established a Working Group on the issue of human rights and transnational corporations and other business enterprises. The Working Group is comprised of five independent experts⁴ of balanced geographical representation, for a working period of three years. In June 2014, in the resolution A/HRC/26/22,⁵ the HRC decided to extend its mandate for a second period of three years. Part of that process is the UN Forum on Business and Human Rights that is being held each year in December.

⁴ Mr. Michael Addo (Chair), Ms. Alexandra Guaqueta, Ms. Margaret Jungk, Mr. Puvan Selvanathan, and Mr. Pavel Sulyandziga (as of May 2015).

⁵ Please note that this resolution includes a request that the UN Working Group prepare a report considering, among other things, the benefits and limitations of legally binding instruments. This resolution, led by Norway, was first led to oppose a binding mechanism (proposed by another resolution led by Ecuador and South Africa). Its first purpose was to acknowledge HRDs fighting for land against business, but this clause was deleted. On 26 June 2014, the UN Human Rights Council adopted Ecuador and South Africa's resolution. The votes were:

20 in favour: Algeria, Benin, Burkina Faso, China (made the distinction it was only to apply to transnational companies), Congo, Cote d'Ivoire, Cuba, Ethiopia, India, Indonesia, Kazakhstan, Kenya, Morocco, Namibia, Pakistan, Philippines, Russia, South Africa, Venezuela, Vietnam.

14 against: Austria, Czech Republic, Estonia, France, Germany, Ireland, Italy, Japan, Montenegro, South Korea, Romania, The Former Yugoslavia, UK, USA)

13 abstentions: Argentina, Botswana, Brazil, Chile, Costa Rica, Gabon, Kuwait, Maldives, Mexico, Peru, Saudi Arabia, Sierra Leone, UAE.

On 27 June 2014, the Council adopted by consensus the Norway's resolution.

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

Thus, the current state of the relationship between business and human rights in the ASEAN region should be studied to highlight positive examples of both international and regional initiatives launched by the different stakeholders (Section A.). A case study of the state of business and human rights in Cambodia will reveal the need for a better implementation of the UN Protect, Respect and Remedy Framework as well as the need for a more comprehensive enhancement of private initiatives such as the International Labor Organisation (ILO) Better Factories Cambodia Program (Section B.).

A. Business and human rights in ASEAN

The World Economic Forum on East Asia held in Jakarta (April, 2015) announced that “ASEAN’s growth will outdo [the] EU[‘s] in ten to fifteen years” (Naidu-Ghelani, 2015). With overall aggregate

Growth Domestic Product (GDP) growth of 5.4 per cent between 2000 and 2013 (McKinsey Global Institute, 2014: p. 1), the Association of Southeast Asian Nations⁶ has enjoyed remarkable economic progress in the recent past, whereas European and American economies are still facing a difficult recovery from the 2007 global financial crisis. ASEAN integration and the completion of the ASEAN Economic Community (AEC) will foster business attraction into the region; attraction that raises concerns among civil society organizations regarding the cost at which governments are willing to facilitate the establishment of enterprises in their territory. ASEAN is today at the centre of regional economic alliances ranging from APEC and ASEM to the EAS and the newly-signed TPP. ASEAN member states are being courted by the biggest economies as they are the world's current and/or future biggest potential markets. This, in turn, is leading to massive economic deals that potentially increase the occurrence of human rights violations within the ASEAN region. To tackle this growing phenomenon, and to ensure the sustainability of businesses' wealth, initiatives have been taken both by the institutions and private multi-stakeholders.

1. The “boost” of ASEAN for an inclusion of human rights into business' activities

On 31 December 2015, the ASEAN Economic Community entered into force. For now, it envisions the free movement of goods,

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

services, capital, and people among member states (McKinsey Global Institute, 2015, p. 4). However, only qualified workers⁷ will be guaranteed freedom of movement within ASEAN. The Protection to be provided to the large body of migrant—so-called unskilled—workers remains unaddressed. Thus, the question of the regulation of businesses in regards to foreign and migrant workers within the region will remain the prerogative of each State.

