

# CAMBODIA LAND CLEARED FOR RUBBER RIGHTS BULLDOZED

The impact of rubber plantations  
by Socfin-KCD on indigenous  
communities in Bousra, Mondulkiri

Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. Article 3: Everyone has the right to life, liberty and security

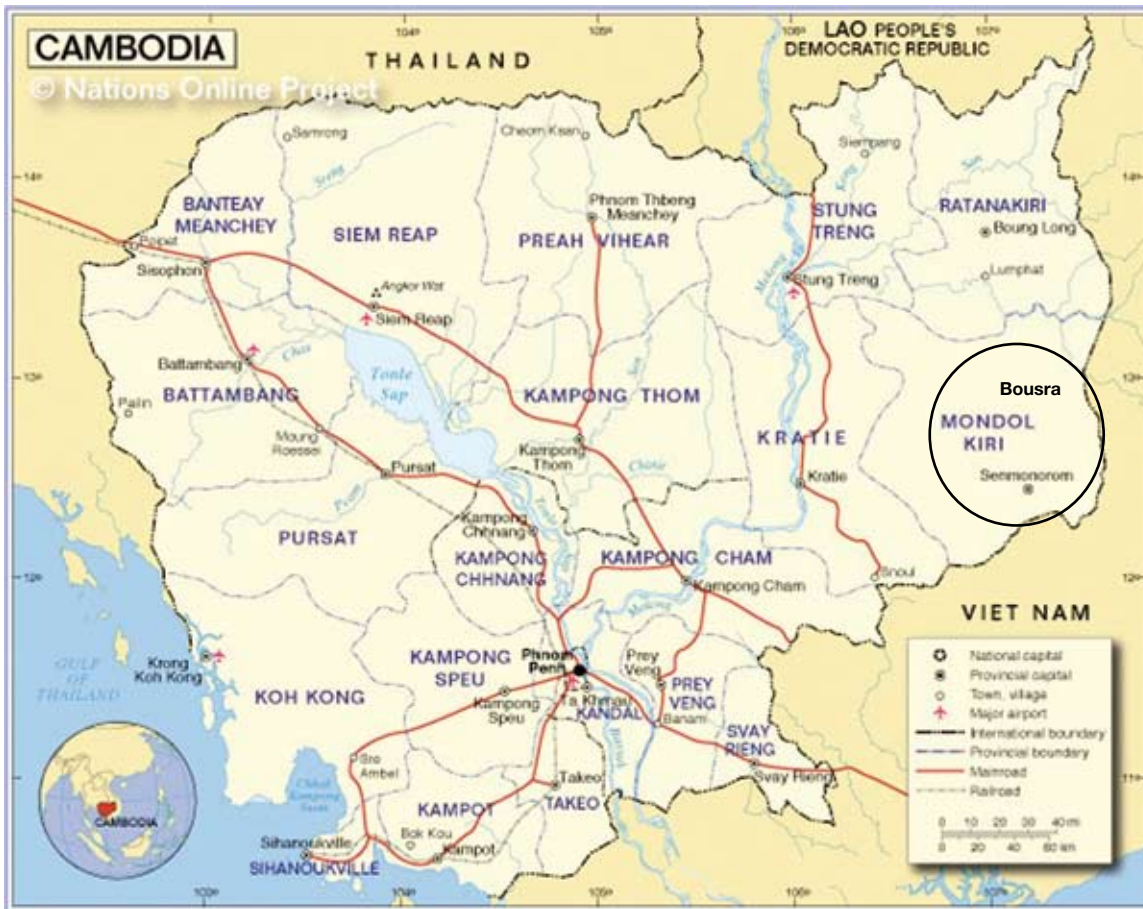




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*“When indigenous communities are alienated from their lands because of development and natural resource extraction projects, they are often left to scrape an existence on the margins of society. This is certainly not a sign of development.”*

**Navi Pillay, UN High Commissioner for Human Rights,  
5 August 2011, International Day of the World’s Indigenous People**



### **Mondulkiri province**

Population: 60,000 inhabitants<sup>1 4</sup>

Area: 11428,8 ha in red soil highland areas near the Vietnamese border

Concessions granted for rubber plantations: 94 731 hectare<sup>2</sup>

Investors: Vietnam Rubber Group (Vietnam), Agro Forestry Research Co (UK) , Covyphama Co (Cambodia), DTC Group (Cambodia), Huor Ling (China), Land and Developing (China), Mo Hy Pa Masu Orn Kampuchea Co (Malaysia), Mondul Agri-Resource Co (Malaysia), Seang Long Green Land Investment Co, Unigreen Resource Co (Malaysia), Wuzhishan LS Group (China), Socfin-KCD (Luxembourg-Cambodia)<sup>3 6</sup> etc.

Socfin-KCD: 6.978 ha (Varanasi and Sethikula)

Households affected: over 850

1. General Population Census of Cambodia 2008 - Provisional population totals, National Institute of Statistics, Ministry of Planning, released 3rd September 2008.

2. Ministry of Agriculture, Forestry and Fisheries, Economic Land Concession : <http://www.elc.maff.gov.kh/en/>

3. It is very difficult to obtain accurate information regarding economic land concessions in Mondulkiri, as will be shown in this report.

# 1. EXECUTIVE SUMMARY

*“Yes we accepted to sell our land, but we had no choice...”*

Community member, Bousra village

Economic land concessions (ELC) are long term leases granted over land for agro-industrial exploitation. Over the past years, ELCs have dramatically increased in Cambodia and are the subject of severe criticisms by civil society organisations and international organisations for fuelling human rights abuses, for leading to the deprivation of vital sources of livelihoods for communities and for aggravating poverty. Land right activists in Cambodia are increasingly being persecuted.

In 2008, an economic land concession (ELC) to exploit industrial rubber plantations was granted by the government of Cambodia to Khaou Chuly Group (KCD), a prominent Cambodian construction company with close ties to governmental figures. In 2007, the European company Socfinasia entered into a joint venture with KCD (Socfin-KCD), of which it now owns 80% and ensures its operational management. Registered in Luxembourg, Socfinasia is owned mainly by the French industrial group Bolloré and Belgian families Fabri and de Ribes.

Socfin-KCD now manages two concessions in the village of Bousra, in Mondulhiri province, (Varanasi and Setikhula) for a total of more than 7000 ha. The concessions affect over 850 families living in Bousra Commune. 90% of the population in Bousra are Bunong, an indigenous group of Cambodia. The Bunong are subsistence farmers practising shifting cultivation and relying on the gathering of non-timber forest products. The Bunong people follow an animist religious belief system that involves the protection of spirit forests and burial grounds for their ancestors.

Alerted by its member organizations in Cambodia about numerous irregularities, including alleged human rights abuses, FIDH organized in December 2010 an international fact-finding mission.

## **Violations of Indigenous Peoples’ Right to Collective Ownership**

*“There is a policy to support indigenous peoples, but we are asking them to change their traditions. They need to settle down and stop being nomad otherwise they won’t get out of poverty”*

Provincial authority

Cambodian legislation plans for the registration of indigenous communities as legal entities and protects indigenous peoples’ right to collective ownership. Although indigenous families of Bousra present all the required elements to qualify as indigenous, they face numerous political, administrative and procedural obstacles which have made it impossible for them to secure collective titling before Socfin-KCD started clearing the land. While families in Bousra should have benefited from interim protection measures as provided by Cambodian legislation, FIDH’s international mission rather found that they have been confronted to a lack of understanding and recognition of their rights on the part of the authorities.

## **Irregularities in the approval process of the concessions**

While Cambodian law requires the submission of an environmental and social impact assessment (ESIA) before a concession is approved, only partial ESIAs were necessary for the two concession to be granted. In the case of Sethikula, the government had to pass a sub-decree to allow the concession to be located in a former protected area. Only in 2010 was an adequate ESIA undertaken for both concessions, upon the request of a potential international

donor agency. These and other documented breaches of national legislation and the investment contract puts into question the legality of the concessions, but also attests to the lack of transparency surrounding the process.

### **Forced evictions, lack of adequate consultation and compensation**

With the pressure exercised upon communities, community members interviewed all confirmed that “they had no choice to sell their land”. Land clearing started before negotiations on compensation were finalized. Despite the fact that Socfin-KCD admitted problems” in the way negotiations were initially undertaken with the communities, subsequent efforts undertaken were insufficient to ensure respect for communities’ right to free, prior and informed consent, and access to an adequate and fair compensation. In the end, over 70% of affected families accepted, for lack of a real choice, insufficient and inadequate monetary compensation while others who chose to be reallocated on a new parcel of land were left without any indication on where such parcel would be.

### **The livelihoods and the cultural rights of the Bunong people at stake**

Deprived of their main source of living, communities affected now have to buy rice, therefore becoming vulnerable to the market prices. In the medium and long-run, the lack of access to land for the Bunong and the absence of food security could generate significant impacts on communities’ livelihoods. In addition, the destruction of various spiritual and burial ground sites has had significant impacts on the wellbeing of the Bunong communities. The arrival of Khmer in-migrants workers makes even more difficult to preserve the Bunong culture.

### **Precarious working conditions**

Bunong workers interviewed complained of harsh and precarious working conditions. Attempting to combine both rice harvesting and work in the plantations, the Bunong workers have reported incidences of physical exhaustion. With 80% of the total workforce being day labourers, employment remains precarious.

### **Conclusions and Main Recommendations**

The case of Bousra shows how Cambodian authorities at the top level blatantly circumvented their own legislation to allow concessions to be granted on land occupied by indigenous communities and protected areas. Through both acts of actions and omissions, the Cambodian authorities have failed to ensure that indigenous communities affected by Socfin-KCD’s concessions could fully enjoy their rights as indigenous people; be duly and meaningfully consulted and adequately compensated, in accordance with national and international human rights law.

On its part, Socfin-KCD has failed to comply with its responsibility to respect human rights. Given the Cambodian political context, and the high level of corruption, Socfin-KCD could not ignore the context in which they operate and should therefore have conducted due diligence processes to adequately assess potential adverse risks their operations may cause. The company should have realized adequate social and environmental impact assessments and consulted with affected indigenous people. Once aware of the violations taking place, Socfin-KCD has failed to date to take all necessary measures to ensure violations would cease and to adapt its compensation process and work policies to ensure respect of economic, social and cultural rights of the Bunong.

### **FIDH therefore urges the Royal Government of Cambodia to:**

- Apply an immediate moratorium on all ELCs; and undertake a contractual compliance review of all concessions, suspend those found to be operating unlawfully until full compliance with national and international law;
- Facilitate rapid registration of indigenous communities and ensure effective and good faith application of interim protection measures when registration as legal entities or collective titling is not secured;

- Ensure adequate and meaningful consultation and participation of communities affected by ECLs, including to seek the free, prior and informed consent;
- Establish an independent monitoring mechanism on large scale agribusiness to guarantee the respect for human rights standards and responsible agro-investment (involving civil society representatives);
- Guarantee in all circumstances the physical and psychological integrity of human rights defenders in Cambodia, including land rights defenders.

**FIDH is calling on Socfin-KCD to :**

- Suspend all operations of the company until all the current disputes are resolved;
- Implement recommendations of the 2010 ESIA, including measures to protect the traditions of the Bunong and to ensure the sustainability of their livelihoods;
- Review compensation provided to ensure compliance with international standards, including compensation for moral damage.

**FIDH is also calling on Luxembourg and other European home states involved to:**

- Adopt legal and policy measures to ensure private actors legally registered under their jurisdiction can be held accountable for human rights violations abroad and that victims have access to effective remedies;
- Require that issuers listed on the Luxembourg Stock Exchange disclose the social and environmental impacts of their activities (including those of their subsidiaries).



# 2. INTRODUCTION

## 2.1. Methodology

In 2008, an economic land concessions (ELC) was granted by the government of Cambodia to Khaou Chuly Group (KCD), a Cambodian company, which formed in 2007 a joint venture with Socfin, a corporation based in Luxembourg<sup>4</sup>. Socfin-KCD then obtained another concession in 2010<sup>5</sup>. Granted in the Bousra Commune, part of the Mondulhiri province, the concessions granted to Socfin-KCD for rubber plantations affect over 850 families. These families are part of the Bunong community, one of Cambodia's indigenous minority groups. Since the concessions were granted to KCD and the exploitation started<sup>6</sup>, numerous irregularities, including human rights abuses, have been reported by civil society organizations (CSOs). Families living in the area have notably complained of not having been consulted and having been forced to sell their land. Residents reported having suffered physical and psychological consequences linked to damages done to their spiritual forests and burial grounds. CSOs have faced threats and intimidation when trying to access plantation sites or to speak publicly about the case.

Alerted by its member organisation ADHOC (Cambodian Human Rights and Development Association), the International Federation for Human Rights (FIDH) supported, in November 2009, the submission to the company and national authorities of a legal memorandum signed by ADHOC, Community Legal Education Centre (CLEC) and FIDH on the ELCs granted to Socfin-KCD. The legal memorandum concluded that the ELCs were likely to be illegal under national and international law<sup>7</sup>. As a follow-up to these efforts and to monitor progress made in the negotiations between the company and community representatives, FIDH undertook a fact-finding mission in the Kingdom of Cambodia from December 13 to 21 2010. The mission was conducted by Sihem Bensedrine, president of Conseil national pour les libertés en Tunisie (CNLT), Tunisia, Noam Leandri, member of Ligue des droits de l'Homme (LDH), France, and Geneviève Paul, Globalisation and Human Rights Desk (FIDH International Secretariat) in close collaboration with ADHOC. The objectives of the mission were threefold:

- Support the efforts of ADHOC and other local NGOs to assist the Bunong indigenous communities affected by the activities of Socfin-KCD in Bousra (Mondulhiri province) through the establishment of a genuine dialogue with all stakeholders;
- Document human rights abuses which have occurred in the Bousra commune allegedly as a result of Socfin-KCD's activities;
- Issue recommendations to Socfin-KCD, to the government of Cambodia and other multinational corporations concerned in order to ensure adequate reparation should human rights violations have occurred and to prevent further human rights violations in the rubber plantation sector and, more generally, violations linked to economic land concessions in Cambodia.

The mission team members were able to meet with affected communities, various government representatives at the local, provincial and national level as well as with representatives of Socfin and KCD, civil society organizations and donors. A list of people met can be found in

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4. See section below for more information on the constitution of KCD and Socfin

5. Socfin-KCD in fact has one concession (Varanasi) and one "lease" (Sethikula), as explained below. However, the report will, as do authorities and the company, use the term "concessions" when referring to Socfin-KCD's plantations in Bousra.

6. For a detailed overview, see "Timeline Prior to FIDH's Mission" in Findings' section.

7. The concessions would likely violate : Cambodian Land Law 2001, Sub-decree No.146 on Economic Land Concessions, Instructive Circular No. 05 IC on Provision of Economic Land Concessions for Investment Projects, ICESCR, ICERD and the UN Declaration on the Rights of Indigenous Peoples. See Legal Memorandum available on FIDH's website : [www.fidh.org](http://www.fidh.org)

appendix. The team members wish to thank the Cambodian authorities and representatives of the company who accepted to meet with the mission members. FIDH is especially grateful for the hospitality and support the mission received from ADHOC's staff.

In addition to information gathered through interviews conducted with stakeholders and documents collected, the report includes information provided in particular by ADHOC, FIDH's other member organization in Cambodia the Cambodian League for the Promotion and Defense of Human Rights (LICADHO), Community Legal Education Centre (CLEC) and subsequent exchanges with Socfin. In addition to questions in writing in August and September 2011, for which Socfin-KCD provided some answers (included in this report), Socfin-KCD received a copy of this report prior to its publication. Socfin-KCD did not comment the report nor provide any response to FIDH's questions in the report.

While this report focuses on the analysis of the human rights impacts of Socfin-KCD, potential environmental impacts, inextricably linked with human rights, both in the current and future phases of the project, should not be disregarded. In the current Cambodian context, where rubber concessions are being multiplied in the Mondulhiri province, it appears particularly important to analyse the cumulative environmental impacts agro-industrial projects may generate on the biodiversity and environmental preservation of the region.

### **Selection of the case**

As briefly evoked in the contextual background (see next section), FIDH decided to focus on the activities of Socfin-KCD as a response to demands from ADHOC, its member organisation in Cambodia. In addition to and beyond companies' responsibility to respect human rights (see Legal framework below), Cambodian civil society expect European-based companies to uphold the highest standards of conduct with regard to human, labour and environmental matters. This is also a political and social expectation of European civil society towards the conduct of European companies in third countries.

FIDH acknowledges the presence of other companies, including national companies, operating rubber plantations in Mondulhiri and other provinces of Cambodia. While this report focuses on the specific case of Socfin-KCD's concessions in Mondulhiri, many recommendations addressed in this report are relevant for other companies operating in the same sector<sup>8</sup>. Finally and as communicated to the company on various occasions, FIDH and its member organisation ADHOC hope that, as a result of a constructive dialogue, Socfin-KCD will be able to contribute to the establishment of improved practices for the industry in Cambodia. In particular, Socfin, as a European company which has expressed commitment to respecting human rights, may seize this opportunity to ensure adequate reparation for communities affected by its operations, the prevention of future abuses and to set benchmarks for companies operating in this sector.

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8. FIDH, during its mission, sought to meet with representatives of the Vietnamese company operating in the Dak Lak Mondulhiri Aphivath Caouthouc Co. Ltd. The company did not follow up on our requests and denied FIDH access to the plantation site. It is also worth mentioning that, according to interviews with villagers in Bousra affected by the Dak Lak concession, the behaviour of the Vietnamese company appeared to be better appreciated by the villagers than Socfin-KCD. Villagers notably mentioned that the company kept its word with regard to sacred forests.

# 3. Contextual background

## 3.1. Political context

The current situation in Cambodia is characterized by a deterioration of the respect for human rights, therefore bearing the risk of eroding hard-earned progress made in the past decade towards the reconstruction of the country and the establishment of the rule of law and democratic principles after the 1975-1993 civil war that ravaged the country during the Khmer rouge regime.

The current Prime Minister has been in power since 1985. Following a bloodless coup in 1997, in which Hun Sen ousted his co-prime minister Prince Norodom Ranariddh, the Cambodian People's Party (CPP) has steadily cemented its hold on power by making sweeping gains in successive elections and gaining an ever secure majority in the national parliament. The CPP now has de facto one-party dominance whereas a fractious opposition has been weakened and subjected to legal intimidation.

