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To

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Ms Federica Mogherini
High Representative of the Union for Foreign Affairs and Security Policy
Vice-President of the Commission
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H.E. George Edgar
Ambassador of the European Union to Cambodia
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Cc

Mr Nikos Zaimis, DG Trade
Mr Stavros Petropoulos, EEAS
Mr Alain Vandersmissen, EU Delegation

Brussels – Phnom Penh, 18 July 2017

Dear Commissioner Cecilia Malmström,
Dear High Representative Ms Federica Mogherini,
Dear Ambassador,

Re: Everything But Arms and land conflicts in Cambodia

We are writing to express our deep concern about the lack of progress regarding the independent audit to assess complaints about land disputes in the sugar sector in Cambodia. The objective of this audit, encouraged by the European Union, was to identify the victims of human rights violations caused by Economic Land Concessions in the sugar sector, in order for them to get reparations. As demonstrated in past investigation reports¹, the land conflicts have involved companies benefitting from the Everything But Arms (EBA) trade preferences.

We appreciate the efforts the European Union made in assisting the Royal Government of Cambodia (RGC) to draft the terms of reference for the audit. We also welcome the fact that the EU made it clear that reparation plans would not rule out the restitution of land. However, this process has been paralysed since 2015. Some communities have been dispossessed and displaced since 2006 – a desperately long period for people deprived of the land on which they depend for their livelihood and food security. It seems as if the EU has not considered additional options apart from or beyond the ongoing political dialogue, to incentivise the RGC to launch the audit. On the contrary, the manifest dilatory attitude of the RGC has not hindered tripling the amount of EU development assistance to the country for the period 2014-2020, including under

Aid for Trade. This assistance has apparently been pledged without effective guarantees to ensure that land-grabbers are not able to benefit from preferential market access to Europe.

Over the past few years, civil society organisations cooperated with the EU, in Brussels and Phnom Penh, in order to facilitate the audit and ensure it would be independent and inclusive. Today, however, affected local communities, community-based organisations and NGOs are doubtful about the EU's approach and call on the EU to set up a clear and reasonable deadline for the audit to start, and to make it clear there will be further measures taken under the EBA initiative if the audit does not happen. In particular, a withdrawal of product or sector specific trade preferences because of unresolved land and human rights violations could incentivise the RGC to start the audit.ⁱⁱ

The Royal Government of Cambodia has not formally approved the final version of the Terms of Reference for the audit, nor has it launched the process of identifying the impacted people. Meanwhile, CSOs supporting the victims of land grabbing in the Northern provinces of the country have faced increased repression over the last few months, as evidenced by the tactics used to discredit and silence local CSOs, including judicial harassment.ⁱⁱⁱ CSOs have made relentless efforts to support affected communities, including now in a context where space for civil society is shrinking and repression, arbitrary arrests and threats to land and human rights defenders are on the rise. Meanwhile, complaints by impacted communities against companies and authorities responsible for the land acquisitions have not been followed by independent investigations. While the EU audit remains stalled, Eurostat data show that in 2016 exports of Cambodian sugar to EU markets increased somewhat compared to figures reported for 2015.

The undersigned organisations have met on various occasions with EU representatives, both in Brussels and in Phnom Penh, since the Terms of Reference of the audit were finalised in September 2015. The last of those meetings were respectively on 12 January 2017, in Brussels, with representatives from DG Trade and the EEAS; and in Phnom Penh in June 2017. For two years, the EU representatives whom we have met have proclaimed that progress to solve the land conflicts has been made.^{iv} However, the only acceptable "progress" would be that an independent and inclusive audit is launched in a timely manner, followed by a transparent redress process so that communities and individuals negatively impacted by the sugar concessions are fully and adequately compensated and rehabilitated for the loss of their land and livelihoods.

As early as September 2014^v, in a letter reiterated on 27 November 2014^{vi}, we wrote that "*In order to ensure effective progress on the ground for affected people, we believe it is essential for the EU to connect this process [the audit] with clearly defined deadlines and benchmarks, and with the use of Art.19 of the GSP regulation in case of non-compliance with such time-bound indicators*". This has not happened, and the other important recommendations in those letters have not been taken up either.^{vii}

Based on these elements, we would like to see, in particular:

- 1) The EU set a clear deadline for the RGC to commence the audit before the end of this year, together with targets and benchmarks.
- 2) If this latest attempt fails to deliver redress for the impacted communities, the Commission proceed with an investigation under the EBA, as we have long called for.^{viii} Such investigation would allow for product or sector-specific suspension as explicitly stipulated in Article 15(1) of the GSP.