In 2013, ASEAN signed the Declaration on the Promotion and Protection of the Rights of Migrant Workers (the Migrant Workers Declaration) which aims to establish a framework for the minimum protection of migrant workers and which is based on international human rights principles as well as the ASEAN Human Rights Declaration (AHRD). The Migrant Workers Declaration comes with a Committee that is in charge of promoting the standards. However, this body cannot receive individual communications. To address the growing migrant workers' rights violations experienced by ASEAN citizens in the region and outside, for instance, in Qatar, a civil task force led by the Law Reform Commission of Thailand (LRCT) has imagined a new mechanism that would include a court (Thitipak, 2015). If such a mechanism is adopted regionally by ASEAN member states, it would be the first of its kind in the world (Wah, 2015). However, to date, this mechanism is far from seeing the light of day and the human rights violations experienced by workers as well as by people directly or indirectly affected by businesses continue. Therefore, besides adopting a human rights based-approach

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

to business, some initiatives try to include and foster CSR and human rights policies straight into business enterprises' internal regulations.

Most ASEAN countries are newly industrialized countries and are subject to an increasing number of human rights violations linked to their economic development. This growing economy is often assisted by state regulations putting governments in the situation of judge and jury regarding the enforcement of human rights regulations. For instance, the bilateral agreement between Cambodia and the European Union (UE on the sugar industry is still leading to massive human rights violations and the “no blood sugar” campaign.⁸

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

⁸ For instance, one of the last news articles on this issue: The Phnom Penh Post, *ANZ still owes villagers over sugar loan: Oxfam*, 16 February 2016, available at <http://www.phnompenhpost.com/national/anz-still-owes-villagers-over-sugar-loan-oxfam> (last accessed on 16 February 2016).

protect, and fulfill the human rights set out in all binding international human rights instruments they ratify (OHCHR, p. 10) as well as customary international human rights law, such as the principle in the Universal Declaration on Human Rights (UDHR). However, international human rights treaties generally do not impose direct legal obligations on business enterprises. Legal liability and enforcement for the infringement by businesses of international human rights standards are therefore defined largely by national law (OHCHR, p. 10). Corporate social responsibility is a voluntary undertaking by businesses to ensure social and economic advantages for their workers as well as the community. CSR is thus regarded as complementary to human rights standards and not as a replacement for them.

The ASEAN Intergovernmental Human Rights Commission (AICHR), established in 2009, holds the role of promoting human rights within the ASEAN member states on the basis of international human rights standards and the ASEAN Human Rights Declaration signed in November 2012. In this non-binding instrument, ten ASEAN member states recall their commitment towards the improvement of rule of law and the respect of human rights in their home countries. However, the AICHR still has not been empowered with any protection prerogatives such as investigation or the ability to receive individual complaints. Indeed, the institution is at this stage struggling to fulfill its basic mission of establishing a regional human rights body. Despite this limited competence, the AICHR is willing to take on its role of human rights promotion and dissemination. In 2014, it issued a study on CSR and human rights in ASEAN. This baseline study recognized that even if ASEAN member states are at different levels of socio-economic development, this

should not stop them from filling the gaps and drawing a common CSR-human rights guideline for businesses across the region that would take into account the specificity of the regional context. The AICHR recommended that ASEAN member states should accelerate and strengthen the implementation and enforcement of the existing rules and regulations that deal directly with such adverse impacts of business conduct. Finally, the AICHR highlighted that small and medium sized enterprises should receive special attention as they make up the bulk of the economic players in ASEAN, and their activities also have the potential to undermine human rights in the region (AICHR, 2014, pp. 21-22).