Especially in the past two years, numerous human rights violations have been reported. Civil liberties are being severely restricted and violations of economic, social and cultural rights regularly reported by civil society organizations<sup>9</sup>. Cambodia was ranked 154 out of 178 in the 2010 Corruption Perceptions Index of Transparency International, showing little and irregular progress over the past five years<sup>10</sup>. An anti-corruption law was finally adopted in 2010, 17 years after its initial draft. In many cases, the administration of justice and decision-making processes are not carried out in accordance with the rule of law. In his 2010 report to the UN General Assembly, the Special Rapporteur on the human rights situation in Cambodia stated that on “a number of occasions and especially in high-profile political cases, the judiciary seems to have allowed itself to be used or manipulated for political or purely private purposes”.<sup>11</sup>

In September 2010, the Observatory for the Protection of Human Rights Defenders<sup>12</sup> and the International Trade Union Confederation (ITUC) denounced restrictions on freedoms of expression, association and assembly particularly targeting land activists, trade unionists and journalists.<sup>13</sup> Corruption is unfortunately no exception when it comes to the promotion of economic projects, and in particular the granting of Economic Land Concessions<sup>14</sup>. Since 2001, land rights defenders and forest activists have increasingly been the target of repression and they made up the majority of human rights defenders persecuted in 2009, with the tendency unfortunately continuing in 2010 and 2011.<sup>15</sup>

9. See for instance ADHOC's annual human rights reports ([www.adhoc-cambodia.org](http://www.adhoc-cambodia.org)) as well as LICADHO's 2011 reports ([www.licadho-cambodia.org/reports.php](http://www.licadho-cambodia.org/reports.php))

10. Cambodia ranked 158 out of 180 in 2009; 166 out of 180 in 2008; 162 out of 179 in 2007; 151 out of 163 in 2006 and 130 out of 158 in 2005. See Transparency International, [www.transparency.org/policy\\_research/surveys\\_indices/cpi](http://www.transparency.org/policy_research/surveys_indices/cpi)

11. See A/HRC/15/46, para. 41.

12. A joint program between FIDH and the World Observatory against Torture (OMCT)

13. Observatory for the Protection of Human Rights (FIDH and OMCT), *Freedoms of Expression, Association and Assembly : A Shrinking Space*, International Fact-Finding Mission Report, with cooperation from the International Trade Union Confederation (ITUC), available at : [www.fidh.org/Human-rights-defenders-face-shrinking-space-in](http://www.fidh.org/Human-rights-defenders-face-shrinking-space-in)

14. Cables recently published in the media and taken from wikileaks highlighted the corruption surrounding the granting of concessions. Cable 06PHNOMPENH348, “Cambodian Land Disputes More Frequent, More Violent”, Wikileaks, <http://wikileaks.ch/cable/2006/02/06PHNOMPENH348.html> / See also Global Witness, “Country for Sale: How Cambodia's elite has captured the country's extractive industries”, February 2009.

15. LICADHO Report 2010- Freedom of expression in Cambodia : the illusion of democracy, available at [www.licadho-cambodia.org/reports/files/148LICADHOIllusionDemocracy2010.pdf](http://www.licadho-cambodia.org/reports/files/148LICADHOIllusionDemocracy2010.pdf). LICADHO, CCHR, CLEC “Authorities Conduct Mass Detention of Forest Activists in Phnom Penh”, 18 August 2011, [www.licadho-cambodia.org/pressrelease.php?perm=255](http://www.licadho-cambodia.org/pressrelease.php?perm=255)

Of particular concern are the current debates around the adoption of a new NGO law regulating associations and NGOs. The third draft, released in July 2011, was moved to the Council of Ministers and the Ministry of Interior seems determined to move forward with this law. With controversial provisions such as mandatory registration for NGOs, over 600 CSOs have denounced this draft law<sup>16</sup>, concerned that the law can be used to further and arbitrarily control and restrict the activities of independent CSOs in the country. In December 2010, Cambodia also adopted a new Penal Code. Following its adoption, a local UN staff was accused of a felony and convicted under the new Code for sharing with his co-workers leaflets he printed from an online news blog called KI-media<sup>17</sup>. Other similar cases have since been denounced by human rights NGOs.<sup>18</sup> Concerns over freedom of expression and the criminalisation of human rights defenders have also been raised by the UN Special Rapporteur on the human rights situation in Cambodia, Mr. Surya Sudebi, during a mission in the country in February 2011<sup>19</sup> as well as by his predecessor and the UN Committee on Economic, Social and Cultural Rights.<sup>20</sup>

### 3.2 Economic context

Over the past few years, Cambodia has witnessed rapid economic growth as a result of the liberalisation of the national economy in 1994 to attract foreign investments. The Cambodian government has attracted foreign investors into the country through the relaxation of business restrictions such as the establishment of a system of taxation with a low corporate income tax rate and export tax rate, favourable export quotas, the creation of Special Economic Zones to facilitate foreign investors' settlement and low labour unit costs and other sector-specific measures such as the privatization of 6 of the 7 state-owned rubber plantations. The government has adopted liberal legislative acts such as the Investment Law 1994 and its Amended Draft 2002, the Law on Taxation 1997, the Law on Foreign Exchange 1997 and the Labour Law 1997 in order to attract foreign investment, allowing, for instance, foreign investors to control 100% of the shareholding of a firm<sup>21</sup>. According to the World Bank data, Cambodian GDP climbed from 10.4 US\$ billion in 2009 to 11.3 US\$ billion in 2010 and the gross national income per capita was 760\$ in 2010.

Although progress has been achieved to reduce poverty, Cambodia ranked 124<sup>th</sup> out of 168 countries in the UNDP 2010 Human Development Report<sup>22</sup>. Cambodian economy is dominated by agriculture (35% of its GDP) with close to 60% of the labour force working in agriculture.<sup>23</sup> The country's rural population remains the sector of the population suffering the most from extreme poverty.<sup>23</sup> The majority of the population lives in rural area (where the majority of

16. Thomas Miller, "Concern over NGO Law Third Draft", National News, Phnom Penh Post, 2 August 2011, <http://www.phnompenhpost.com/index.php/2011080250802/National-news/concern-over-ngo-law-third-draft.html>

17. OBS, *Assault on Freedom of Expression Continues with Conviction of UN Staff*, 23 December 2010, available at : <http://www.fidh.org/Cambodia-Assault-on-freedom-of-expression>

18. See for instance: "Asian Civil Society Condemns the Conviction of Mr. Sam Chankea, a Cambodian Human Rights Defender, for the Exercise of his Right to Freedom of Expression", 14 February 2011, [http://www.fidh.org/Asian-civil-society-condemns-the-conviction-of-Mr / Mr. Sam Chankea](http://www.fidh.org/Asian-civil-society-condemns-the-conviction-of-Mr-Mr-Sam-Chankea), ADHOC's coordinator in Kampong Chan, a human rights defender in land rights cases, was sentenced to 3 million riels (543 euros) in compensation and 1 million riels (180 euros) in fines for defamation after having publicly spoken about human rights violations involving KDC International Company.

19. Statement by the UN Special Rapporteur on Human Rights in Cambodia, 24 February 2011.

20. "The Special Representative is particularly concerned about the increasing number of community activists facing criminal charges related to land disputes and their land-related activism. [...] It is apparent that the legal system is being used to protect those with power and influence, rather than to provide protection and justice for poor individuals and communities". Report of the Special Representative of the Secretary-General for human rights in Cambodia, Yash Ghai, A/HRC/4/36, 30 January 2007, §88. See also UN Committee on Economic, Social and Cultural Rights, "Concluding Observations on Cambodia, 42<sup>nd</sup> Session, 22 May 2009, E/C.12/KHM/CO/1, §31.

21. See the website of the United Nations Economic and Social Commission for Asia and the Pacific: <http://www.unescap.org/> and most specifically its publications : <http://www.unescap.org/tid/publication/t&ipub2320.pdf>

22. United Nations Development Programme, *Human Development Report 2009*, Cambodia.

23. United Nations Development Programme, Kingdom of Cambodia, available at : <http://un.org:kh/undp/CMDGsglobal-1-Eradicate-extreme-poverty-and-hunger.html>

economic land concessions are granted) and depends heavily on land and natural resources as a source of livelihood.<sup>24</sup>

### *3.2.1. Economic land concessions*

Economic land concessions (ELC) are long term leases granted over land for agro-industrial exploitation. The 2001 Land Law defines a land concessions as “[...] a legal right established by a legal document issued under the discretion of the competent authority, given to any natural person or legal entity or group of persons to occupy a land and to exercise thereon the rights set forth by this law.”<sup>25</sup> The Sub-decree on Economic Land Concessions adds that ELCs refer to “a mechanism to grant private state land through a specific economic land concession contract to a concessionaire to use for agricultural and industrial-agricultural exploitation.”<sup>26</sup> According to official government records, 85 economic land concessions have been granted in 16 provinces as of April 2010.<sup>27</sup> However, evidence on the ground suggests the number may be far higher. Only the 10 first companies are listed on the website of the Ministry of Agriculture, Forestry and Fisheries (MAFF)<sup>28</sup>. Socfin-KCD’s concessions do not even appear on the website. According to a table given by the Cadastral Commission in Mondulakiri, 15 concessions would have been granted in Mondulakiri. The NGO Forum database counts 16 concessions in Mondulakiri.

Numerous economic concessions were sold to domestic and foreign companies, especially forest concessions (over 30 between 1994 and 1999).<sup>29</sup> It is estimated that more than half of Cambodia’s total arable landmass (3 million hectares) has been granted for industrial projects (agro-industrial, hydro-power and mining projects).<sup>30</sup> Legally, ELCs can only be granted on State Private land<sup>31</sup>, cannot exceed 10 000 ha<sup>32</sup> and can be granted for a maximum of 99 years<sup>33</sup>. However, the reality is different. Many concessions granted exceed the 10 000 ha limit, and the grant of contiguous land to companies with different names but pertaining to the same group has reached hundreds of thousands of ha<sup>34</sup>, although MAFF affirms that it has been reviewing those which exceed this limit since 2009.<sup>35</sup> The number of disputes involving ELCs are testament to the fact that land is not being clearly identified as State public land (and therefore available for investments) prior to allocation.

There are daily reports of human rights abuses relating to real estate developments or mining and industrial agricultural projects under way involving both national and foreign investors.<sup>36</sup>

Over the past years, ELCs have dramatically increased and have been, and continue to be,

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24. Report of the Special Representative of the Secretary-General for human rights in Cambodia, Yash Ghai, A/ HRC/4/36, 30 January 2007, §65.

25. Land Law 2001, Article 48.

26. Sub-Decree on Economic Land Concession, 2005, No. 146 ANK/BK, Art. 2.

27. Ministry of Agriculture, Forestry and Fisheries, Overall status of economic land concession in Cambodia, 2010: <http://www.elc.maff.gov.kh/en/news/12-elc-status.html>

28. Ministry of Agriculture, Forestry and Fisheries, ELC Profile, Mondulakiri : <http://www.elc.maff.gov.kh/en/profile/18-mdk.html>

29. Report by the Royal Government of Cambodia, 2002 : to the second session of the United Nations Forum on forests on progress in implementation of the IPF/IFF proposals for action, available at : [www.un.org/esa/forests/pdf/national\\_reports/unff2/report\\_2002\\_cambodia.pdf](http://www.un.org/esa/forests/pdf/national_reports/unff2/report_2002_cambodia.pdf)

30. LICADHO, ‘Harmful Effects of ELCs on Poor Cambodians’, Briefing Paper, November 2005 : [http://www.sithi.org/landissue/source/ELC/2005\\_11\\_LICADHO\\_Paper%20Land%20Issues.pdf](http://www.sithi.org/landissue/source/ELC/2005_11_LICADHO_Paper%20Land%20Issues.pdf)

31. Land Law 2001, Article 17 and 58.

32. Ibid, Article 59.

33. Ibid, Article 61.

34. NGOs in Cambodia have largely documented this situation. See notably LICADHO’s publications on land grabbing.

35. MAFF, Overall Status of ELCs in Cambodia, [www.elc.maff.gov.kh/en/news/12-elc-status.html](http://www.elc.maff.gov.kh/en/news/12-elc-status.html) (access in August 2011)

36. See for example, Don Weinland, “Erdos Plans Laid Bare”, Phnom Penh Post, 3 August 2011, <http://www.phnompenhpost.com/index.php/2011080350842/National-news/erdos-group-plans-laid-bare.html>

widely denounced by civil society organisations as well as by international organisations and donors for fuelling human rights abuses<sup>37</sup> for leading to the deprivation of vital sources of livelihoods for communities and the aggravation of poverty.<sup>38</sup>

The impacts generated by ELCs and the alarming rate at which the ELCs are being granted have grave social, cultural and environmental consequences on the rural population of Cambodia and in particular on indigenous communities.<sup>39</sup> During the first half of 2010, more than 3,500 families were affected by land grabbing, according to a survey conducted by LICADHO in 13 of Cambodia's 24 provinces.<sup>40</sup>

Human rights abuses in the framework of ELCs are further exacerbated by the existence of schemes such as the Everything But Arms (EBA) initiative, of the European Union (EU). Under the EBA initiative, sugar producers in Cambodia are granted tariff and quota free access to the EU market. In recent years, over 80 000 hectares have been granted to private companies for industrial production and processing of sugar-cane in Cambodia. Human rights organisations and the media have documented and reported serious human rights abuses connected to the sugar industry in Cambodia and notably involving Thai businesses directly benefiting from the EBA Initiative. Abuses include forced evictions, destruction of property, the use of violence against, and arbitrary arrest and detention of human rights defenders, the deprivation of means of subsistence, etc.<sup>41</sup> The EU has been formally requested by civil society organisations calling on the EU to conduct an investigation to assess the possibility of suspending EBA status for Cambodian sugar, as well as taking precautionary measures to ensure compliance by Cambodia of its obligations, as per EC regulations.<sup>42</sup>

### 3.2.2. *The rubber sector*

Rubber cultivation in Cambodia is still limited as it represents approximately 2.5% of cultivated area. Plantation of rubber is experiencing a renewed interest since rubber prices have become attractive again since 2003 and the business-related legal reforms and emphasis put on the export of rubber following the accession of Cambodia to the WTO in October 2004.<sup>43</sup> The development of rubber plantations is one of the priorities of the Cambodian government<sup>44</sup>. The authorities continue to grant controversial ELCs for rubber plantations, including inside

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37. See notably : UN Special Representative of the Secretary-General for Human Rights in Cambodia, "Economic land concessions in Cambodia A human rights perspective", OHCHR Cambodia, June 2007. For an update on land and housing rights disputes in Cambodia, see Report of the UN Special Rapporteur on the situation of human rights in Cambodia, Surya P. Subedi, A/HRC/18/46, 2 August 2011, p. 5-7. CHRAC, "Losing Ground : Forced Evictions and Intimidation in Cambodia", September 2009. Bridges Across Borders Southeast Asia, COHRE and JRS, "Untitled : Tenure Insecurity and Inequality in the Cambodian Land Sector", 2009. Global Witness, "Country for Sale: How Cambodia's elite has captured the country's extractive industries", February 2009. Indigenous People NGO Network (IPNN) coordinated by NGO Forum on Cambodia in cooperation with Asian Indigenous Peoples Pact (AIPP), "The Rights of Indigenous Peoples in Cambodia", Shadow report submitted to the UN Committee on the Elimination of Racial Discrimination for its 76<sup>th</sup> session, February 2010.

38. Report of the Special Representative of the Secretary-General for human rights in Cambodia, Yash Ghai, A/HRC/4/36, 30 January 2007, §69.

39. *Ibid.*, §80.

40. Human Rights Watch, World Report 2011: Cambodia, available at: <http://www.hrw.org/en/world-report-2011/cambodia>

41. See for instance : Bridges Across Borders Cambodia, "Bittersweet A Briefing Paper on Industrial Sugar Production, Trade and Human Rights in Cambodia", September 2010, available at: [babcbombodia.org/developmentwatch/cleansugarcampaign/bittersweet.pdf](http://babcbombodia.org/developmentwatch/cleansugarcampaign/bittersweet.pdf).

42. EC Council Regulation no. 732/2008, art. 15[1a], 16[3], 16[3b] and 17.co

43. Ministry of Commerce, Kingdom of Cambodia, Foreword, "Trade Sector Development and Aid for Trade in Cambodia", Phnom Penh, July 2011.

44. The Association of Natural Rubber Producing Countries, statistical profile of rubber industry in Cambodia from 2008 to 2010, available at : [www.anrpc.org](http://www.anrpc.org) / See also reference to a speech by the Minister for LMUPC on his vision to turn north-east Cambodia into the fourth development pole by 2015. In UN Special Representative of the Secretary-General for Human Rights in Cambodia, "Economic land concessions in Cambodia A human rights perspective", OHCHR Cambodia, June 2007, footnote 32.

protected areas.<sup>45</sup> Officials confirmed to the press that this had led to the expansion of rubber plantations in Mondulkingi and are hoping that such expansion will continue.<sup>46</sup> Cambodia's rubber exports have nearly tripled from 2008 to 2010, from 16 to 45 thousand tons<sup>47</sup>. At the same time prices have drastically increased with global demand on the rise and exceeding supplies since 2010, notably due to tight supplies in Thailand and an expanding demand in China.<sup>48</sup> As a consequence, natural rubber is ranked among the top five sectors with high export potential for Cambodia<sup>49</sup>. In addition to national companies, numerous ELCs have been granted to foreign companies such as Malaysian, Chinese, Vietnamese, American, Korean and Thai companies<sup>50</sup>. Vietnam, an important economic player in the region, recently signed nine memorandum of understanding with the government of Cambodia with plans to invest approximately US\$44 million in rubber plantations.<sup>51</sup>

Informal revenues generated by the forest sector and monopolized by the provincial and district governments, by the military and the police, by politicians and political parties, by the senior officials were estimated between 40\$ and 80\$ US dollars per cubic meter.<sup>52</sup>

International donors and organizations have an important presence in Cambodia's economic landscape. Numerous development and aid agencies inject funds and provide technical assistance in land-related projects. Amongst those present, it is worth mentioning the World Bank, the ILO, GTZ (Germany), CIDA (Canada), DANIDA (Denmark), AFD, the French Development Agency and Finnmap (Finland). Some donor agencies have been criticized by CSOs for deliberately avoiding to get involved in sensitive cases or areas, such as those involving powerful corporations. The failure of donors to trigger land and natural resource reforms have also been highlighted by CSOs, evoking donors' failure to address problematic areas<sup>53</sup>. In 2011, GTZ of Germany provided grants to NGOs to assist 6 indigenous communities in Mondulkingi to obtain collective land title, including support for the establishment of internal community registration process which this requires, however Bousra communities were not selected. Support to the Bunong communities in Bousra for legal registration and application for collective land title is brought by the ILO and the UNHCHR.

AFD is a financial institution and is France's main agency responsible for official development assistance to developing countries. Socfin-KCD contemplated obtaining a 2,5 million euros loan for a project of rubber family plantation and garden wood in Bousra, which subsequently triggered the conduct of an environmental and social impact assessment to comply with AFD's requirements. Socfin-KCD finalized the ESIA in September 2010 and without providing reasons to AFD or FIDH, abandoned the project in 2011. In Cambodia, AFD has supported different

45. The Primer Minister recently authorized, through a sub-decree, a 9 000 ha ECL in Virachey national park. Rainforest News, "Cambodia Approves Rubber Plantation in...a National Park", 4 April 2011, <http://www.salvaleforeste.it/en/201104041406/cambodia-approves-rubber-plantation-in-national-park.html>

46. Phnom Penh Post, Farmers bet on rubber boom, 24 December 2010 : <http://www.guptaverlag.com/general/news/industry/9215/CAMBODIA-Farmers-bet-on-rubber-boom>

47. The Association of Natural Rubber Producing Countries, statistical profile of rubber industry in Cambodia from 2008 to 2010, available at : [www.anrpc.org/html/member\\_country\\_info.aspx?ID=14&PID=15](http://www.anrpc.org/html/member_country_info.aspx?ID=14&PID=15)

48. Rubber Market News, Cambodia encourages more investment in rubber, January 7 2010 : <http://rubbermarketnews.net/2010/01/07-jan-cambodia-encourages-more-investment-in-rubber/>

49. UNESCAP– United Nations Economic and Social Commission for Asia and the Pacific, Export competitiveness of the Cambodian rubber sector relative to other Greater Mekong Subregion suppliers: A simple descriptive analysis, July 2009: [www.unescap.org/tid/artnet/mtg/DP%200109.pdf](http://www.unescap.org/tid/artnet/mtg/DP%200109.pdf)

50. See notably table listing the ELC granted as of December 2006 in Special Representative of the Secretary-General for Human Rights in Cambodia, "Economic Land Concessions in Cambodia: a Human Rights Perspective", June 2007, Annex I.