An important milestone for Cambodia is the upcoming national election in July 2018. An investigation should be launched and completed by the end of this year for solution to be provided prior to the election.

Under Article 1 of the EU Cambodia Cooperation Agreement ("EUCCA"), respect for democratic principles and fundamental human rights constitute an essential element of the agreement, these are also enshrined in the EU treaties. Article 19 of the EUCCA expressly permits appropriate

measures to be taken in the event of violation of an obligation under this Agreement. This offers the EU the opportunity to explore a number of options to increase its leverage and would also be in line with the principle of Policy Coherence for Development, enshrined in Article 208 of the Lisbon Treaty.

We have now reached a crossroads. The EU should take decisive action on this matter in accordance with its human rights obligations and use the leverage at its disposal to ensure remediation for the well-documented human rights violations continue to occur in Cambodia. We hope that the EU will demonstrate its commitment to upholding the human rights and fundamental freedoms enshrined in the EU Charter of Fundamental Rights, the European Convention on Human Rights, and the EU treaties themselves.

We thank you for your attention and remain available for a meeting to discuss available options, for example, during the visit of Cambodian CSOs to Brussels at the beginning of September 2017.

Sincerely Yours,

ACT Alliance EU

Action Aid International

Adhoc – Cambodian Human Rights and Development Association

Cambodia Center for Human Rights (CCHR)

FIDH – International Federation for Human Rights

Cambodian League for the Promotion and Defence of Human Rights (LICADHO)

Community Legal Education Center (CLEC)

Equitable Cambodia (EC)

FIAN Germany

Inclusive Development International (IDI)

Southeast Asia Development Program (SADP)

ⁱ http://www.inclusivedevelopment.net/wp-content/uploads/2013/10/Bittersweet_Harvest_web-version.pdf;
<http://www.actionaid.org/sites/files/actionaid/brochure-cambodge-bd-1.pdf>

ⁱⁱ See Commission Communication 2015 Trade for All and its explicit reference to due diligence and EU human rights policies. Enforceable due diligence mechanisms should be considered under the forthcoming Commission evaluation of the GSP system.

ⁱⁱⁱ Reference to reports, press releases, etc. At various occasions, community representatives were threatened to be arrested when they came to Phnom Penh to submit their petition to the Ministry. A press conference and a video launched by communities in March 2017 resulted in threats by the Ministry of Commerce on possible legal action against community member or NGOs.

For reports and press releases in Dec. 2016, Jan. 2017 or early in May 2015 see <http://www.phnompenhpost.com/national/land-dispute-petition-search-ministry>;

<http://www.phnompenhpost.com/national/sugar-crash>;

<http://www.phnompenhpost.com/national/villagers-swat-down-15-hectare-resolution>; <http://www.phnompenhpost.com/national/tensions-between-chinese-firm-ethnic-villagers-mount>; <http://www.phnompenhpost.com/national/sugar-firm-villagers-p-vihear-face-again>; 18 January: <http://www.phnompenhpost.com/national/bitter-feud-preah-vihear>;

http://www.actionaid.org/sites/files/actionaid/finalized_the_bitter_taste_of_sugar_displacement_and_dispossession_in_oddar_meanchey_2015_1.pdf
<https://drive.google.com/file/d/0B8pHgUwKtRg2XzdwaY4YVJHbLE/view?usp=sharing> (“The Bitter Taste of Sugar in Cambodia: Case of Oddar Meanchey Province!”)

^{iv} Reference to written replies received so far: Response from Ambassador E. George 22/09/2016; Response from A. Vandersmissen 9/10/2015, Response from Commissioner de Gucht 20/12/2013, Response from Commissioner de Gucht 15/04/2013, Response from Commissioner de Gucht 20/08/2012. There are also a number of community letters to the EU calling for the audit to move forward. By doing so, community members have put themselves at risk to hand delivering their message to the EU delegation in Phnom Penh.

^v Joint NGOs letter to High Representative of the Union for Foreign Affairs and Security Policy Catherine Ashton

^{vi} Same letter sent again when the current European Commission took office.

^{vii} Such as revising the GSP regulation in order to institute a system of human rights due diligence for all products imported to the EU under the EBA arrangement; ensuring that EU-based companies respect human rights and due diligence when operating outside of the EU including through subsidiaries; and putting in place mechanisms within the EU to ensure company extraterritorial liability.

^{viii} NGO letter to Commissioner de Gucht, 6 November 2013; NGO letter to Commissioner de Gucht, 1 October 2012;

NGO letter to Commissioner de Gucht, 26 June 2012.