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

2. Positive impact of multi-stakeholders' initiatives in ASEAN

Worldwide initiatives on human rights and business assist in bolstering the aforementioned existing weak legal framework. Intergovernmental organizations such as the United Nations or the Organisation for Economic Cooperation and Development (OECD), as well as private international organizations such as the International Organisation for Standardization (ISO), Global Reporting Initiative, and the International Financial Corporation, separately launched complementary initiatives providing guidelines for companies on

how to integrate human rights in their operations at home or abroad (Plantilla, 2014, p. 2).

One of the first initiatives launched in 2000 was the United Nations Global Compact. This is a voluntary global platform that convenes businesses and UN agencies, labor, and civil society in support of human rights, labor, the environment, and anti-corruption (OHCHR, 2011) to lead to the development, implementation, and disclosure of responsible and sustainable corporate policies and practices (Foundation for the Global Compact, 2015). To date, the UN Global Compact has gathered around 7,500 businesses in over 140 countries⁹ as well as over 3,900 non-business stakeholders such as civil society organizations, labor unions, business associations, foundations, communities, cities, and academic institutions (UN Global Compact, 2013). One of the strengths of the UN Global Compact is the development of more than a hundred local networks around the world, six of which are located among the ASEAN countries (UN Global Compact, 2014, p. 5). Jan Eliasson, UN Deputy Secretary-General, expressed that “Local networks are the soul and foundation of the Global Compact” (UN Global Compact, 2014, p. 32).

UN Global Compact local networks can be found in Indonesia, Malaysia, Singapore, and Vietnam and are emerging in Myanmar and the Philippines. These networks are still on the rise in terms of participants and activists—compared to the North East Asian countries, but they are the most pro-active when it comes

⁹ Around 187 business participants are ranked in the Financial Times Global 500 of the world’s largest businesses (by market capitalization) and roughly 56 percent of business participants are small and medium-sized enterprises (UN Global Compact, 2013).

to learning activities (UN Global Compact 2014, pp. 17, 22). For instance, Indonesia hosted a 2014 regional meeting that focused on the launch of the Post-2015 Business Engagement Architecture. The strong value-added of local networks is their relative advantage in terms of strengthening relationships between stakeholders at a local level. Local networks take into account issues at the local level, for instance minorities' rights and land rights. There is also room to build bridges between local networks at a regional level as well as foster the emergence of such networks in neighbouring countries. This is where the already-existing ASEAN member states' UN Global Compact local networks have a role to play in encouraging countries like Cambodia, Thailand, or Laos to create a local network within the UN Global Compact. Such creation will encourage the efforts to tackle corruption and will help these countries in improving their human rights records, which are currently the lowest in the region.

The International Organisation for Standardisation and its International Guidance Standard on Organization Social Responsibility better known as ISO 26000, is popular amongst the ASEAN countries. The ISO 26000 "helps clarify what social responsibility is, helps businesses and organizations translate principles into effective actions and shares best practices relating to social responsibility, [... and is] aimed at all types of organizations regardless of their activity, size or location" (ISO 2014, 2). The ISO 26000 is built around the concept that human rights and labor practices are core areas of social responsibility. Moreover, monthly meetings have been organised in all the ASEAN member states in the past three years. The main objectives of these meetings was the dissemination of the guidance to private and public stakeholders, including media and advice for

businesses on the ways of ensuring both competitiveness and sustainability of their businesses. The success of the ISO 26000 within the context of ASEAN could be explained by the fact that, being a private initiative, it is not comprised of a remedy framework, not even a non-judicial mechanism such as a mediation or arbitration mechanism. Those mechanisms, however, are part of the recent improvement of workers' rights in Cambodia.

Case study: business and human rights in Cambodia.