51. "GMD investit dans la culture de l'hévéa au Cambodge", *Courrier du Vietnam*, 25 May 2011.

Vietnews, Investments to Cambodia from Vietnam increases, May 22 2011 : <http://www.dztimes.net/post/business/investment-to-cambodia-from-vietnam-increases.aspx>

52. Bruce McKenney and Prom Tola, Natural Resources and Rural Livelihoods in Cambodia. A Baseline Assessment, Working Paper n°23, Phnom Penh, Cambodian Development Resource Institute, July 2002, p.75.

53. See notably Global Witness, "Country for Sale: How Cambodia's elite has captured the country's extractive industries", February 2009.

projects related to rubber exploitation, including support to implement a certification system to facilitate rubber exports on the international market, as well as family rubber plantations projects in the provinces of Kompong Cham and Kratié<sup>54</sup>. In August 2011, the World Bank decided to stop new loans to Cambodia over persistent and unresolved forced evictions problems.<sup>55</sup>

### 3.3. Rubber plantations in Mondulakiri province : the case of Bousra

#### 3.3.1. Bousra Commune and the Bunong communities



The province of Mondulakiri, located on the eastern border of Cambodia near the Vietnamese border is predominantly populated by indigenous peoples. Mondulakiri Province is the largest, but least populated, Cambodian province, with a population of approximately 60,000 inhabitants (or 4.3 persons per square km) according to the 2008 General Population Census of Cambodia.<sup>52</sup> Ninety-four percent of the province is forestland.<sup>53</sup> Bousra Commune is located in the Pech Chreada District and consists of seven villages closely arranged along the road between Sen Monorom and the (now closed) Vietnamese border crossing. According to 2007 Commune records,

Bousra had a total population of 3,741 people in 800 family households.<sup>54</sup> In 2008, Bousra counted a total of 849 families and 3,925 people, of which 91% are Bunong.<sup>56</sup>

The Bunong are an indigenous people of Cambodia also referred to as Phnong or Central Mnong. Except during the Khmer Rouge period, where some were forced to flee before they could return in the 80s, the Bunong People have been living in the area for centuries.<sup>57</sup> The Bunong language has different linguistic roots than Khmer, is based on an oral tradition, and has only very recently developed a written script, using the Khmer alphabet.<sup>58</sup> The Bunong are subsistence farmers practising shifting cultivation and which depends on rotating fields and regenerating forest soil fertility of shifting plots.<sup>59</sup> “Forest is cleared and burned to establish agricultural land which is cultivated with hill rice, intercropped with a wide variety of vegetables.” According to the ILO, shifting cultivation represents one of the most

54. AFFD, Projets achevés, <http://www.afd.fr/home/pays/asia/geo-asia/cambodge/projets-cambodge/projets-acheves-cambodge>

55. Prak Chan Thul, “World Bank Stop Funds for Cambodia over Eviction”, Reuters, 9 August 2011, [www.reuters.com](http://www.reuters.com)

56. According to « Departement du Plan 2009 » in Socfin-KCD, *Projet de Plantations d’Hevea Familiales et Jardins a Bois, Cambodge, Rapport Environnemental et Social Provisoire, Volume III : PAR*, p.123.

57. ILO, *Indigenous Cambodians’ long wait for collective land ownership* : [http://www.ilo.org/asia/info/public/lang-en/WCMS\\_125235/index.htm](http://www.ilo.org/asia/info/public/lang-en/WCMS_125235/index.htm)

58. Refugees International, *The Bunong - The Caretakers of Cambodia’s Sacred Forests*, 29 June 2007, available at: <http://www.unhcr.org/refworld/docid/47a6eb8dce.html> [accessed 8 August 2011]

59. “The term shifting cultivation indicates a farming system that rotates its fields, letting most of the areas that form part of the system lie idle for regeneration of nutrients. Sustainability is ensured by co-opting natural processes and by letting the soil rest and regenerate. Shifting cultivators do not cut all trees and bushes but leave numerous wild plants, which are known to provide sustenance. The ashes from the burning provide important nutrients to the soil.”, in Kristen Ewers Andresen, Sok Sophorn and Francesca Thornberry. “Development of a Sub-decree on Shifting Cultivation under Article 37 of the Forestry Law (2002) Cambodia. ILO, 2007, p.5.



“complex and multifaceted forms of traditional agroforestry practice in the world reflecting a robust traditional ecological knowledge”.<sup>60</sup>

The livelihood of the Bunong people also relies on the gathering of non-timber forest products, such as wild fruits and vegetables, honey, resin, rattan, bamboo, medical herbs, etc.<sup>61</sup> The Bunong people follow an animist religious belief system that involves the protection of spirit forests and burial grounds for their ancestors. They believe that nature belongs to spirits which should be obeyed. Spiritual forests are normally located in stretches of dense evergreen forest and represent sacred areas in the trees and other elements of the environment must be protected from harm. Traditional ceremonies requiring animal sacrifices take place on various occasions, such as weddings, funerals, seasonal celebrations or in cases of illness. These ceremonies form part of the Bunong’s animism practices and play an essential role in the appeasement process, to ensure continuity and balance between the human and spirit worlds.<sup>62</sup> Bunong’s belief in sacred forest areas and the restricted use of forest resources is said to have favoured the conservation of biodiversity in Monduliri’s forests. Village solidarity and maintaining community harmony is also a central aspect of life in Bunong’s communities.<sup>63</sup>

Due to the administrative burden and the dependence on donor resources to facilitate the process, as will be discussed in the **Findings** section, registration for the Bunong people living in Bousra has been slow. At the writing of this report, three villages had almost completed the process for registration (Pou Lu, Pou Til and Pou Toeut). None had attained legal title for land traditionally occupied. Although there has been steady progress in moving forward the registration process in cooperation with the Ministry of Rural Development (MRD) and the Ministry of the Interior (MOI), lack of political will has at times been noted as an impediment.

### 3.3.2. Socfin-KCD concessions<sup>64</sup>

Clear and consistent information regarding concessions granted to Socfin-KCD have proven to be difficult to obtain. According to information provided by the Cadastral Commission in Monduliri’s provincial land department, 15 concessions were granted to six companies<sup>65</sup>, whereas the website of the Ministry of Agriculture, Forestry and Fisheries (MAFF) still indicates that 10 companies have been granted ELCs in the province.<sup>66</sup> Near the Bousra Commune are the concessions registered as Dak Lak Monduliri Aphivatch Caoutchouc Co. LTD (5,108 ha)<sup>67</sup> and granted to the Vietnamese company Dak Lak Rubber Limited Company. Sethikula Co. Ltd. (4273 hectares) and Varanasi (2705 ha) are two concessions wholly owned by Socfin-KCD<sup>68</sup> and both were granted for 70 years.

60. Kristen Ewers Andresen, Sok Sophorn and Francesca Thornberry. “Development of a Sub-decree on Shifting Cultivation under Article 37 of the Forestry Law (2002) Cambodia. ILO, 2007, p.5.

61. UNDP Cambodia with Ministry of Justice and Ministry of Interior : Phnong Ethnicity – Documentation of Customary Rules page 3 : [http://indigenouspeoplesissues.com/attachments/4787\\_Phnon-Cambodia-2.pdf](http://indigenouspeoplesissues.com/attachments/4787_Phnon-Cambodia-2.pdf)

62. Ibid, paragraph 4.7. According to the feasibility study undertaken by Socfin and finalized in 2010, there would be 23% of Christians in Bousra. Socfin-KCD, Feasibility Study, p.88.

63. Refugees International, The Bunong - The Caretakers of Cambodia’s Sacred Forests, 29 June 2007, available at: <http://www.unhcr.org/refworld/docid/47a6eb8dce.html> [accessed 8 August 2011]

64. Note : the report will, as do authorities and the company, use the term “concessions” when referring to Socfin-KCD’s plantations in Bousra. However and as explained below, Socfin-KCD in fact has one concession (Varanasi) and one “lease” (Sethikula).

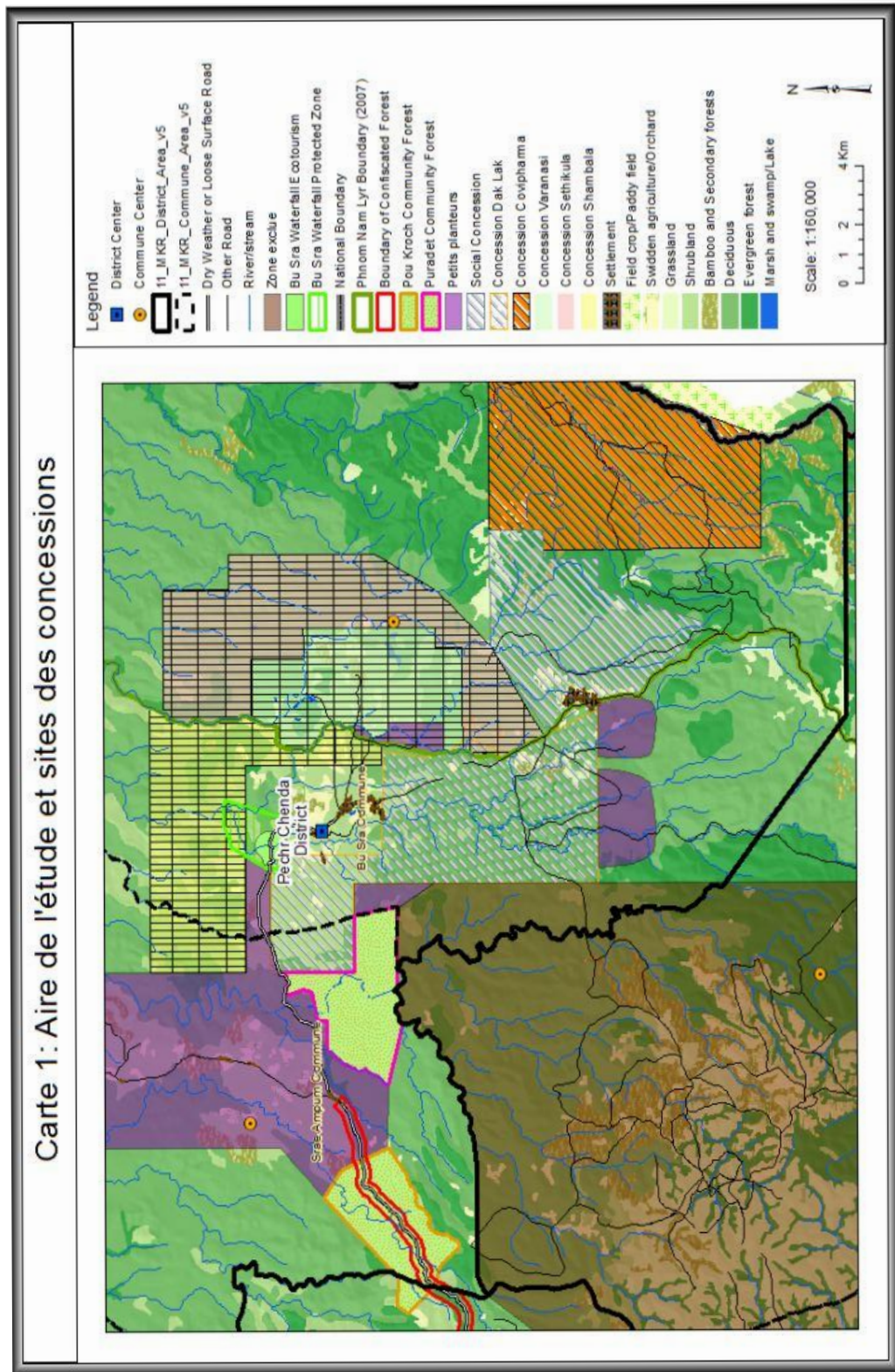
65. Table given by the Cadastral administration. Meeting with Mr. Nam Peng, Deputy Officer, Cadastral Commission, Monduliri Provincial Department of Rural Development, Ministry of Rural Development.

66. MAFF, Profile, Monduliri, <http://www.elc.maff.gov.kh/en/profile/18-mdk.html> (last accessed 10 August 2011)

67. Table given by the Cadastral administration. op. cit.

68. Varanasi was originally leased to Khaou Chuly Development prior to the 2007 joint venture with Socfin.

MAP OF THE CONCESSIONS' SITES<sup>69</sup>



Obtained in Socfin-KCD, 2010 Feasibility Study, Map: Area of the Study and Concessions' Sites.

69. Obtained from Socfin during FIDH's mission.

Varanasi was granted by the Ministry of Agriculture, Forestry and Fisheries. Sethikula, although referred to by the authorities as a concession, is technically a “lease”. In effect, and due to its location on the “Phnom Nam Lyr Wildlife Sanctuary” (PNLWS), a protected area, it was granted as a “lease” by the Ministry of Environment and therefore has a different status. It should be mentioned that the government passed a royal decree in 2007<sup>70</sup> excising the area of overlap of the Varanasi concession from within the boundaries of PNWLS, reducing the size of the protected area and enabling the concession to be granted.

According to Socfin-KCD, the company was contemplating a third concession next to Sethikula (Shambala 3604 Ha) but decided to drop its request.<sup>71</sup> Representatives of the MAFF met during FIDH’s mission gave a different explanation, stating that the authorisation was refused due to its potentially high environmental and social impacts.<sup>72</sup> Nevertheless, the feasibility and Environmental and Social Impact Assessment (ESIA) studies provided to FIDH by Socfin-KCD in December 2010 included an analysis of the potential impacts of the Shambala concession. Finally, The French Ambassador in Cambodia alluded to the fact that “Bolloré was ready to pursue the discussions but only if things were clear...”<sup>73</sup> When asked if the company had definitely abandoned the project of this third concession, Socfin-KCD simply responded that “Shambala had never been a concession of Socfin-KCD”.<sup>74</sup>

KCD obtained Varanasi in 2007 and operations began in 2008.<sup>75</sup> According to the company, the contract for Varansi was signed on 8 October 2008 and the contract for Sethikula on 9 April 2010<sup>76</sup>. The concessions operated by Socfin-KCD affect over 800 families (849 according to Socfin’s ESIA) families living in 7 villages of the Bousra Commune.

With an investment of 15 million USD in the Varanasi concession alone, the company estimates that it will start generating profit beginning in the 8<sup>th</sup> year for a global return on profit rate of 15%. From 2022 (once the investment is paid off), the company plans to make 2.1 million profit per year.

### 3.3.3. Socfin-KCD: who is behind the joint venture?

Socfin-KCD is a joint venture registered as a company in Cambodia and owned 80% by Socfinasia and 20%<sup>77</sup> by KCD (Khaou Chuly Development).<sup>78</sup> Socfinasia is a holding company created in 1972 and headquartered in Luxembourg. Socfinasia’s main activity is to



70. Sub-decree no.206, ‘Cutting Land Areas from the Protected Forest Areas for Conservation of Plant and Wildlife Genetic resources ‘Mondulkiri’’, 28 December 2007. As highlighted in the Legal Memorandum, the sub-decree did not specify the exact location and nature of the 56,467 HA to be cut from protection and reallocated for use in ELCs. In DFDL weekly update from 19 February 2008, quoted in Legal Memorandum.

71. Meeting with Socfin representatives in their offices on the plantation site, 15 December 2011.

72. Meeting with -Mr. It Nody, Under Secretary of State, Ministry of Agriculture Forestry and Fisheries, 21 December 2010.

73. Meeting with his Excellency Mr. Christian Connan, Ambassador, Embassy of France in Cambodia, 21 of December 2011.

74. Unofficial translation. Socfin’s responses to FIDH’s questions, August 2011.

75. Frederic Mertens, Coordinator, Sustainable Development, Meeting with Socfin representatives, 15 December 2010.

76. As noted in the « Findings », official documents obtained by FIDH show different dates. According to copies of the front pages of the contract included in Socfin’s Feasibility Study (September 2010), contract for Varanasi were signed on 3 April 2009 and on 23 February 2010 for Sethikula.

77. Socfin, Organisation, <http://www.socfin.com/Public/FlashContainer.php?ID=1064&ancestor1=1051>

78. Socfinasia S.A. increased its participation in Socfin-KCD by 10% during the second semester of 2010. See Socfin, Annual Report 2010, p.26.

manage portfolio holdings focused on the exploitation of over 50 000 ha of tropical palm and rubber plantations located in South-East Asia. Socfinasia has 12 000 employees and had a turnover of 280 million euros in 2010.<sup>79</sup> 55% of Socfinasia is owned by Socfin (Société Financière des Caoutchoucs)<sup>80</sup>, previously Société Financière Luxembourgeoise (Socfinal).

Socfin is a company created in 1959 and headquartered in Luxembourg. Both Socfin and Socfinasia are listed on the Luxembourg Stock Exchange. Some of the group's holdings in Africa have been targeted for alleged human rights abuses on plantations.<sup>81</sup> The table below indicates Socfin's shareholders. Amongst them, Bolloré Group (France) holds 38,75%, in addition to Belgian families Fabri and de Ribes.<sup>82</sup> The Fabri family owns one third of what is referred to as the "Empire Rivaud", a financial power which owns millions of hectares in plantations in Africa and Asia and which is led by Jean de Beaumont and Edouard de Ribes<sup>83</sup> (the latter being on Socfinasia and Socfin's boards of directors).

In addition to Socfin SA (53,96%<sup>84</sup>), Bolloré Group (France) holds 21,75% of Socfinasia SA.<sup>85</sup> Other shareholders (24,29% unidentified shareholders) are front companies located in tax havens which would be linked to the Fabri and Ribes families, themselves sitting on the board of Bolloré Group.<sup>85</sup> Listed on the Paris Stock Exchange, Bolloré is a French investment and industrial holding group headquartered in Puteaux, France, and its principal activities are in sectors such as logistics, energy distribution, plantation, and media and communications.

With the exception of Mr. Luc Boedt and Mr. André Balot (on Socfin's board), Mr. Hubert Fabri, Mr. Vincent Bolloré, Mr. Robert de Tehux de Meylandt et Montjardin (represented by Mr. Cédric de Bailliencourt), Mr. Eoudard de Ribes, and Mr. Philippe de Traux de Wardin all sit on both Socfin's and Socfinasia's boards of directors.

In addition, Mr. Hubert Fabri is President of Palmeraies de Mopoli (owning 4,49% of Socfin) and also represent TwoSun Fin Establishment (owning 11,24% of Socfin) on Socfin's board of directors. Edouard de Ribes has the authority to represent Geselfina (owning 23,05% of Socfin) as well as holdings and companies pertaining to Bolloré's group on Socfin's board.<sup>86</sup>

In 2010, Socfinasia realized a net profit of 137,28 million euros (on a turnover of 280 million euros).<sup>87</sup>

Due to the complex and multi-layered structure of holding companies owning 80% of Socfin-KCD's joint venture, it is difficult to assess the degree of control exercised by Bolloré's group on Socfin-KCD. However, available information tend to confirm that the company is exercising

79. Unofficial translation. Socfinasia, Annual Report 2010.

80. Socfin, Annual Report 2010, p.5.

81. For instance in Cameroun : Socfin holds 61% of Socfinaf (previously Intercultures). Socfinaf holds 67% of Palmcalm (Cameroun) which owns 63% of Socapalm. Socapalm was recently targeted by human rights NGOs for alleged human rights violations in banana plantations. See Misereor, le Centre pour l'environnement et le développement, Focarfe et Sherpa, "Des palmiers et des hommes : Comment la SOCAPALM viole les droits sociaux et environnementaux des communautés locales" (in French), 7 December 2010.

82. Martine Orange, "Enquête sur la face cachée de l'empire Bolloré", Mediapart, 2009.

83. Ibid.

84. Rapport annuel Socfinasia 2010, p.29.

85. Martine Orange, 2009, op. cit. While information concerning the unidentified shareholders could not be obtained, it is worth mentioning that the family Fabri would, according to Ms. Orange's article, hold the operational power of Socfin and Socfinasia. In addition and as mentioned, both families Fabri and Ribes sit on the board of Bolloré Group (see Rapport annuel 2010, Groupe Bolloré, in French). According to Ms. Orange and remarks made by Vincent Bolloré, family Fabri would have shares in companies which, in addition to Bolloré Group, detain Socfin such as Geselfina, Palmerais de Mopoli and TwoSun Fin Establishment. Geselfina and TwoSun Fin Establishment are registered in tax heavens and their shareholders are not disclosed. Mr. Hubert Fabri is President of Palmeraies de Mopoli. [http://www.afm.nl/registers/fv\\_documents/5674.pdf](http://www.afm.nl/registers/fv_documents/5674.pdf)

86. MEDIAPART, Frenchleaks, « La feuille de présence des actionnaires de la société Socfinal lors de l'AG de 2004 », Document published on 05.02.2009, available at: <http://www.frenchleaks.fr/IMG/pdf/Socfinal.pdf>

87. Socfinasia, Annual report 2010 (in French), p.32.

significant operational ( Vincent Bolloré, Chief Executive Officer of Bolloré Group sits on both Socfin and Socfinasia's boards) and financial control over the joint venture (Bolloré's group directly detain 21,75% of Socfinasia and owns 54% of Socfin, in turn detained at nearly 40% by Bolloré's group. See table above on the shareholders' structure).

**Khaou Chuly Group** is registered in Cambodia and is said to be the largest Cambodian construction company. Founded in 1955, Khaou Chuly Company was, after the Khmer Rouges regime, rebuilt after the Khmer Rouges regime under the name of Khaou Chuly MKK, in partnership with the Japanese company MAEDA.<sup>88</sup> According to the company's website, "many of the company's current projects are internationally funded by overseas agencies including the EU, Japan International Cooperation Agency (JICA), SCA, US Agency for International Development (USAID), Australian Agency for International Development (AusAID), etc."<sup>89</sup> The activities of the group include construction (engineering, buildings and public work, schools, universities, railways, dams, airports..), holdings (in agribusiness, consulting strategy, building materials, cement factory and fashion and accessories through Dhammarangsi Holding), surveillance services and pool construction and maintenance (with French company Piscines Desjoyaux). Mr. Khaou Chuly, a Sino-Cambodian tycoon, is the Chairman of Khaou Chuly Group and also a private adviser to Prime Minister Hun Sen.<sup>90</sup> His son, Khaou Phallaboth is co-founder and President of the Group.<sup>91</sup> Khaou Phallaboth and his relatives maintain close relationships with governmental figures.<sup>92</sup> Khaou Phallaboth is also the former son-in-law of Chea Xim, brother-in-law of CPP minister Sun Chanthol.

In 2007, Khaou Chuly Group and Socfin announced a joint venture representing US\$ 20 million.<sup>93</sup> In February 2009, the operational management was transferred from KCD to Socfin.<sup>94</sup> This was confirmed by the mission team during its mission.<sup>95</sup>

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88. Chambre de Commerce Franco-Cambodgienne, Groupe Khaou Chuly, [www.cfcambodge.org/pdf/KHAOU105.pdf](http://www.cfcambodge.org/pdf/KHAOU105.pdf)

89. Khaou Chuly Business Group, "Company History", [www.khaouchulygroup.com/Mkk\\_index.php](http://www.khaouchulygroup.com/Mkk_index.php)

90. Asian Development Bank Report on the ASEAN experience, May 2009, available at : [http://aric.adb.org/aid-for-trade-asia/global-financial-crisis/pdf/Cambodia%20-%20Regional%20Aid%20for%20Trade%20Event%20draft%2028-May-09\\_.pdf](http://aric.adb.org/aid-for-trade-asia/global-financial-crisis/pdf/Cambodia%20-%20Regional%20Aid%20for%20Trade%20Event%20draft%2028-May-09_.pdf)

91. Khaou Chuly Group, Message from President, [www.khaouchulygroup.com/KCG\\_message.php](http://www.khaouchulygroup.com/KCG_message.php)

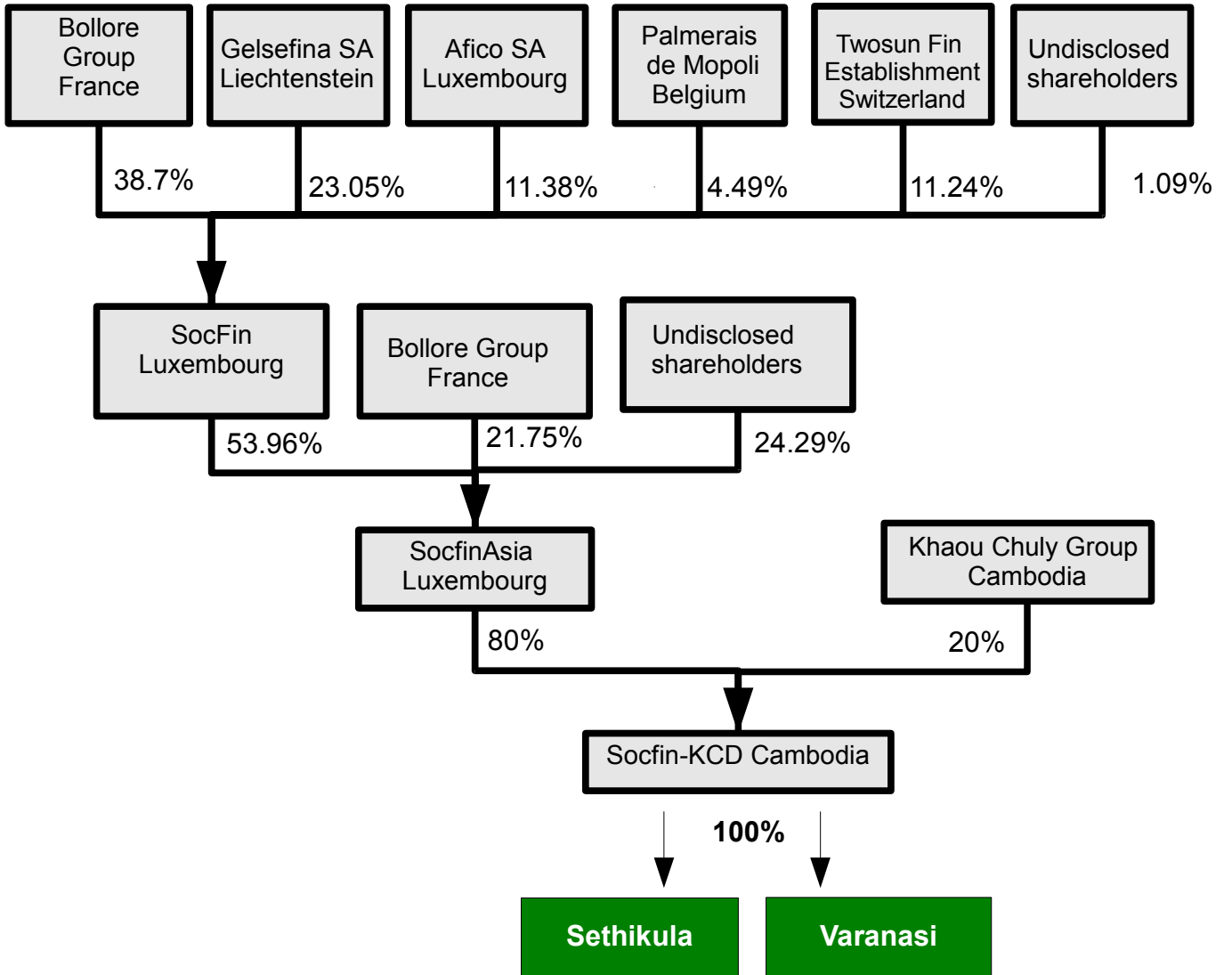
92. In 1996, Khaou Phallaboth got married to Chea Pine, daughter of Chea Sim, President of the Senate. See Kevin Doyle and Van Roeun, "Securing Allegiance: Elite's Children Find Love in a Hot Political Climate", The Cambodian Daily, 17-18 January 2004, [www.camnet.com.kh/cambodia.daily/selected\\_features/securing.htm](http://www.camnet.com.kh/cambodia.daily/selected_features/securing.htm). Khaou Phallaboth's sister, Suv Chantha is the wife of Sun Chanthol, vice chairman of the Council for the Development of Cambodia and a former minister of public works and transport. See Chrann Chamroeun, "Okhna to Petition for Wife's Release on Bail", Phnom Penh Post, 12 July 2010.

93. Socfin-KCD, Chambre de Commerce Franco-Cambodgienne, [www.cfcambodge.org](http://www.cfcambodge.org)

94. Socfin-KCD, "Volume I: Etude de Faisabilite", Projet de Plantations d'Hevea Familiales et Jardins a Bois", Socfin-KCD, Cambodia, 1 September 2010. [hereinafter Socfin-KCD, Feasibility Study]

95. While the mission team had the opportunity to meet with Mr. Khaou Phallaboth, President of Khaou Chuly Group, all exchanges were done through representatives of Socfin. On site, Socfin effectively manages the plantations.

## Shareholders' structure



# 4. The Legal Framework

## 4.1. International human rights and labour law

Cambodia and Luxembourg are parties to all major international human rights treaties. Under international human rights law, States have an obligation to respect, protect and fulfill human rights. The obligation to respect means that States must refrain from interfering with or impeding the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses committed by third parties, including businesses. Finally, the obligation to fulfill refers to States' obligations to take positive measures to ensure the enjoyment of basic human rights, UN treaty bodies, which provide authoritative guidance on the interpretation of international human rights treaties, have stated that home States (i.e. States where companies are domiciled in their territory and/or jurisdiction), in this case Luxembourg and other European countries concerned (such as France), should take measures to prevent abuses abroad committed by companies within their jurisdiction as part of their obligation to protect. This exercise of due diligence as an obligation incumbent upon States has been confirmed by the UN Human Rights Committee, which affirmed that States have to take appropriate steps to prevent, punish, investigate and redress harm by private entities.<sup>96</sup>

The International Covenant on Civil and Political Rights (ICCPR) protects freedom of expression and the right to access to information. (Article 19), equality before the law (Article 14), the right to an effective remedy (Article 2.3a) as well as special protection to national minorities, including indigenous peoples (Article 27). The Human Rights Committee has highlighted that Article 27 requires States to protect indigenous peoples' rights to own, develop, control and use their communal lands, territories and resources and recognized their right to restitution (or, if not possible, a just, fair and prompt compensation) if deprived of their lands and territories traditionally owned.<sup>97</sup>

The International Covenant on Economic, Social and Cultural Rights (ICESCR) enshrines the right to self-determination (Article 1), the right to an adequate standard of living (Article 11), including the right to food and housing. Article 11 has been interpreted by the Committee on Economic, Social and Cultural Rights (CESCR) as acknowledging the right for indigenous peoples to choose their own development, including the use of management of their land and natural resources. In its General Comments no.4 and 7, the Committee clearly states that Article 11 should be interpreted as allowing land seizure only in the public interest and if accompanied by fair and just compensation.<sup>98</sup> The UN Basic Principles and Guidelines on Development based Displacement and Evictions can also provide useful guidance to States. The Guidelines particularly recommend States to explore all possible alternatives to evictions; to ensure full consultation and participation of affected people throughout the entire process as well as adequate compensation.<sup>99</sup>

In its Concluding Observations of May 2009 on Cambodia, the CESCR Committee expressed serious concerns over the impact of economic land concessions on human rights in Cambodia, including particularly on indigenous peoples' rights, and issued several recommendations to the State, including a moratorium on all evictions and the conduct of participatory and meaningful consultations with affected residents and communities.<sup>100</sup>

96. Human Rights Committee, General Comment 31, "The Nature of the General Legal Obligation Imposed on States Parties to the Covenant (2004) of the ICCPR", § 8.

97. Human Rights Committee, "General Comment no.23 : The Rights of Minorities (Article 27 ICCPR)", 8 April 1994, § 5.

98. CESCR, General Comment 4 (1991) and 7 (1997)

99. UN Basic Principles and Guidelines on Development-Based Evictions and Displacement, Annex 1 of the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, A/HRC/4/18

100. UN Committee on Economic, Social and Cultural Rights, "Concluding Observations on Cambodia, 42<sup>nd</sup> Session, 22 May 2009, E/C.12/KHM/CO/1, §30.

The International Convention on the Elimination of Racial Discrimination (ICERD) guarantees the right to be free from discrimination in property-related matters such as the enjoyment of property (Article 5) as well as the right to an effective remedy (Article 6). In its General Recommendation no. 23, the Committee on the Elimination of Racial Discrimination (CERD) prescribes detailed measures that States should take to respect and protect indigenous peoples' rights to land and natural resources. Such measures notably include to ensure the free and informed consent of indigenous communities prior to granting licenses, steps to return lands and territories to indigenous peoples in cases of deprivation and, in cases where restitution is not possible, a just, fair and prompt compensation.<sup>101</sup> In its 2010 concluding observations, CERD expressed concern "about reports of the rapid granting of concessions of land traditionally occupied by indigenous peoples without full consideration, or exhaustion of procedures provided for, under the land law and relevant sub-decrees (arts.2 and 5)" and notably recommended the government to adopt protective measures (such as granting delays when issuing land concessions).<sup>102</sup>

In September 2007, Cambodia voted in favour of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Although not legally binding, it is generally agreed that the Declaration reflects the current state of international law pertaining to indigenous rights.<sup>103</sup> The Declaration recognises the right of indigenous peoples to self-determination (art.1 – i.e. to freely pursue their economic, social and cultural development), the right to be protected against forced evictions (art.10), the right to be protected against forced assimilation or destruction of their culture (art.10) and, interrelated, the right to maintain and protect their cultural traditions and customs (art.11), spiritual and religious traditions (art.12) and to exercise their spiritual and traditional relationship with the land (art. 25) ; and more explicitly their right to land (art. 26). Articles 19 and 32 highlight the need for States to consult with indigenous peoples and to obtain their **free, prior and informed consent** prior to adopting legislative or administrative measures or projects which may affect the enjoyment of their rights, in particular "projects affecting their lands or territories and other resources".<sup>104</sup> Article 29 underscores indigenous peoples' right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. Finally, the Declaration also emphasizes indigenous peoples' right to obtain redress if they are deprived of their means of subsistence and development (art. 20, 28, 32, 40).

In 2009, the Government of Cambodia accepted all 91 recommendations made by the United Nations Human Rights Council (HRC) on the occasion of the first Universal Periodic Review (UPR) of Cambodia. Amongst these, specific recommendations were made regarding land issues, such as the need to: adopt further legal reforms to address land issues<sup>105</sup>; intensify efforts to promote fair access to land ownership and protection against forced evictions<sup>106</sup>; adopt a moratorium on eviction until measures are taken to guarantee effective implementation

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101. CERD General Recommendation no.23, "Indigenous Peoples", 18/08/1997, §5. See Legal Memorandum, p.14.

102. See para. 16, "The Committee recommends that the State party ensure that a proper balance between development and the rights of its citizens is achieved and that its economic development does not come at the expense of the rights of vulnerable persons and groups covered by the Convention. It also recommends that the State party develop appropriate protective measures, such as a delay in the issuance of a concession on lands inhabited by indigenous communities who have applied to be registered legally in order to obtain land titles until the issue of collective ownership titles and indigenous peoples' rights to possess, develop, control and use their communal lands, where at issue, has been assessed and determined, and after consultation with and the informed consent of the indigenous peoples. The Committee further encourages corporate business entities when engaging in economic land concessions to take into consideration their corporate social responsibility as it relates to the rights and well-being of local populations.", para.16,

103. See for example ILO standards and the UN Declaration on the Rights of Indigenous Peoples, Information note for ILO staff and partners, paragraph "UNDRIP and Convention No. 169, Legal nature", p.2, available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---normes/documents/publication/wcms\\_100792.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_100792.pdf)

104. UN Declaration of the Rights of Indigenous Peoples, Adopted by the General Assembly Resolution 61/295, 13 September 2007, Art.32.

105. Human Rights Council, Report of the Working Group on the Universal Periodic Review on Cambodia, A/HRC/13/4, 4 January 2010, Recommendation no.38.

106. Ibid, Recommendation no.61,62.



of the 2001 law on land property<sup>107</sup> and put an end to forced evictions, notably by [...] ensuring a better verification of land titles and guaranteeing strengthened protection of the population affected by the expropriations.<sup>108</sup>

In its Concluding Observations on Cambodia in June 2011, the Committee on the Rights of the Child (CRC) expressed “deep concern that thousands of families and children, especially urban poor families, small-scale farmers and indigenous communities continue to be deprived of their land as a result of land grabbing and forced evictions carried out by people in positions of power,” and the Committee recommended that Cambodia “establish a national moratorium on evictions until the determination of the legality of land claims is made.”<sup>109</sup>

In its 2010 concluding observations, the Committee on the Elimination of Racial Discrimination (CERD) recently expressed concerns “about reports of the rapid granting of concessions of land traditionally occupied by indigenous peoples without full consideration, or exhaustion of procedures provided for, under the land law and relevant sub-decrees (arts.2 and 5) and notably recommended to the government to adopt protective measures (such as granting delays when issuing land concessions).<sup>110</sup>

The International Covenant on Civil and Political Rights (ICCPR) also establishes guarantees (art.27) specifically aimed at protecting national minorities, including indigenous peoples and requires States to take all appropriate measures to ensure that their rights are protected<sup>111</sup>. Amongst ILO Conventions ratified by Cambodia, it is worth noting the ratification of ILO Convention 29 concerning Forced or Compulsory Labour, ILO Convention 105 concerning the Abolition of Forced Labour, as well as ILO Convention 111 on discrimination in employment and occupation which provides protection for indigenous peoples’ access to their traditional occupations.<sup>112</sup>

Cambodia also ratified the Convention on Biological Diversity, which recognizes the role of indigenous peoples in protecting biodiversity.<sup>113</sup> Furthermore, the Rio Declaration on Environment and Development clearly recognizes indigenous peoples’ role in protecting the environment and achieving sustainable development and states that Governments should ensure the effective participation of indigenous peoples in resource management and conservation strategies (Principle 22).<sup>114</sup>

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107. Ibid, Recommendation no.64b)

108. *ibid*, Recommendation no.64c).