Following the United Nations' intervention in the early nineties and the reestablishment of democracy and rule of law in the country, the Kingdom of Cambodia's economy has been growing steadily over the past few years. For the past decade and a half there has been an economic boom, with an average growth of 8 percent every year. Furthermore, the Cambodian Ministry of Economy and Finance has indicated that Cambodia had a 7.3 percent and 7.6 percent growth in 2012 and 2013 respectively.¹⁰ According to the 2014 World Bank Cambodia Report, the country's real growth for 2014 was estimated at 7.2 per cent, and the country's real economic growth rate for 2015 is expected to reach 7.5 per cent.¹¹ Most of this growth is

¹⁰ More data available on the Cambodian Ministry of Economy and Finance's website: <http://www.mef.gov.kh/> (Last accessed on 7 February 2016).

¹¹ More data available on the World Bank's website: <http://www.worldbank.org/en/country/cambodia> (Last accessed on 7 February 2016).

due to the development of small and medium enterprises (SMEs).¹² However, according to the latest Transparency International Cambodia's report, Cambodia's full growth potential is limited by corruption. As much as 60 percent of SME CEOs who responded to a Transparency International study in Cambodia identified corruption as an external factor impeding the progress of their company (TIC, 2015, p. 6).

In the meantime, Cambodia's human rights record remains unsatisfactory according to both civil society organizations and the United Nations. The UN chose to extend the position of UN Special Rapporteur on the situation of human rights in Cambodia for at least one more year in March 2015, by appointing Professor Rhona Smith as the new Special Rapporteur.¹³ At the time of writing, it has not been decided if her mandate should be prerogate for a longer time. During the last Universal Periodic Review of Cambodia, Human Rights Watch submitted several recommendations to the UN pertaining to the human rights situation in Cambodia. Some of these included the establishment of an independent commission to investigate irregularities in the 2013 national elections in Cambodia, the opening of the media sector to independent and opposition voices, and a lifting of all arbitrary bans on freedom of peaceful assembly and association (Palatino, 2015).

¹² Since 2005, a common definition of SMEs is used in Cambodia. Indeed, the SME sub-committee of the Royal Government of Cambodia (RGC) proposed that all ministries and institutions understand SMEs has enterprises comprised of 11 to 50 employees and USD50,000 to USD250,000 of assets for small enterprises, and comprised of 51 to 100 employees and USD250,001 to USD500,000 of assets for medium enterprises (TIC, 2015, p. 12).

¹³ Prof. Rhona Smith succeeded Prof. M. Surya Subedi who was appointed in 2008 as the fifth Special Rapporteur on Human Rights in Cambodia.

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

1. Initiatives fostering business development in light of human rights

The fundamental legal basis that bound the Kingdom of Cambodia to ensure the respect of human rights on its territory can be found in Article 31 of the Constitution which enshrines international human rights obligations. Article 31 states that "The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women's and children's rights" (Kingdom of Cambodia, 1993, p. 7). The Guiding Principles on Business and Human Rights are grounded in recognition of States' existing obligations to respect, protect and fulfill human rights and fundamental freedoms. Therefore, the standards on business and human rights are directly applicable to the Kingdom of Cambodia through their international legal commitments and

domestic law (OHCHR, 2011, p. 10). As of today, with more than thirty laws and regulations¹⁴ that are applicable to the business sectors in Cambodia, the main issue remains their dissemination and implementation by the RGC and the local authorities. These laws have, among other things, created the Anti-Corruption Unit and other online procedures which are intended to tackle corruption and speed up business registration and tax declaration. The lack of knowledge of these mechanisms by businesses, especially the microbusinesses and SMEs, is encouraging bad practices at the governmental officials (TIC, 2015, pp. 6-7). However, businesses that try to run a clean business by fully following the legislation face difficulties in being a competitive and therefore in surviving as compared to the unclean businesses.¹⁵ Efforts have to be made by the RGC together with Chambers of Commerce in Cambodia (such as EuroCham and AmCham¹⁶) and the businesses to facilitate the transition from unregulated or partly regulated enterprises to clean enterprises.

Corruption is simultaneously both the symptom and cause of Cambodia's weak rule of law which is unfortunately leading to human rights violations. For instance, in the matter of business, corruption is leading to general abuses by the law enforcement

¹⁴ A non-exhaustive list of laws and regulations is provided by OHCHR in its 2011 publication titled "*Guiding principles on business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework*", pp. 16-17.

¹⁵ According to all stakeholders involved in the Panel discussions, Transparency International Cambodia, National Conference on Business Integrity, 27 May 2015.

¹⁶ EuroCham: European Chambers of Commerce in Cambodia; AmCham: American Chambers of Commerce in Cambodia.

officials (e.g., fee registration of taxes) and lack of access to information and to remedy (OHCHR, 2011, pp. 10-11). The most common human rights violations are land-grabbing, poor working conditions, trafficking, and slavery, (CCHR, 2010) which the RGC has started to address by, for example, raising the minimum wage of garment factory workers and reforming the land titling process.

One of the skills the businesses need to ensure the sustainability of their income and profit is the ability to assess and consider the risk of starting, developing, and pursuing their operations. The Guiding Principles refer to this as risk mitigation. Businesses have the responsibility to prevent and address negative impacts to which they are linked (OHCHR, 2011, p. 12). If businesses do not respect human rights or offer effective remedies when their operations violate human rights, they will increase the risk of attracting bad publicity (OHCHR, 2011, p. 12). The infamous name and shame strategy typically used by the international community vis-à-vis state-related human rights violators has also been directed towards the biggest companies to force them to comply with the minimum human rights standards (Global Exchange, 2015; Heng and Roberston, 2014). Such advocacy strategies have been successfully used in Cambodia to raise the cases of the workers operating in famous brands' supply chains. For instance, international campaigns against the suppliers of Nike, H&M, and Walmart have resulted in the brands' acknowledging the violations and, in turn, forcing their suppliers to compensate their workers (Pearlman, 2013). Factories are not the only businesses in Cambodia to receive special attention from the RGC and the international community. Indeed, one of the other important areas of business in Cambodia is sugar production, sadly known as "blood sugar".

Since the start of the ‘Everything but Arms’ Treaty by the European Union, Cambodia has experienced a “sugar rush” (Ruom, 2013). Signed in 2006, the treaty allows for all sugar produced in Cambodia to be exempt from tax when entering the EU which leads to the attraction of powerful investors. One such investor is the major Australian Bank ANZ (and its Cambodian subsidiary ANZ Royal) which is accused of hoarding profits at the cost of the suffering of Cambodian farmers.¹⁷ Human rights organizations have reported that more than 12,000 people have been forced off their land to make way for this development. Crops have been razed, animals shot, homes burned to the ground, thousands of people left destitute, and some people thrown in jail for daring to protest (Ruom, 2013). Given no option but to accept inadequate compensation, villagers gave up their homes and farmland (Ruom, 2013).

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

¹⁷ More information available on the Clean Sugar Campaign’s website: <http://www.cleansugarcampaign.net/> (Last accessed on 7 February 2016).

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

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

2. A unique example: ILO Better Factories Cambodia

It is poignant at this point to recall that Cambodia was set to be the garment-industry model. Many years ago, the United Nations' International Labor Organization (ILO) launched the Better Factories Cambodia (BFC) programme to manage Cambodia's booming garment trade. The programme is the first of its kind in the world and involves Better Factories Cambodia's monitoring factories, training management and workers, and providing guidance

and advice on factory improvements that help enterprises preserve profits while respecting workers' rights. The programme, initiated in 2001 by an agreement between the United States and the Royal Government of Cambodia, is based on the eight core ILO Conventions which Cambodia has signed¹⁸ (CCHR, 2010, p. 31). The fact that the RGC supports this initiative is a big step towards businesses' compliance to ILO Conventions and therefore basic human rights for the workers.