109. CRC/C/KHM/CO/2, see para. 62, “The Committee urges the State party to establish a national moratorium on evictions until the determination of the legality of land claims is made. The Committee also urges the State party to ensure that families and their children are not made homeless as a result of evictions for private and development activities. The Committee further recommends that the State party fully implement the recommendations of the Special Rapporteur on the situation of human rights in Cambodia in relation to access to land and livelihood (A/HRC/4/36 and A/HRC/7/42).”

110. The Committee on the Elimination of Racial Discrimination Concluding Observations 2010, CERD/C/KHM/CO/8-13, Paragraph 16 : “The Committee recommends that the State party ensure that a proper balance between development and the rights of its citizens is achieved and that its economic development does not come at the expense of the rights of vulnerable persons and groups covered by the Convention. It also recommends that the State party develop appropriate protective measures, such as a delay in the issuance of a concession on lands inhabited by indigenous communities who have applied to be registered legally in order to obtain land titles until the issue of collective ownership titles and indigenous peoples’ rights to possess, develop, control and use their communal lands, where at issue, has been assessed and determined, and after consultation with and the informed consent of the indigenous peoples. The Committee further encourages corporate business entities when engaging in economic land concessions to take into consideration their corporate social responsibility as it relates to the rights and well-being of local populations”.

111. See the Draft Legal Memorandum Economic Land Concession In Bousra Commune, Mondulkiri Province, p.14, referring to the HRC General Comment no.31.

112. ILO Convention 111 on discrimination (employment and occupation). Quoted in Sek Sophorn, Stefania Errico and Chea Phalla, ILO, “Guide on IC By-Law Development and Issues related to Indigenous Peoples in Cambodia”, Programme to Promote ILO Convention No. 169 (PRO169) Support to Indigenous Peoples in Cambodia, ILO, May 2010.

113. United Nations, Convention on Biological Diversity, 1992.

114. See also Section III of Agenda 21 on the role of Indigenous People and their communities in environmental protection.

## 4.2. National legal framework

### 4.2.1. Constitutional Guarantees

According to Article 31 of the Constitution of the Kingdom of Cambodia, international human rights standards are binding domestic law.<sup>115</sup> The Constitution specifically grants Cambodians the right to own land, which may only be confiscated in the public interest, as provided for under law and with the payment of fair and just compensation prior to the displacement.

### 4.2.2. Land management

In 1975, under the Khmer Rouge regime, private property was abolished. The right to own land was reintroduced in 1989. The 1993 Cambodian Constitution recognises the right to enjoy private land ownership. Article 44 of the Constitution states that the government can only deprive someone of his/her property for “public interest” purposes and requires that the government pay victims a fair and just compensation. Despite the recognition of the right to gain private land titles, the vast majority of the population never received a formal award of land and only few people received land certificates.<sup>116</sup>

The 2001 Land Law classifies Cambodian land into five categories: State Public Property; State Private Property; Private Individual Property; Monastery Property; and Collective Indigenous Community Property. State Public Property refers to land with a public interest use, including land of natural origin such as forests.<sup>117</sup> These areas can only be owned by the State.<sup>118</sup> State Private Property can be privately possessed, owned and sold. The Sub-Decree on State Land Management sets out the administrative guidelines for land identification, mapping, registration and classification. Unfortunately, there has been so far very limited identification, mapping or registration of State Land in Cambodia and the distinctions between public and private state land too often remain blurred.<sup>119</sup> **For instance in the case of Bousra, it appears no official notice of a transfer of the land in Bousra from State public to private land has occurred.**<sup>120</sup>

According to the Land Law, any person who enjoyed peaceful, uncontested possession of land – but not state public land- for at least five years prior to the law’s promulgation has the right to request a definitive title of ownership.

### 4.2.3. Economic Land Concessions

In December 2005, a Sub-Decree on Economic Land Concessions was adopted to establish the legal and regulatory framework for the granting and management of concessions. For ELCs to be granted the following conditions should be met<sup>121</sup>:

- The land must be classified and registered as State Private land;<sup>122</sup>
- A land use plan must have been adopted by the Provincial-Municipal State Land Management Committee and the proposed use of the land should be consistent with this plan;

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115. “The Constitutional Council, in its decision No.092/003/2007, further noted that international treaties are part of national law and courts should take treaty norms into account when interpreting laws and deciding cases.” See Legal Memorandum, p.12.

116. The Observatory for the Protection of Human Rights Defenders, September 2009, op.cit. p.19. Interview with Dr. Ou Vuddy, Permanent Deputy, Ministry of Land Management, Urban Planning and Construction, 16 December 2011.

117. Land Law 2001, Art. 16.

118. Land Law 2001, Art.43

119. See Legal Memorandum, p.9.

120. Legal Memorandum, p.9

121. Sub-decree no.146 on Economic Land Concessions 2005, no.146 ANK/BK, Art. 4

122. “In accordance with the Sub-Decree on State Land Management and Sub-Decree on Procedures for Establishing Cadastral Maps and Land Register, or the Sub-Decree on Sporadic Registration.”, Sub-decree no.146 on Economic Land Concession 2005, Art.4 (1).

- ESIA's must have been completed in relation to the land use and development plan for ELCs projects;
- The proposed land concession must present solutions for resettlement issues and the government shall ensure that there will be no involuntary resettlement by lawful land holders and that access to private land is respected;
- Public consultations with territorial authorities and residents of the locality on the concession projects have been held (However there are no guidelines on how such consultations should be conducted).

The MAFF is authorized to grant ELCs that exceed 1,000 ha (but which shall not exceed 10,000 Ha). Proposals to obtain ELCs shall be evaluated in light of criteria such as the *promotion of living standards of the people, perpetual environmental protection* and natural resources management and *avoidance or minimizing of adverse social impacts*.<sup>123</sup> According to the new sub-decree N°131 on the justification of sub-decree on Economic Land Concession dated 15 September, 2008, the MAFF is authorized to grant all ELCs. It remains unclear what is the legal ground authorizing the MOE to grant ELCs.

All ELC projects have to produce an ESIA study to the Ministry of Environment to get approval from Royal Government, in conformity with the sub-decree No72 on the Environment Impact Assessment Process, dated 11 August 1999.

Chapter 6 of the Sub-decree plans for the creation of a Technical Secretariat mandated to support authorities in the review of existing ELCs, including, *inter alia*, a review of contractual compliance and a public consultation to solicit comments on land concession activities within communes where the concession land is located. The Technical Secretariat shall issue a review report including recommendations such as whether or not the contract should be cancelled due to a violation of its terms.

There is currently no law on access to information in Cambodia.

#### 4.2.4. ELCs and indigenous peoples' rights

Articles 23 to 28 of the 2001 Land Law grants indigenous' peoples the right to collective ownership. Article 23 defines an indigenous community as "a group of people that resides in the territory of the Kingdom of Cambodia whose members manifest ethnic, social and cultural and economic unity and who practice a traditional lifestyle, and who cultivate the lands in their possessions according to customary rules of collective use". The Bunong, who practice collective decision-making, collective ownership, shifting cultivation and other traditional agricultural and spiritual practices, satisfy these requirements. In addition, international human rights law regards self-identification as an important criterion<sup>124</sup>. In August 2010, a working group of civil society organisations (ADHOC-CLEC-ICSO-CARITAS) with support from UNHCHR conducted surveys to identify the people in Bousra wanting to be considered as indigenous. 99% of the 733 families interviewed<sup>125</sup> out of 914 (other families are not Bunong<sup>126</sup>) answered in the affirmative. In 2008 (at the same time as the first concession was granted to Socfin-KCD), indigenous communities living in all 7 villages of Bousra were recognized and informally approved by the Ministry of Interior as potentially eligible for collective land ownership.<sup>127</sup>

123. Sub-decree on Economic Land Concessions, 2005, no.146 ANK/BK, Art.5. Emphasis added.

124. See ILO Convention no. 169, Article 1.2, Working paper on the concept of "indigenous people" of the Working Group on Indigenous Populations, E/CN.4/Sub.2/AC.4/1996/2, United Nations Declaration on the Rights of Indigenous Peoples, 2007, Article 33.

125. Other families are not Bunong.

126. The Khmer families living in the area are practically not affected by the activities of Socfin-KCD, since they do not practice agricultural activities and mostly get their revenues from the business and tertiary sectors.

127. Following the conduct of two provincial workshops held in 2008 with the support of the ILO and Cambodia authorities, a list of 133 indigenous communities, including those living in Bousra, was drawn up as communities potentially eligible for collective land ownership.

In addition to residential land, article 25 of the 2001 Land Law explicitly specifies that land belonging to indigenous communities includes both lands actually cultivated and as well as land reserved for shifting cultivation required by agricultural methods practised by indigenous people and recognized by the administrative authorities. This is also confirmed by article 6 of the Sub-decree on Procedures of Registration of Land of Indigenous Communities, which also recognises indigenous rights to collective ownership of spiritual forest land and burial ground forest land (cemeteries)<sup>128</sup>, located on State Public Land.

#### *Land use*

The 2002 Forestry Law is relevant to indigenous peoples in terms of user and tenure rights of communities. In addition to indicating rules for shifting cultivation areas (Article 37), this law requires concessionaires to make sure their operations do not interfere with “customary user rights taking place on land property of an indigenous community that is registered with the state consistent with the Land law; and customary access and user rights practised by communities residing within, or adjacent to forest concessions”.<sup>129</sup>

Furthermore, Article 2 of the Sub-decree on forest concession management (2000) requests a “*regular consultation with, and participation by, local communities* and other relevant stakeholders in the development of concession management.”<sup>130</sup>

#### *4.2.5. Registration, Collective Land Titling and Interim measures*

Despite the fact that collective ownership is permitted under Cambodian law since 2001, there was, as of September 2011, no land officially registered as Collective Indigenous Community Property in Cambodia.

To obtain collective land titling, the following three steps need to be followed according to Government policy<sup>131</sup>:

1. Identification of indigenous peoples and communities
2. Registration of their community as a legal entity
3. Registration of the collective land and issuing the title

To determine the identity of indigenous peoples and their communities, the community first needs to identify itself and produce the required documents (self-identification) and make a formal request to the Ministry of Rural Development (MRD) and obtain its recognition.

Once obtained, communities need to register as legal entities with the Ministry of Interior (MoI). This is a prerequisite for applying to collective land title and requires different steps (drafting and approval of the by-laws of the community, application for registration with MoI, etc.).

Once the by-laws of the community have been officially registered with the MoI, a community is entitled to apply for collective land title.<sup>132</sup> This involves applying for land registration (collective ownership) to the Ministry of Land Management, Urban Planning and Construction (MLMUPC) and then go through the titling procedure, the adoption of internal rules concerning land use and management system of the community.<sup>133</sup>

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128. One or more plots for each community with a limit of 7 ha in total size.

129. Art.15.

130. Emphasis added. Sub-decree on Forestry Concession Management, No.05/ANK/BK/Feb.7.2000., Article 2.

131. 2001 Land Law, Articles 23-28. Sub-decree on Procedures of Registration of Land of Indigenous Communities, No. 83 ANDK.BK, 9 June 2009, Article 3.

132. Sub-decree on Procedures of Registration of Land of Indigenous Communities, No. 83 ANDK.BK, 9 June 2009, Article 3.

133. Sek Sophorn, Stefania Errico and Chea Phalla, ILO, “Guide on IC By-Law Development and Issues related to Indigenous Peoples in Cambodia”, Programme to Promote ILO Convention No. 169 (PRO169) Support to Indigenous Peoples in Cambodia, ILO, May 2010.

Article 23 of the 2001 Land Law provides for interim measures to protect indigenous peoples' rights when their legal status has yet to be determined as a community.<sup>134</sup> However, the Circular of 31 May 2011 on interim protective measure protecting lands of indigenous peoples excludes from interim measures “those plots that the Royal Government has agreed in principle for investment or development – prior to this measures come into effect”.<sup>135</sup>

#### 4.2.6. Dispute Resolution and Recourse Mechanisms

##### *Cadastral Commission*

The 2001 Land Law established a Cadastral Commission under the supervision of the Ministry of Land, which has the competence to identify properties, establish cadastral index maps, issue ownership titles, register land and inform people about the status of each parcel of land. The Cadastral Commission does not focus on “possession claims” but on “registration claims”, i.e., land that has not yet been formally registered with the Ministry, as legally required.

##### *National Authority for the Resolution of Land Disputes*

The Government has also set up a “National Authority for the Resolution of Land Disputes” which comprises 17 high-ranking officials of various ministries. However, the members have largely delegated their tasks to others and this body is ineffective in practice. Bousra community members and others submitted a complaint to the NARLD which was left unanswered.

##### *Suspension of the contract*

The MAFF has the ability to suspend a contract in case, *inter alia*, the involved company fails to respect the conditions and terms of the ESIA reports or the master plan or if “disputes occurred with the local people or the third parties related to the rights of land tenures in parts of the concession land”. Article 15 of the copy of the contract obtained mentions that “if any conditions stated in the articles of this contract are in contradiction with the laws, invalid or made ineffective, this case will not nullify the whole contract. It is understood that this contract has validity through the (validated articles existed?).<sup>136</sup>” In other words, only articles invalid or which contradicts the laws shall not be implemented.

Instructive Circular no. 05 on Provision of ELCs for Investment Projects also stipulates that ELCs can only be granted when investors and the government comply with specific regulations, including clauses similar to those in the investment contracts (benefits to the affected communities, etc.).<sup>137</sup>

As far as other judicial and non-judicial mechanisms are concerned, while there are other possibilities<sup>138</sup>, communities and CSOs remain very sceptical about the efficiency and impartiality of the Cambodian justice system, which continues to be the subject of concerns of numerous actors such as the United Nations.

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134. “Prior to their legal status being determined under a law on communities, the groups actually existing at present shall continue to manage their community and immovable property according to their traditional customs and shall be subject to the provisions of this law.”, 2001 Land Law, Art.23. Paragraph 6.3. of Circular No. 02 on Illegal Possession of State Land Property dated February 26, 2007 also implies that until there is official registration of land titles, indigenous communities maintain the right to management of their land in accordance with traditional custom and no lease or sale of the land shall take place. See Legal Memorandum, p.8.

135. Ministry of Interior, Ministry of Land Management, Urban Planning and Construction, Circular on inter-ministerial circular on interim protective measure protecting lands of indigenous peoples, that has been requested for collective ownership titling, while awaiting titling process according to procedure to be completed, 31 May 2011.

136. Exact quote from Article 15: Partial Invalidity of the Contract.

137. See Legal Memorandum, p.11.

138. In 2007, CLEC questioned the legality of an ELC in Sre Ambil and Botumsukor districts. Judges were assigned to the case only in August 2011.

### 4.3. The human rights responsibilities of corporate actors

#### 4.3.1. The UN Framework and Guiding Principles on Business and Human Rights

In 2007, the HRC adopted the report of the UN Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises (SRSG) proposing a framework to address business and human rights responsibilities and the respective responsibilities of States and companies. The framework rests on three pillars: States' duty to protect against human rights abuses by third parties (including businesses), the corporate responsibility to respect human rights and the need for greater access by victims to effective remedy. In 2011, the HRC endorsed the Special Representatives' last report, taking the form of Guiding Principles meant to operationalize the "Protect, Respect, Remedy" Framework.

Under previously existing international human rights law, States hold the primary duty to ensure the protection, respect and fulfilment of human rights. However and as affirmed by the HRC when adopting the "Protect, Respect and Remedy" Framework, there is now a consensus within the international community that companies should, at a minimum and regardless of States' ability or willingness to fulfil their human rights obligations, respect human rights at all times "wherever they operate".<sup>139</sup> "This means businesses should avoid infringing on the human rights of others and should address adverse human rights impacts of activities in which they are involved".<sup>140</sup> Human rights in this context are understood, at a minimum, as those comprised in the International Bill of Human Rights<sup>141</sup> as well as the principles concerning fundamental rights set out in the ILO Declaration on Fundamental Principles and Rights at Work.<sup>142</sup> In addition, the Guiding Principles specifically emphasize the need, in some circumstances, for businesses to consider additional standards such as UN instruments on the rights of indigenous peoples. In the Bousra case therefore, both the ILO Convention no.169 as well as the UN Declaration on the Rights of Indigenous Peoples should form part of the corpus of standards considered by Socfin-KCD.

The corporate responsibility to protect requires companies to act with due diligence and to take measures to address adverse impacts with which they may be involved "either through their own activities or as a result of their business relationships with other parties."<sup>143</sup> Human rights due diligence also means that a company should integrate and act upon the findings, as well as communicate on how impacts are addressed.<sup>144</sup> Such process should start "as early as possible in the development of a new activity or relationship" (i.e. in this case Socfin should have initiated a due diligence process *prior* to concluding the negotiation of its joint venture with KCD and starting operations in Bousra). If impacts cannot be prevented or mitigated, they should be a subject for remediation. One of the key aspects of human rights due diligence process, as outlined by the Guiding Principles, is to assess impacts through "meaningful consultation with potentially affected groups and other relevant stakeholders."<sup>145</sup> Furthermore, the scale and complexity of the means through which companies comply with their responsibility to act with due diligence varies according to the size, sector, operational context, ownership and structure as well as the severity of impacts.

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139. As unanimously affirmed by the UN General Assembly upon adoption of the "Protect, Respect and Remedy" Framework proposed by the SRSG on business and human rights in its 2008 report. See Protect, Respect and Remedy: a Framework for Business and Human Rights Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, A/HRC/8/5, 7 April 2008, III. The Corporate Responsibility to Protect.

140. Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, A/HRC/17/31, 21 March 2011, II.A.11 and commentary.

141. Universal Declaration of Human Rights, ICCPR and its two Protocols, ICESCR.

142. Guiding Principles, March 2011, , op. Cit, II.A.11 and commentary, II.A.12.

143. Idem, II., 13 and 15.

144. Idem, II.B.17.

145. Idem, II.B.18 (b).

Human rights treaty bodies have provided key guidance and recommendations to home States to take steps to prevent abuses committed abroad by enterprises within their jurisdiction and to ensure corporations can be held accountable.<sup>146</sup> Furthermore, the Guiding Principles touch upon the role of home States' agencies and the need to ensure "policy coherence". This includes ensuring that State agencies (such as development agencies) evaluate the adverse impacts on human rights of beneficiary enterprises.<sup>147</sup>

The European Union has endorsed the framework proposed by the UN SRSG and expressed commitment to take the lead on CSR and to ensure European corporations respect human rights wherever they operate.<sup>148</sup>

#### *4.3.2. The OECD Guidelines for Multinational Enterprises*

In 2011, the OECD adopted the revised OECD Guidelines for Multinational Enterprises. The Guidelines are recommendations for responsible business conduct applicable to the enterprises of the 42 adhering governments to the Guidelines and in areas ranging from employment and industrial relations to information disclosure, taxation, consumer interests, combating bribery, science and technology, human rights and environment. The updated Guidelines now include a human rights chapter specifically calling on multinational companies to "respect the internationally recognized human rights of *those affected by their activities*."<sup>149</sup> Building on the UN Guiding Principles, the Guidelines also require companies to carry out risk-based due diligence in order to avoid causing adverse impacts and The OECD Guidelines are applicable to Socfinasia (and Socfin) and their operations in Bousra since their headquarters are based in Luxembourg, a member of the OECD.

#### *4.3.3. The UN Global Compact*

Officially launched in 2000 by the UN, the Global Compact is a voluntary corporate responsibility initiative now counting on over 8 700 corporate participants and other stakeholders from over 130 countries.<sup>150</sup> According to Principle no.1, "businesses should support and respect the protection of internationally proclaimed human rights". In addition, businesses should make sure they are not complicit in human rights abuses through acts or omissions, explicitly referring to direct, beneficial or silent complicity.<sup>151</sup> Although Socfin is not a member of the Global Compact, Bolloré's group, which owns nearly 40% of Socfin and 22% of Socfinasia, has been a member since 2003. According to the Global Compact, "a company's commitment to join the Global Compact applies to all its subsidiaries and local branches, and it is important that this commitment is spread throughout the company's operations around the world." According to the Global Compact, the term "subsidiary" refers to a company controlled by a Global Compact participant.<sup>152</sup> As noted above, information available tend to demonstrate a significant operational and financial control exercised by Vincent Bolloré on the joint-venture.

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146. CERD, « Concluding Observations of CERD: Canada », CERD/C/CAN/CO/18, 25 May 2007, para.17. See also CESCR, General Comment 17, "The right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author", E/C/12/GC/17, 12 January 2006, General Comment 19 on the right to social security", E/C.12/GC/19 (2008).

147. John Ruggie, Guiding Principles 21 March 2011, op. Cit, I.B.4. Commentary.

148. "Protect, Respect, Remedy: Making the European Union Taking a Lead in Promoting Corporate Social Responsibility", Swedish EU Presidency and Spanish EU Presidency statement at the EU conference on corporate social responsibility (CSR), Stockholm, 10-11 November 2009.

149. OECD Guidelines for Multinational Enterprises, OECD, 2011, II.A.2. Emphasis added.

150. The initiative has been criticized for its mitigated results so far : [www.globalcompactcritics.blogspot.com](http://www.globalcompactcritics.blogspot.com)  
See also the UN Global Compact Annual Review 2010 : [www.unglobalcompact.org/docs/news\\_events/8.1/UN\\_Global\\_Compact\\_Annual\\_Review\\_2010.pdf](http://www.unglobalcompact.org/docs/news_events/8.1/UN_Global_Compact_Annual_Review_2010.pdf)

151. UN Global Compact, Global Compact Principle 2, <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/Principle2.html>

152. UN Global Compact, Subsidiary Engagement, [http://www.unglobalcompact.org/HowToParticipate/Business\\_Participation/Subsidiary\\_Engagement.html](http://www.unglobalcompact.org/HowToParticipate/Business_Participation/Subsidiary_Engagement.html)

#### 4.4. Socfin's commitments

Socfin has a code of ethics to be followed by employees pertaining to entities of the group, as well as suppliers and consultants<sup>153</sup>. The code was only adopted in 2009, therefore after Socfin had started operating in Cambodia. The code prohibits discrimination in the workplace, sexual harassment, as well as child and forced labour. The code also contains specific sections governing relations with governmental authorities and corruption. The code contains significant weaknesses (some of them addressed in the recommendations) and is not publicly available. KCD does not have any code of ethics.

Finally, the Legal Memorandum submitted by CSOs also argued that Socfinasia would be violating the internal performance standards of the French development agency AFD. However and as referred to subsequently, Socfin-KCD decided, in 2011, to abandon the project for which they were seeking funds with AFD.

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153. In the original version of the code, written in French, the term use is "consultants et fournisseurs" (consultants and suppliers). Although Socfin-KCD did not confirm it, FIDH assumes this includes sub-contractors.



# 5. FINDINGS

## Timeline prior to FIDH's mission<sup>154</sup>

**2006:** Study by KCD to determine the suitability of the concession site for a rubber plantation? (extract from the CERD report)

**2008:** Varanasi concession granted to KCD by the Ministry of Agriculture, Forests and Fishers (MAFF) / A Memorandum of Understanding is signed between MAFF and KCD on 25 March 2008.<sup>155</sup>

**April 2008:** Socfin-KCD starts land clearing near Bousra Commune on the first part of the concession (before the signature of the contract).

**May 2008:** 100 community representatives protest at the Provincial Governors Office. The NARLD promises to return land to the community.

**June 2008:** Socfin-KCD agrees to pay compensation to those recognized by the authorities. But villagers talk about threats.<sup>156</sup>

**8 October 2008:** Socfin-KCD signs contract for Varanasi<sup>157</sup>

**October 2008:** Community representatives file complaints about the ELC (Varanasi) with the Council of Ministers, the Prime Minister's Office, MAFF, Ministry of Interior and the Ministry of Land Management Urban Planning and Construction (MLMUPC). (To date, there has been no formal response to this complaint).

**19 December 2008:** Meetings held, including with the presence of the Provincial Secretary to attempt resolving issues with communities. No result or agreement reached.

**20 December 2008:** 400 Bunong demonstrate and destroy 43 rubber seedlings, burn three earth excavators and damage a fourth. Socfin-KCD then declines to intervene and refers the matter to the Government. The army intervenes.<sup>158</sup>

**December 2008 – January 2009:** meetings led by Provincial authorities and including Socfin-KCD representatives and community representatives.

**5 January 2009:** Meeting with the Minister of LMPUC, provincial and local authorities, and villagers of the 7 affected villages to discuss incidents occurring on the plantation.<sup>159</sup>

**January 12, 2009:** the Provincial Court summoned six community representatives on charges of robbery, arson and destruction of property. Three representatives were taken to the Provincial Police Head Quarters and released later the same day. Although no charges were made against them, they were told that they would be arrested and imprisoned if they spoke to the media or human rights groups.<sup>160</sup>

**February 2009:** A sacred forest is razed.

154. Information taken from: "Draft Legal Memorandum Economic Land Concession in Bousra Commune, Monduliri Province", Submitted by ADHOC and CLEC with the support of FIDH, 25 November 2009. For more details, refer to the Legal Memorandum available online at: [www.fidh.org](http://www.fidh.org).

155. MOU available in Socfin-KCD's 2010 Feasibility Study ESIA (in French).

156. Indigenous People NGO Network (IPNN), Coordinated by NGO Forum on Cambodia and in cooperation with Asian Indigenous Peoples Pact (AIPP), *The Rights of Indigenous Peoples in Cambodia*, Shadow report, UN CERD, February 2010.

157. Contract in appendix.

158. Confirmed by Socfin representatives, Meeting with Socfin representatives in their offices on the plantation site, 15 December 2011.

159. Socfin-KCD, Feasibility Study, p.233.

160. Cambodian Human Rights Action Committee (CHRAC), Human Rights Vigilance of Cambodia, and Cambodian Human Rights and Development Association (ADHOC), *Investigation subcommittee of the Treatment Committee's Brief Report on Conflict over a Land Area of 2,705 hectares between approximately 300 Households in Bousra Commune, Pich Chreada District, Monduliri Province and the Khaou Chuly Company*, 27 January 2009.

**February 2009:** Socfin officially takes over operational management from KCD.<sup>161</sup>

**May-September 2009:** Clearing continues and planting of rubber trees starts. Villagers seek legal advice from NGOs.

**November 2009:** NGOs (CLEC, ADHOC, Caritas, My Village) and community members visit Socfin-KCD plantations. CLEC and ADHOC with the support of FIDH submit a Legal Memorandum to the company and the authorities assessing the legality of the concession under national and international law.<sup>162</sup>

**December 2009:** Socfin-KCD agrees to halt land clearing (for 3 months<sup>163</sup>) and to set up a “Tripartite Committee” including 3 representatives from the company, 3 representatives from the local authorities and 3 community representatives.

**January 2010- December 2010:** Exchanges between FIDH, CLEC, ADHOC with Socfin-KCD/Villagers continue to report incidents with bulldozers affecting spiritual land and burial sites.

**21 January 2010:** Group of NGOs representatives denied access to Socfin-KCD’s concessions.<sup>164</sup>

March 2010: Meetings continue between community representatives and commune officials without any significant signs of progress.<sup>165</sup>

**10 March 2010:** An Agreement in Principle is given to Sethikula Co. to start land clearing of 500 Ha.

**9 April 2010:** Socfin-KDC concludes contract for Sethikula.

**2 May 2010:** a meeting with villagers focusing on the Free and Prior Consent was organized by Socfin-KCD regarding the second concession (Sethikula company).

**Fall 2010:** Mr. Patrick Lemaître replaces Mr. Philippe Monnin as Director general of Socfin-KCD.

**September- December 2010:** The company, as a result of the conflict with the local population, undertakes a series of measures, including the creation of an office dedicated to relationships with the local population. Sylvain Vogel, former professor at the Royal University of Phnom Penh and University of Franche-Comté (France) linguist and expert of Bunong language, is hired as communication director. Mr. Vogel replaced the former employee (left in September 2010) in charge of dealing with compensation, conflicts, spiritual and burial forests and demarcation issues. The office team also includes Bunong representatives.

**September 2010:** Socfin-KCD finalizes the feasibility study and the ESIA (as requested by AFD).<sup>166</sup>

**December 2010:** FIDH’s mission and meetings with authorities and Socfin-KCD representatives.

**December 2010:** 2,741 ha planted on Socfin-KCD’s Varanasi concession.<sup>167</sup>

**September 2011:** 3000 ha planted on a total of 4000 ha for both concessions.<sup>168</sup>

161. Socfin-KCD, Feasibility Study, p.233.

162. The Legal Memorandum is cited in Socfin-KCD Feasibility Study of which a copy was given to FIDH.

163. Socfin-KCD did not confirm exactly for how long they halted land clearing operations. However, land clearing operations started again before conflicts between the communities and the company were fully resolved. As explained below, both communities and CSOs confirmed that the Tripartite Committee did not yield concrete and significant results for affected residents.

164. “Joint Statement on Restriction on Freedom of Movement”, 21 January 2010, [http://www.chrac.org/eng/CHRAC%20Statement%20in%202010/01\\_22\\_2010\\_Joint%20statement%20of%20Busra%20case.pdf](http://www.chrac.org/eng/CHRAC%20Statement%20in%202010/01_22_2010_Joint%20statement%20of%20Busra%20case.pdf)

165. The Phnom Penh Post, “Land Dispute : Meeting Set for Row in Mondolkiri”, 4 March 2010.

166. A copy of which was given to FIDH in December 2011.

167. Socfinasia, Rapport annuel 2010, (in French), p.5.

168. Socfin’s responses to FIDH, September 2011.

## 5.1. Indigenous Peoples' Right to Collective Ownership: In Paper Only?

*“People accuse the government of taking indigenous peoples' land,  
but the land belongs to the State”*

Mr. Yorn Sarom, Director of Mondulkiri Development Department Ministry of Rural  
Development, 16 December 2010

*“We obtained the ELC before a formal demand for collective land title was submitted”*

Frederic Mertens, Coordinator, Sustainable Development, Socfin, 15 December 2010

As confirmed by FIDH's international mission, while the legislation protecting indigenous peoples' right to collective ownership exists, indigenous families of Bousra face numerous political, administrative and procedural obstacles in securing their right to collective ownership.

First of all, there is a clear and **lack of understanding and recognition of indigenous peoples' rights** on the part of local, provincial and national authorities. According to interviews conducted in Bousra village, villagers were told not to use the word “community” by local authorities, who maintain that indigenous peoples' rights are terms invented by NGOs. Villagers in village no.1 (PouTeth village) affirmed that they had sought, on a few occasions the help of the local authorities, but without any success. Residents in PouRang village also indicated having received a refusal from the local authorities when seeking to register as a community. Despite a formal request made at the district level in 2008, they had not received any response. Other villages (such as PouChar village) also evoked refusal by their commune chief, who argued that it was too late to initiate such a process, which reflects a total ignorance of existing legislation protecting indigenous peoples' rights.

Authorities met have even questioned the “indigenous” status of the Bunong people. Multiple factors have challenged Bunong's capacity to preserve their identity, such as the arrival of Khmer families in the commune at the end of the 90s and most recently the observation of an internal migration phenomenon of Khmer between 2005 and 2008<sup>169</sup>, favoured by the arrival of Socfin-KCD (see section below on working conditions). Yet, the people of Bousra, as evoked in sections 3.3.1 and 4.2.4., clearly fulfil the requirements to be considered as indigenous, both under national and international law. Moreover, considering self-identification as an important criterion under international human rights law, it is worth recalling that the results of the extensive survey undertaken by CSOs in Bousra (700 out of 900 families) showed that 99% of the people living in Bousra villages would prefer benefiting from a communal land. Finally, the analysis made by a consultant in ethnology and sociology hired by Socfin-KCD as part of the ESIA also concluded that the Bunong people could be qualified as indigenous.<sup>170</sup> Nevertheless, such comments by the authorities well-illustrate a lack of understanding of the rights of the Bunong people and further highlight the daily challenges they face in claiming their rights.

Second, the **concessions granted to Socfin-KCD appear to violate provisions of the Land Law 2001 protecting the rights of indigenous communities** to manage their land in accordance with traditional customs. Due to a **lack of implementation of existing regulations and outreach to indigenous communities**, communities in Bousra were not empowered with the necessary tools to be in a position to properly register as indigenous communities and to obtain collective land ownership.

169. According to ethnologists who undertook Socfin's feasibility study, the number of Khmer families in Bousra commune would have increased by 60% between 2005 and 2008. Socfin-KCD, Feasibility Study, p.91.

170. Socfin-KCD, Projet de Plantations d'Hevea Familiales et Jardins a Bois, Cambodge, Rapport Environnemental et Social Provisoire, Volume III : PAR, Cadre légal concernant les minorités, p.22.

Interviews conducted by FIDH confirmed a confusion on the part of the authorities with regard to the process to follow to obtain collective land title (each government representative met offers a different understanding of the process to follow for collective land title and for concession allocation).

During FIDH's mission, three pilot projects supported by ILO to assist communities in obtaining legal entity and communal land registration were under way in Mondulkiri and Ratanakiri. At the time of writing, 7 communities in Bousra had initiated the process, 3 of which had reached step 2 of the process and obtained recognition from the MRD.<sup>171</sup> The office of the UN High Commissioner for Human Rights in Cambodia (OHCHR) has set up a program to assist communities in Bousra commune to obtain registration and collective land title.

**At the moment, the process for registration remains lengthy, complicated and costly and therefore dependent on commitment from NGOs, development partners and donors.** Yet and despite the current political, legal and administrative burdens encountered by indigenous people wishing to register land as community land, it is worth recalling that the land law provides for interim measures to protect indigenous peoples' rights.

The Bunong communities have not yet registered their community or land, they are therefore entitled, under article 23 of the 2001 Land Law, to benefit from interim protection measures and to manage their lands in accordance with their traditional custom until the registration process takes place.<sup>172</sup> **Such interim protection should have been evoked with regard to the request from KCD-Socfin for the ELC in the Bousra commune.** However, the application of such measures in the case of Bousra seems to be jeopardized by the 31 May 2011 circular which restricts the possibility of applying such measures.<sup>173</sup>

As highlighted in section 4, the 2001 Land Law, adopted *prior* to the granting of ELCs to Socfin-KCD, protect the rights of indigenous communities to manage their land in accordance with traditional customs. Notwithstanding the Sub-decree on Procedures of Registration of Land of Indigenous Communities which was only adopted in 2009, the Government of Cambodia clearly contradicted its own existing legislation by granting indigenous community land to private interests without taking into consideration indigenous communities living on the land.

Finally, although the obligation to respect and implement national legislation is a primary obligation of the Cambodian authorities, **Socfin-KCD should not have ignored national legislation** and therefore cannot argue that the ELC is valid only because the Bunong communities affected have not yet been registered as indigenous communities. **This clearly contravenes companies' responsibility to act with due diligence** in order to avoid causing or contributing to human rights violations.

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171. On 26 July, 2011 the Ministry of Rural Development officially approved and issued letters to recognize the communities of three villages, Pou Lu, Pou Til and Pou Toeut, as Phnong indigenous peoples, which will enable them to apply as legal entities, and eventually for collective land title.

172. See section « Legal framework » on Registration Process.

173. MOI, MLMUPC, Interministerial circular 31 May 2011, op.cit.

## 5.2. Questioning the legality of the concessions and the validity of the concession contracts

*“If it affects people, we don’t approve it”*

Mr. It Nody, Under Secretary of State, Ministry of Agriculture Forestry and Fisheries,  
Meeting with FIDH representatives, December 2011

*“Everything is decided by Prime Minister Hu Sen”*

Cambodian authorities, Meetings with FIDH representatives, December 2011

In addition to breaches mentioned with regard to indigenous peoples’ right to collective ownership, the following analysis highlights irregularities observed in the granting of the concessions to Socfin-KCD in light of existing legislation.

### *Non-compliance with requirements to conduct ESIA*

Representatives of the MAFF and the MOE insisted on the importance of conducting ESIA studies prior to granting concessions. Yet, all authorities interviewed (at the national, provincial and local levels) all made it clear that ELCs were signed “from the top”, that is in the office of the Prime Minister.

In both cases (Varanasi, Sethikula), it seems that **only a preliminary assessment of the environmental and social impacts was necessary for the concessions to be approved by the authorities**. For Varanasi the preliminary study was partially included in the Master plan. In interviews with FIDH, Socfin itself recognized that this preliminary assessment was insufficient and lacked proper analysis of the potential environmental and social impacts.<sup>174</sup> Local communities did not have access to the preliminary study nor the Master Plan for Varanasi. **Authorities met refused to provide FIDH with a copy of the preliminary studies or the Master Plans.**<sup>175</sup> Such situation clearly contravenes article 4 of the 2005 Sub-decree on ELC and is also likely to be in contradiction with the investment contracts. Finally, the preliminary study conducted by KCD prior to the granting of the concession and partly included in the Master Plan for Varanasi did specify that rubber should not be planted on “fields belonging to the villagers” and that traditions and rituals of the inhabitants should be maintained. The company also committed to “identify people’s lands, i.e. rice fields and other fields.”. **As highlighted in the ESIA subsequently undertaken by Socfin-KCD, the company has therefore “not complied with the Masterplan”.**<sup>176</sup>

The master plans should have also been prepared with the support and input of local authorities and communities.<sup>177</sup> It has not been the case in both cases. The only comprehensive ESIA undertaken by Socfin-KCD was finalized in September 2010, **over two years after the company had started clearing the land and while tree planting had already begun**. This ESIA was done upon pressure by the French Development Agency (AFD). To its credit, Socfin-KCD has accepted that an external and independent consultant undertake a legal analysis of the concessions in light of national and international human rights and environmental law and that copies be shared with stakeholders, including FIDH and local CSOs. The analysis, as it appears in the copy of the ESIA obtained clearly confirms violations of national and international law on the part of the Cambodian government. The ESIA sets out a series of recommendations for the company to ensure compliance with human rights standards, in particular as they relate to indigenous people. Unfortunately, while Socfin-KCD maintain they implemented some of the recommendations of the ESIA, notably with regard to environmental care<sup>178</sup>, the majority of the measures recommended were not implemented. When asked by FIDH which measures had been implemented, Socfin simply mentioned that the project

174. Meeting with Socfin,

175. In the end, FIDH managed to obtain the Master Plan for Varanasi through a local authority.

176. Socfin-KCD, Feasibility Study, p.237.

177. Investment Contract, Art. 6.2.

178. According to Socfin, the company implemented measures recommended with regard to the protection of river corridors, erosion and precaution in the use of phytosanitary products.

with AFD had been abandoned and that many recommendations of the study were already part of their policies, referring to environmental care and health and social support to the community. None of the examples of recommendations taken up by Socfin addressed the main issues at stake : the Bunong’s rights to consultation, the right to fair and just compensation and the preservation of their livelihoods.