Over the years, the BFC has helped Cambodia to improve its record on health at work places and fight its battle against child labor. BFC has a 'zero tolerance' policy in regards to child labor. When the program started, child labor was a common issue in Cambodia and brands like Nike and Gap had just been exposed by the media for employing children in their outlts factories. Therefore, Nike and Gap cut off ties with Cambodia until they were sure child labor would be prohibited under the BFC progred. Without the BFC, hundreds of workers would have lost their jobs following the accusations; the programme helped secuee factory activitisy while ensurine respect of the ILO Conventions and the reputation of the brands working in Cambodia. This is the perfect example of the benefits the ILO Better Factories Cambodia Program can bring to an industry and a country.

¹⁸ ILO Convention 29 – Forced Labor Convention (1930); ILO Convention 87 – Freedom of Association and Protection of the Right to Organise Convention (1948); ILO Convention 98 – Right to Organise and Collective Bargaining Convention (1949); ILO Convention 100 – Equal Remuneration Convention (1951); ILO Convention 105 – Abolition of Forced Labour Convention (1957); ILO Convention 111 – Discrimination (Employment and Occupation) Convention (1958); ILO Convention 138 – Minimum Working Age Convention (1973); ILO Convention 182 – Worst Forms of Child Labour Convention (1999).

In its 2015 report, the BFC highlighted the fact that its online transparency database concurs and encourages businesses operating in Cambodia to translate the ILO Conventions into their internal regulations and operations (BFC, 2015, pp. 2-3). With this database, the RGC have involved the Ministry of Commerce and the Ministry of Labor and Vocational Training to join the BFC teams during visits to factories on the Low Compliance List.¹⁹ The report, along with the BFC websites, highlights factories' good practices with the aim of inspiring others to do the same.

However, despite the “success story”, some reports have shown that the BFC has over the years failed to address “longstanding labor rights problems in the Cambodian garment industry or to prevent a backward slide in wages and conditions for workers” (Stanford Law School and WRC, 2015). Since the last national election in July 2013, protests by workers demanding higher wages have intensified. So much so that on 5 January 2014, five workers were killed by security forces with no one convicted. Following the last series of protests in December 2015, the workers obtained a raise to USD140 a month applicable since January 2016. This minimum wage is only for the garment factory workers and can be seen as an indirect benefit from the ILO BFC Programme which urges the factories to comply with the ILO “decent work” agenda.

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

The current battle of the workers is the union law that is still being drafted after more than 10 years of negotiation. Consultations have been organized with all parties but the last modification made by the government on the law would break at least two of the eight core ILO Conventions. Indeed, according to the union leaders, the union law would restrict the freedom to form unions, collectively bargain, and strike. The union leaders have asked the leading political party and the main opposition party to reconsider the law before giving it to the National Assembly for adoption. At the time of writing, there is no date scheduled for the adoption of the law or for another consultation. Here, the fact that there is a possibility for the Cambodian union law to be in conflict with ILO Conventions is an interesting point that needs monitoring.

Now, ILO Better Factories Cambodia has been used as a model for ILO's Better Work programmes in Bangladesh, Haiti, Indonesia, Jordan, Lesotho, Morocco, Nicaragua, and Vietnam, in garment factories and in other industries such as agribusiness, tourism, and the electronics industries.

Conclusion

With multinational corporations being more and more sensitive to their need to meet human rights standards, there is hope that their attitude may trickle down to their suppliers and to local SMEs in the ASEAN member states. Global businesses also have the power to “level up” the human rights standards set in place by national laws. Therefore, they could be a key player in implementing the practice of the Guiding Principles on business and human rights in

ASEAN. The fulfillment of the AEC could not be completed without an agreement, or at least common guidelines, among all the ASEAN member states regarding the way of doing business and the respect of basic human rights principles. This is a need for which civil society organizations have been advocated the past months. Nevertheless, such a document is not on the ASEAN Secretariat's agenda.

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

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