#### *Concessions not registered and resettlement issues not solved*

During FIDH’s mission, it was noted that these two concessions were not registered by the Cadastral Commission because of land disputes. Indeed, the company needs to show that they have done everything to solve conflicts on the concessions. The investment contract obtained for Varanasi states that registration is mandatory “not later than three months after the master plan is approved”.<sup>179</sup> Furthermore, all issues related to resettlement shall be solved “within the period of not later than one year from the date of signing the contract”.<sup>180</sup> **Both clauses of article 2 of the investment contract have not been complied with.**

Finally, article 2 also stipulates that an environmental and social impact assessment document on the land use and development for the concession should be submitted to the authorities no later than one year *after* the signature date. This clause appears to be contrary to article 4 of the Sub-decree on ELCs which clearly states the realisation of an ESIA as a prerequisite for authorizing ELCs.

#### *Lack of transparency and access to information*

FIDH and CSOs have, on numerous occasions, requested a copy of the investment contracts for the concessions granted. While the company has referred us to the Cambodian authorities, the latter refused to provide us with copies of the investment contract and the attached master plans. However, the mission team was able to obtain, informally, the investment contract and the master plan related to the Varanasi concession in 2008. Confusion nevertheless remains around the different contracts signed, with the **communities unable to obtain copies of the master plans for the concessions**. Local authorities met with confirmed not having been informed of the forthcoming projects until the contracts were signed.

### **5.3. Lack of adequate consultation and compensation: communities under pressure**

*“Yes we accepted to sell our land, but we had no choice...”*  
Community member, Bousra village

*“The company and the local authorities tried to convince us not to resist or negotiate. They said everything was already signed by the authorities”*  
Community member, PouTeth village

As confirmed by FIDH through interviews with both the authorities and the company, community members living in Bousra were offered three options for compensation for agricultural land affected<sup>181</sup>.

Prior to detailing options offered, it is worth mentioning that villagers interviewed by FIDH complained that they did not have the chance to get their land measured or demarcated before Socfin-KCD began clearing and planting on it. In a meeting with FIDH, the company admitted problems regarding land measurement and demarcation. Options offered were:

<sup>179</sup>. Contract, Article 2. See appendix.

<sup>180</sup>. Contract, Article 2. See appendix.

<sup>181</sup>. Residential lands are not affected by the operations of Socfin-KCD.

- 1) Monetary compensation in the case that all the household's land bought by the company (including compensation for fruit trees on the land)
- 2) An equivalent parcel of land inside the concession for family rubber plantations (under a contract farming model with options for also growing food crops<sup>182</sup> )
- 3) Equivalent parcel of cultivated land on the concession where they can grow food crops (land exchange / relocation). It remains unclear whether such parcels of land would be located inside or outside the concession

In 2008 and 2009, 1 732 ha on Varanasi were cleared. Socfin-KDC affirmed that 423 households were impacted and a first group of 255 households accepted one of the three options. Amongst those, 72% chose to obtain monetary compensation, while 28% choose option 2 or 3. By December 2009, 155 households had not yet been demarcated by the company while 16 had refused all three options<sup>183</sup>. In total, 366 families were compensated (with one of the 3 options) for operations on the Varanasi concession.<sup>184</sup>

At the end of 2010 and over a year after some families agreed to be resettled on another land parcel, the company confirmed that people choosing option 3 had not yet been told which portion of land they would receive in exchange, **being therefore left without any land to cultivate**.<sup>185</sup> Socfin-KCD did not confirm to FIDH if and when families would have obtained a new parcel of land.

Testimonies collected confirmed that most families opted for monetary compensation due to the fact that the company was not in a position to tell them where they would be relocated should they opt for the third option and a profound lack of trust towards the company. Furthermore, it is worth mentioning that communities in Bousra were also facing, at the same time, other land disputes with other companies operating in the area (such as the Vietnam Rubber Group) and received strong pressure on the part of local and provincial authorities to sell their land and accept the money for the land would be taken by the company anyway<sup>186</sup>. In other words, families opted for this option for *lack of a real choice*.

In August 2011, Socfin-KCD affirmed that 253 families had been concerned by the compensation process.<sup>187</sup> Numbers given by SOCFIN-KCD during the mission in December 2010 differ with the information provided in August 2011.<sup>188</sup> Villagers met during FIDH's mission reported that the company was not respecting agreements concluded with families who had opted for family plantations and that they were still awaiting to receive a parcel of land. Numerous residents also reported receiving replacement land of smaller sizes from the company than they had been promised. Remarks made by the company representatives during FIDH's mission tend to confirm that disagreements mainly came over the size of shifting cultivation land lying fallow which was supposed to be accounted for when compensation claims were being considered. Both the company and authorities interviewed maintained that "villagers were lying about the size of their land". The representative of the Cadastral commission confirmed that land demarcation and titling had not been done in Bousra. Only a few citizens living in the city had official land titles. In the absence of formal land maps in Bousra, Socfin-KCD had no mean of verifying such allegation.

**When asked, Socfin admitted that when people refused all three options, the company would**

182. While it is not possible, with this option, for farmers to continue with their traditional agriculture methods, family rubber plantations can allow, to a limited extent, food crops between rows of rubber trees.

183. Socfin-KCD, Feasibility study, p.31

184. Socfin's responses to FIDH's questions, August 2011.

185. Sylvain Vogel, Meeting with Socfin representatives in their offices on the plantation site, 15 December 2011.

186. Confirmed by community members in each village interviewed.

187. Socfin's responses to FIDH's questions, August 2011.

188. FIDH requested clarification from SOCFIN-KCD, but the company did not provide any response.

**simply start clearing the land around their cultivated parcel.** As a result, such situation would isolate the family members, eventually and presumably forcing them to stop cultivating their land.<sup>189</sup>

Families opting for monetary compensation were offered 200 USD per ha. The company, however, admitted that when they started offering compensation to families, a monetary compensation was given only for cultivated land whereas at the time of FIDH's visit, parcels of land in fallow were also compensated 200 USD per ha. Such fixed price had not yet been determined and was only generalized later on in the process. According to Socfin-KCD, the price of the ha was fixed in agreement with the company and the local authorities. There is no legislation in Cambodia regulating compensation with involuntary displacement caused by private investment projects.<sup>190</sup> However, 90% of household chiefs believe that the monetary compensation provided is insufficient to acquire an equivalent parcel of land despite the fact that 77% have expressed their desire to pursue traditional agriculture.<sup>191</sup> In addition, it is estimated that indigenous families earn approximately 249 USD on average a year when working for the company. On the other hand, the revenues of families who traditionally use to cultivate their land (including rice, livestock, cash crop, non-timber products and hunting and fishing) is estimated on average at 641 USD per year.<sup>192</sup>

Interviews conducted confirmed that villagers were still, at the end of 2010, not adequately informed both regarding the compensation process for acquisition of land and regarding the harm done to sacred sites, as well as what communication channels they could use in cases of grievances. In addition to this confusion, villagers complained that company representatives had been constantly changing from one meeting to another. Villagers and the company representatives confirmed that the Tripartite Committee set up as a recommendation of the ESIA conducted by Socfin upon AFD's request and after mobilization of NGOs was unfortunately not working efficiently and remained an informal structure.

**In sum, information provided to community members was confusing, incomplete and inconsistent.** Often, villagers were compelled to accept monetary compensation for the lack of another option. Despite efforts undertaken by Socfin-KCD to improve the compensation process and address concerns raised by villagers, the latter were clearly not in a position to make an informed or free choice.

The process was also characterized by an obvious **ignorance of the Bunong's oral traditions and a lack of respect of common contractual procedures.** Socfin-KCD requested community members to use their fingerprints by way of signature for contracts written in Khmer and signed between them and the company on compensation or farming agreements<sup>193</sup>. All contracts are kept by the company. When asked why villagers would not get a copy of the contract, the company representatives told FIDH that "villagers did not ask for them".<sup>194</sup> Local authorities were involved in facilitating the signature of contracts. In addition to such conflict of interests on the part of local authorities and the lack of respect of common contractual procedures on the part of the company, what matters most is the irrelevancy of the procedure in the present case.

In fact, it should be noted that the Bunong people, due to their traditional and different decision-making processes and due to the fact that many are not fluent in Khmer, do not easily interact

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189. While FIDH did not have the opportunity to interview families in this situation, it can be logically implied that families in this situation would eventually be prevented from cultivating their land for lack of access to water.

190. Also confirmed in Socfin-KCD, Feasibility Study, p.35

191. Socfin-KCD, Feasibility Study, p.20.

192. For rice production only, revenues can range from 212 to 1,667 USD. Men Prachvuthy, "Land Governance for Equitable and Sustainable Development: Land Acquisition by Non-Local Actors and Consequences on the Livelihoods of Indigenous Communities in Northeast Provinces of Cambodia", March 2010, Faculty of Humanities and Social Science, Department of Tourism, Royal University of Phnom Penh, p.28-30.

193. See Models of Relocation and Implantation Agreements (in French) in Appendix.

194. Meeting with Socfin-KCD representatives, 21 December 2010.



with local authorities who, unless they themselves are Bunong, do not speak the language of the Bunong and, as highlighted by FIDH's investigation, often openly show contempt towards indigenous people.

While the company did undertake efforts to incorporate Bunong language as a working language within the company (notably after hiring Mr. Vogel in September 2010 who has now left the company) and, as a result, had translated certain documents into Bunong<sup>195</sup>, the company should have sought ways to conclude oral agreements with the community after due consultation. As noted previously, the Bunong is traditionally an oral language and did not have any written script until a few years back. **In the end, families who agreed to a resettlement plan did so in a language most do not speak nor understand in its written form.** A copy of the contract template used for financial compensation or for families opting to be reallocated on another parcel of land was provided to FIDH and is available in appendix.

As part of its contractual obligations, the company shall “strictly respect the laws and regulations in force”.<sup>196</sup> The contract also stipulates that as part of the duty of the two Parties, they should: “completely solve the issues of new-resettlement in accordance with the effective procedures within the period of not later than one (01) year from the date of signing contract”.<sup>197</sup> In December 2010 during FIDH's mission and over 2 years after the conclusion of the contract for Varanasi, over 200 families were still awaiting to obtain compensation and families which have opted to be reallocated had yet to received another parcel of land.

According to Socfin's 2010 ESIA, it is estimated that costs for land compensation represents 156, 626 USD.<sup>198</sup> The Cambodian legislation with regard to compensation requires financial compensation that is fair and just and that takes place *prior* to ownership deprivation. Socfin-KCD, as a multinational company, should abide by international standards, such as the UN Basic Principles and Guidelines on Development-Based Evictions and Displacement and the International Finance Corporation Performance Standards. Both set of standards include references to the need to obtain free, prior and informed consent of affected indigenous peoples, as well as procedures and standards in relation to compensation and risk management (including measures to restore affected people's standards of living or livelihoods.)

In addition to violating indigenous peoples' right to free, prior and informed consent, methods used to grant compensation in this case violates peoples' right to be protected against forced eviction. By affecting their livelihoods (see section below), it also jeopardizes peoples' right to an adequate standard of living and their right to food, closely linked with the right to adequate housing. Finally, the fact that adequate compensation has not been provided prior to land clearing amounts to a violation of both national and international law.

While the company did take steps to improve its relationships with the communities, it has done so only partially and without offering communities a free and informed choice nor providing adequate redress for affected people. According to information received, Mr. Vogel has left his position as well as Mr. Mertens who in fact turned out to be a consultant hired to coordinate social and environmental matters for Socfin.

While a junior person has been hired at the end of 2010 to work on social and environmental issues, none of Mr. Vogel and Mr. Mertens' position has been replaced and Socfin-KCD has not indicated any plan to do so. This situation further confirms the fact that results of measures taken are limited and indicates a lack of good faith on the part of Socfin-KCD.

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195. Sylvain Vogel, Meeting with Socfin representatives in their offices on the plantation site, 15 December 2010.

196. Kingdom of Cambodia, “Contract on the Investment of Rubber and Agro-Industry Plantation”, Article 6 : Rights and Obligations of Party “B”, 6.2.

197. Ibid, Article 2 : Duty to be Fulfill Prior to Grant the Location.

198. Socfin-KCD, Feasibility Study, p.218. This excludes operational indirect costs estimated at 104 000 USD until 2014. Socfin-KCD, Feasibility Study, p.216.

## 5.4. The livelihoods and cultural rights of the Bunong people at stake



Touch, resident of Bousra commune, lost his land. He has 10 children and takes care of his 85 year old mother.

*“I want to live peacefully in the community, as before.  
I want to depend on the forest, not the company.  
Now, I live with only one hectare.  
What will I do if my family gets bigger?”*,  
Female community member, BouSra Village

*“There is a policy to support indigenous peoples, but  
we are asking them to change their traditions.  
They need to settle down and stop being nomad  
otherwise they won’t get out of poverty”*  
Mr. Kin Chean, Deputy Director, Agriculture  
Department Mondulhiri Province, 16 December 2010

### 5.4.1. Shifting cultivation, non-timber forest products

Such observations, heard on numerous occasions during FIDH’s mission, are unfortunately not isolated comments<sup>199</sup> and reflect the lack of support and recognition on the part of the authorities and, above all, a profound ignorance or unwillingness to recognize indigenous peoples’ rights. Numerous testimonies collected by FIDH’s mission members confirmed villagers’ desire to pursue with shifting cultivation including rice production. Villagers interviewed also complained about the lack of grazing areas for cows and animals, and the fact that the areas they needed for this were not included in the compensation or resettlement process by the company and local authorities.. Conflicts between the communities and the company have lead to partial (or total in some cases) destruction of rice fields. Members of PouChar village mentioned not having sufficient harvest to proceed with the sacrifices they usually do as part of their annual traditional and religious practices. Others mentioned that the noise caused by the bulldozers have generated impacts on the presence of animals in the area. The loss of lands also generated impacts on the production of non-timber forest products (such as wild fruits and vegetables, bamboo, rattan, vines, honey, resin, medical herbs, etc.), which represent an important source of income for the Bunong people. The importance of traditional agricultural practices for the Bunong people is well-documented in the 2010 ESIA of Socfin-KCD.

The shift from subsistence farming to salaried work with a precarious status (see section 5.5. below on working conditions) has led community members in Bousra to buy imported rice

199. For instance, the ILO affirmed that “In Cambodia, the officers of the central government consider it a backwards mode of agriculture and are eager to modernize the indigenous peoples’ way of agriculture.”, Kirsten Ewers Andersen, Sek Sophorn, Francesca Thornberry. ILO Study, “Development of a Sub-decree on Shifting Cultivation under Article 37 of the Forestry Law (2002), Cambodia”, 2007.

from the market. While research has shown that indigenous traditional agriculture modes can be sustainable<sup>200</sup>, affected families have now ceased to be self-sufficient and have become dependent and vulnerable to the market prices. In the medium and long-run, the lack of access to land for the Bunong and the absence of food security could generate significant impacts on communities' livelihoods.<sup>201</sup>

#### *5.4.2. Arrival of internal migrant workers in Bousra*

Socfin admitted that their presence triggered the arrival of Khmer workers in the area<sup>202</sup>. Employment offered by the company has accelerated the arrival of internal migrants, competing to obtain jobs in the area.<sup>203</sup> Two third of the workers employed by Socfin are Khmer workers.<sup>204</sup> Socfin has indicated that efforts were taken to address this situation and to encourage employment of Bunong workers. Socfin-KCD did not provide FIDH with updated data. However and as highlighted in Socfin-KCD 2010 ESIA as well as by testimonies collected from FIDH, the arrival of Khmer workers in the area have rendered the Bunong communities even more vulnerable to the weakening of their culture.

#### *5.4.3. Impacts on spiritual and burial lands*

*“We were not able to protect the spirits. Now they are angry at us and as a result, we are getting sick” - Resident, Village no.7*

The mission team collected numerous testimonies reporting the removal of trees by the company that are considered part of spirit forests by the people as well as the destruction of traditional burial sites. The company confirmed that Khmer employees driving the bulldozers often disregarded spiritual forests and burial areas. Villagers recognized that representatives of the company (“French man”) committed not to touch spiritual land but that Khmer workers did not respect such an agreement. The company admitted that many conflicts with the community regarding sacred sites had been caused by the fact that the company went “too fast” at the beginning of the land clearing, both before and after Socfin took control of the operational management.<sup>205</sup>

The company maintained that they now had a procedure in place whereby the operational manager would, prior to proceeding with the plantations, wait for the authorisation of the person in charge of relations with communities. Mr. Vogel, then in charge of relations communities, affirmed going with village representatives on site to identify sacred sites and to proceed with the demarcation. The company said it gives 10 days to villagers to finalize the demarcation process. The company then asks the villagers to sign the registration paper with their fingerprints, whereby they agree not to complain to the company in the future. Such process was confirmed by some villagers interviewed. However, since the land clearing is done by a subcontractor

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200. Ibid, “[...] research has shown that a shifting cultivation system is based on deep ecological knowledge and attachment to the lands and that it is sustainable given a sufficiently large area”.

201. Shifting cultivation is a practice intrinsically linked with the core values and traditions of the Bunong. Besides, it is protected by article 25 of the 2001 Land Law and article 37 of the Forestry Law. Essential to the realisation of the right to food and the right to housing is access to land, as highlighted by General Comment (GC) 4 on the right to housing, GC 7 on forced evictions and GC 12 on the right to adequate food. “Without a home and without land, the right to education, the right to work, right to medical access and to clean water are severely restricted” (GC 4 ESCR), UNDP Cambodia – Annual Report 2010, available at : [www.un.org/kh/undp/knowledge/publications/undp-cambodia-annual](http://www.un.org/kh/undp/knowledge/publications/undp-cambodia-annual)

202. Socfin-KCD Feasibility Study mentions the company would have brought in 200 workers and that the number was continuing to grow. Socfin-KCD, Feasibility Study, p.235.

203. Men Prachvuthy, “Land Governance for Equitable and Sustainable Development: Land Acquisition by Non-Local Actors and Consequences on the Livelihoods of Indigenous Communities in Northeast Provinces of Cambodia”, March 2010, Faculty of Humanities and Social Science, Department of Tourism, Royal University of Phnom Penh, p.30.

204. Ibid, p.36.

205. Meeting with Socfin representatives in their offices on the plantation site, 15 December 2010.

who is apparently unaware of the demarcation process, incidents occurring in spiritual and burial forests continued to be reported even after numerous complaints by the communities and CSOs. When asked by FIDH why this was still occurring, the company responded that the subcontractor, a Cambodian company, did not take into consideration the map indicating the areas to avoid since they “didn’t care”.<sup>206</sup>

In cases where the company’s actions damage what is considered as sacred by the Bunong, the company would organize a sacrificial ceremony as requested by the community. A paper translated into Bunong is now signed, mostly to preclude families from returning to the company afterwards with claims regarding the same locations.<sup>207</sup> The company pays for the ceremony (approximately 300 to 500 US dollars for the animal and 100 dollars for jars of wine).

#### 5.4.4. Health and school services

As part of its obligations under the investment contract, the company shall “secure people who are living in the investment zone to get *proper benefit* from the investment project, such as the use of infrastructures, roads, schools, health centres and the creation of job opportunities linked to the investment project.<sup>208</sup> The investment contract also requires the company to ensure its business activities respect the conditions to durably “maintain the natural resources of the location and minimize the environmental impact caused by the production and business operation”.

Socfin-KCD has invested in social projects aimed at improving the livelihood of affected communities. The company indeed has focused its investments mostly on health and education projects. Socfin-KCD renovated the two primary schools in Bousra and forecast investments to provide salaries to teachers, school materials and access to drinkable water. The company also indicated its desire to financially support, in close collaboration with the government, the inclusion in the curricula of an optional Bunong class. At the time of writing, it seems this project had not yet been implemented.

Socfin-KCD also planned to provide drugs and office supplies to Bousra’s health centre, as well as housing with toilets and electricity.<sup>209</sup>

Despite these initiatives, villagers reported not having been consulted prior to the development of such projects. While such efforts may be commendable, they form part of the company’s obligations under the investment contracts and the Instructive Circular no.5 and represent a relatively low source of spending for the company.<sup>210</sup> Above all, they do not in any way absolve the company from its obligation to respect all applicable laws, including those relating to human rights. Furthermore, such initiatives do not respond to the contractual requirement that the company ensures its “business activities respect the condition to durably maintain the natural resources of the location”, neither do they fulfill the requirement to ensure “proper benefit” to the community.

Finally, it is worth recalling that the communities have never seen the investment contract and are therefore unaware of this clause.

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206. Idem. Socfin-KCD did not provide the name of the subcontractor.

207. Sylvain Vogel, Meeting with Socfin representatives in their offices on the plantation site, 15 December 2010.

208. Emphasis added. Kingdom of Cambodia, Contract on the Investment of Rubber and Agro-Industry Plantation between the Kingdom of Cambodia and Varanasi Co.Ltd, Article 6.2, Obligations of the Party “B”

209. Socfin’s answers to FIDH’s questions, August 2011. Also included in Socfin-KCD, Feasibility Study, p.211-212.

210. Socfin-KCD, Feasibility Study, Appendix 7, p.215. Tables on costs for these projects found in the ESIA conducted by Socfin-KCD, indicate different amounts. Socfin-KCD did not provide clarification.

## 5.5. Precarious working conditions in the plantations

*“We are tired. We have to get up at 2am if we want to have time to go in the rice fields before the company’s truck picks us up at 4am. If we miss the truck and walk to the company’ site, we are not allowed to work that day.”*



According to the company, there are 200 permanent employees and 800 day labourers.<sup>211</sup> The 2010 ESIA mentions 187 permanent workers and 1169 day labourers in December 2009. Khmer workers represented 71% of the permanent workers and 50% of the temporary workers.<sup>212</sup> Permanent employees have a contract with the company, while day labourers have to present themselves at the plantation site daily and get work according to the company’s needs.

Bunong workers interviewed have repeatedly complained about precarious working conditions: these include irregular and long working hours and the obligation for workers to be ready at 4am to be picked up by the company’s trucks. In order to continue growing rice, some workers reported having to start working at 2am in the rice fields prior to being picked up by the company at 4am (while the work on the plantations starts at 7am). According to Socfin-KCD, workers get half day on Saturday and are off on Sundays.<sup>213</sup>

According to Socfin-KCD, workers earn 5\$ USD a day, the minimum set wage in Cambodia being approximately 2.5 USD.<sup>214</sup> Some workers interviewed have complained about not receiving 5 USD per day. Workers are paid based on the tasks performed. Daily workers do not get a pay slip. The company maintains that it respects international management norms regarding plantations and accepted by international donors. It ensures respect of the Cambodian labour law with regard to women. According to Socfin-KCD, permanent workers get a medical

211. Meeting with Socfin representatives in their offices on the plantation site, 15 December 2010. Socfin-KCD did not provide FIDH with exact numbers for 2010 and 2011.

212. Socfin-KCD, Feasibility Study, p. 112.

213. FIDH was not able to confirm this information with workers.

214. In fact, the only minimum wage defined is for the garment sector and is set at 50 dollars/month. In 2010, Cambodia witnessed important demonstrations from workers in the garment industry claiming better working conditions and decent wages.

insurance and up to 20-30 USD of medical expenses are covered for all employees (both permanent and day workers).<sup>215</sup>

As witnessed by FIDH, workers are transported by dozens in trucks where they have to stand for lack of sufficient room. Bunong workers interviewed complained about excessive physical workload with daily targets to achieve, while Socfin-KCD maintained respecting the industry standards generally accepted by donors.

The company complains of a high rate (40%) of absenteeism, due to the fact that many workers prefer to stay behind to attend to the rice fields. When asked if there were rules of communication (written or oral) to communicate with workers, the company replied there were none. In addition, when discussing what measures the company could take to accommodate workers wanting to pursue the harvesting rice or other traditional cultural activities, the company representatives argued that workers had to “adapt” to this type of work. In sum, in spite of finding ways to accommodate the Bunong and ensure they can continue to practice, to a certain extent, traditional agricultural practices, the company emphasised “discipline” problems the company faced with workers and the need for them to adapt to the industry requirements<sup>216</sup>. The attitude of the company towards Bunong workers clearly indicates an ignorance and lack of understanding of the rights of the Bunong as an indigenous people.

While the operations of Socfin-KCD in Mondulhiri has led to the creation of employment, these have mostly benefited to Khmer in-migrants. It has done so to the detriment of respect for the Bunong’ cultural rights. The benefit of increasing local employment opportunities jobs created can therefore seriously be questioned.

## 5.6. Absence of effective remedies for victims

As confirmed by FIDH’s mission, the Tripartite Committee set up by Socfin-KCD as a reaction to NGO pressure and as a follow-up to the 2010 ESIA remains a symbolic and largely ineffective structure. The Committee had not officially met since the first meeting following its creation at the end of 2009. Villagers, including committee representatives, confirmed that the mechanism was not working and that it did not act as an effective communication channel to address grievances. Workers did recognize increased contact since September 2010 with company representatives, but complained about the fact that such contact would take place only once damages had occurred. While the creation of the Committee bore the potential of preventing further violations, in particular regarding the compensation process and the protection of sacred forests and burial grounds, it has not yielded the expected results.

As far as dispute resolution mechanisms are concerned, the Cadastral Commission at the provincial level and in charge of ensuring mediation in case of conflicts over land demarcation has not played any significant role. When meeting with FIDH’s representatives, the Deputy Officer of the Commission, albeit cooperative, clearly admitted having no power to deal with issues of this scale. The Commission was not even in a position to provide FIDH with clear and correct information regarding companies detaining concessions in the area. **The representative met admitted that every company investing in Mondulhiri has conflicts with affected communities** and that his role was to be “fair for both sides”. The capacity of the Commission to both effectively mediate such conflicts and ensure respect for the rights of indigenous peoples is seriously questioned.<sup>217</sup>

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215. Socfin-KCD, Feasibility Study, p.212.

216. Meeting with Socfin-KCD representatives, Phnom Penh, December 21<sup>st</sup> 2001.

217. “Cadastral committees at the district, provincial, and national levels are charged with settling disputes involving untitled land, yet in reality these committees accomplish little”, Wikileaks, <http://wikileaks.ch/cable/2006/02/06PHNOMPENH348.html>

Some authorities met even disregarded the possibility for communities living on Varanasi to obtain adequate compensation due to the fact that rubber trees had already been planted.<sup>218</sup>

Affected communities who have been unjustly deprived of their land have few options to obtain effective remedies, entitled to under national and international law. While some NGOs have tried to challenge the legality of ELCs in other provinces, these claims remain pending in a judicial system known for being corrupted and partial.

Authorities met confirmed that there is an inspection procedure which reviews concessions twice a year and that if the company does not follow the master plan, the Ministry of Land will propose the termination of the contract. 41 companies terminated contracts until 2010 / 85 contracts still legitimate.<sup>219</sup> While the list is not available, Socfin-KCD's concessions are not concerned by this procedure.

Finally and as evoked in the contextual background, in Cambodia, threats, intimidation, imprisonment and other legal techniques are being used against land rights activists and villagers involved in land disputes.

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218. Meeting with Mr. Kin Chean, Department of Agriculture, Province of Monduliri, 16 December 2010.

219. MAFF, Economic Land Concession, <http://www.elc.maff.gov.kh/en/>

# 6. ANALYSIS OF VIOLATIONS AND RESPONSIBILITIES

*“Our export base is being diversified with great progress in rice, cassava, rubber, cashew nuts, silk and other areas with a strong positive impact on the poor”*  
H.E. Cham Prassidh, Senior Minister, Minister of Commerce, Kingdom of Cambodia<sup>220</sup>

Instead of triggering inclusive development for the poor, the analysis of the Bousra case shows that the exploitation of rubber plantations through economic land concessions such as those exploited by Socfin-KCD do not benefit local communities but rather tend to deprive indigenous peoples from their livelihoods, and rather benefit foreign investors with interests located in tax havens along with national prominent companies and businessmen close to the political power.

Over three years after Socfin-KCD started clearing the land, hundreds of communities have been de facto constrained to accept monetary compensation for a lack of a real choice, while those having opted to be relocated were left without any indication on the location of their new parcel of land.

Despite the fact that a legislative framework protective of indigenous peoples’ right to collective ownership and to preserve their traditions and cultural ways of life has been in place since 2001, indigenous communities face practical and political obstacles which prevent any effective implementation of existing laws. Respect for due process has been ignored both on the part of authorities and private actors involved.

Without any due consultation, communities affected by the operations of Socfin-KCD have de facto been forced to act as passive witnesses to an industrial project which has resulted in forcing them to abandon traditional shifting agriculture they have practised for decades, in addition to suffering harm caused by the destruction of traditional spiritual forests or burial ground sites. Hundreds of families were in fact forced to change from subsistence farming to salaried work in harsh conditions. Faced with such destruction of their culture<sup>221</sup> and livelihoods, the Bunong communities are now struggling to preserve their traditions in an increasingly difficult context characterized by discrimination, contempt and/or ignorance widely spread among all actors involved, including authorities, private actors as well as non-indigenous residents.

## ***The responsibility of the Cambodian government***

The case of Bousra shows how Cambodian authorities at the top level blatantly circumvent their own legislation to allow concessions to be granted on land occupied by indigenous communities and protected areas.

The analysis of the status of the concessions demonstrates that its legality can be seriously questioned since granting both Varanasi and Sethikula would amount to violations of the 2001 Land Law. In effect, the Cambodian government granted concessions in areas populated by indigenous communities which authorities themselves had recognized as eligible for collective ownership.

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220. Ministry of Commerce, Kingdom of Cambodia, Forword, “Trade Sector Development and Aid for Trade in Cambodia”, Phnom Penh, July 2011.

221. Article 10, UN Declaration on the Rights of Indigenous Peoples.



Without verifying whether communities had been duly consulted prior to the approval of the project, the Cambodia government validated incomplete ESIA's in both cases.

Prior to authorizing concessions in Bousra, authorities should have granted interim protection measures to the Bunong communities, as per article 23 of the 2001 Land Law and the 2007 Circular No. 02 on Illegal Possession of State Land Property.

Rather than showing contempt vis-à-vis indigenous communities, as observed by FIDH in all political spheres, it is the obligation of the Cambodian authorities to take positive measures to value collective ownership since such concept too often remains a foreign one in indigenous peoples' culture.

To ensure adequate consultation of affected individuals, authorities should have duly consulted communities prior to approving the project, in conformity with decision-making processes of the Bunong people. Cambodian authorities have also failed to make all ELC related documents publicly available.

It is the primary responsibility of Cambodian authorities to protect land rights activists' freedom of expression and to refrain from undertaking any act of repression against community members and human rights defenders.

Finally, affected communities in Bousra did not have access to effective remedial mechanisms to obtain adequate reparation for harm suffered. With local and provincial authorities inciting Bunong residents to accept insufficient and inadequate monetary compensation, the Cambodian authorities have acted in clear conflict of interests and in violation of international standards on fair and just compensation. According to international law, cash compensation should under no circumstances replace compensation in the form of land and common property resources.<sup>222</sup> The Cambodian government has failed to ensure ELCs granted avoid or minimize adverse social impacts, as per Cambodian legislation.<sup>223</sup>

Despite attempting to seize national available bodies such as the National Authority for the Resolution of Land Disputes (NARLD) in addition to meeting with provincial and local authorities on various occasions, victims were left without any effective avenue to obtain remedies.

Through such acts of action and omission, the Cambodian government has failed to fulfil its obligations, both under national and international law and has set the grounds to allow Socfin-KCD to operate in a context whereby local populations are being ignored.

### ***The responsibility of Socfin-KCD***

While Socfin only entered in a joint-venture with its national partner KCD once the first concession had been obtained, it should have exercised due diligence prior to entering in an investment agreement with KCD. That Socfin was not aware that indigenous communities were living on the concession does not absolve the company to uphold national and international standards.

In this case, KCD (and subsequently Socfin) has benefitted from the omission by Cambodian authorities to respect national legislation regarding the granting of ECLs.

As per the UN framework "Protect, Respect, Remedy" and its accompanying Guiding Principles on Business and Human Rights, companies have the responsibility to adequately assess potential adverse risks their operations may cause prior to the beginning of their operations. KCD and Socfin should therefore have conducted due diligence processes.

Given the Cambodian political context, Socfin-KCD could not ignore the context in which they operate and should therefore have identified the risks born by the fact that Cambodia is known for

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222. UN Basic Principles and Guidelines on Development-Based Evictions and Displacement, op.cit.

223. Sub-decree on Economic Land Concessions, 2005, no.1246 ANK/BK, Art.5.

its generalised corruption and lack of respect for the rule of law. Addressing such “governance gaps” as referred to by the former UN Special Representative of the Secretary-General on the issue of business and human rights, is at the root cause of international debates on corporate responsibility and can no longer be ignored by companies operating in such contexts. In this case, Socfin-KCD failed to conduct a proper environmental and social impact assessment prior to the project, in addition to failing to effectively consult affected communities.

The absence of adequate consultation with affected communities prior to start clearing the land contravenes both national legislation<sup>224</sup> as well as international standards on the need to seek free, prior and informed consent of indigenous people. While benefiting from the local authorities’ support in order to facilitate land purchase, in a country known for its widespread corruption, Socfin-KCD could not ignore the possibility of conflict of interest on the part of local authorities, at the detriment of Bunong residents. Although Socfin, once it took operational control of the joint venture, did put in place a series of measures to improve relations with communities affected and to address issues regarding land compensation, such measures have proven to be limited and largely insufficient to fulfil requirements on consultation.

Despite being aware of violations occurring as a result of its activities,<sup>225</sup> Socfin-KCD has taken only limited measures, mostly related to environmental care and the prevention of future damages to spiritual and burial ground sites. While the company recognized some of the mistakes made at the beginning of the operations and made changes in the course of the compensation process, it has failed to seriously implement the recommendations of the ESIA, in particular regarding the implementation of compensation measures adapted to the Bunong’s rights, far beyond the sole and inadequate monetary compensation. In addition, attempts to set up an effective monitoring body (under the form of a Tripartite Committee) have failed. Socfin-KCD also failed to take sufficient measures to ensure its sub-contractors no longer do harm to spiritual forest or burial ground sites.

By failing to adapt its compensation process and its work policies to ensure respect of economic, social and cultural rights of the Bunong, Socfin-KCD has failed to respect both national and international standards on the protection of indigenous peoples’ rights.

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224. Ibid, as well as according to the copy of the investment contract obtained for Varanasi.

225. In addition to alerts given by the communities, international organisations and CSOs in Cambodia, the legal analysis of the ESIA undertaken by Socfin in 2009 clearly highlights violations of national and international standards.

# 7. Recommendations

**To ensure the communities of Bousra obtain adequate compensation for harm suffered and to prevent the commission of future violations with regard to Socfin-KCD's operations and, more generally, in the context of ELCs in Cambodia:**

**FIDH urges the Royal Government of Cambodia to:**

- Apply an immediate moratorium on all ELCs due to widespread human rights violations connected to ELCs;
- When registration as legal entities or collective titling has not been secured, provide preliminary recognition and grant interim protection measures to indigenous communities which may be potentially affected by economic projects, as per article 23 of the 2001 Land Law, the inter-ministerial circular on interim measures should be reviewed so as to ensure full compliance with the land law as well as with international law;
- Ensure adequate and meaningful consultation and participation of communities affected by ELCs, including to seek the free, prior and informed consent of affected indigenous people;
- Facilitate rapid registration of the Bunong communities in Bousra as indigenous people, in collaboration with actors already involved such as the ILO and UNHCR; in case registration is not completed, provide documentary evidence to communities whose registration is pending so that they have some legal back up;
- Undertake a contractual compliance review of all concessions, and as per Article 37 the Sub-decree on ELC, suspend those found to be operating unlawfully until full compliance with national and international law;
- Establish an independent monitoring mechanism on large scale agribusiness to guarantee the respect for human rights standards and responsible agro-investment (involving civil society representatives);
- Explore alternatives to large scale investment and monoculture plantation to ensure the right to food, sustainable development and to effectively reduce poverty;
- Ensure the independence of the judiciary so it can provide an effective remedy in case of rights violations;
- Consider ratifying the ILO Convention 169 on Indigenous and Tribal Peoples in independent Countries, as recommended in June 2009 by the UN Committee on Economic, Social and Cultural Rights;
- Consider ratifying the Optional Protocol to the ICESCR;
- Guarantee in all circumstances the physical and psychological integrity of human rights defenders in Cambodia, including land rights defenders, in conformity with the provisions of the UN Declaration on Human Rights Defenders.

**FIDH recommends that, in line with their obligation to protect human rights, Luxembourg and other European home states involved,**

- Ensure private actors legally registered under their jurisdiction do not cause or contribute to human rights violations in their operations abroad. Such obligation requires home States to take a wide range of legal and policy measures, such as to legally require companies to exercise human rights due diligence;

- Take steps to prevent, punish, investigate and redress harm suffered by victims' of abuses committed by corporations (or their subsidiaries) under their jurisdiction . In this case, Luxembourg, France and Belgium, where Socfin and its main shareholders are legally registered, should allow victims' to seek justice in their jurisdiction in the absence of effective remedies in Cambodia;
- Require that issuers listed on the Luxembourg Stock Exchange be required to disclose social and environmental impacts of their activities (including those of their subsidiaries) as part of mandatory financial reporting.

**FIDH urges Socfin-KCD to:**

- Suspend all operations of the company until all the current disputes (relating to fallow land, compensation, resettlement, labour, etc) are resolved to the documented satisfaction of the community members involved;
- Publicly share the master plans, ESIA's and all other relevant documents relating to the Varanasi and Sethikula concessions;
- Ensure regular communication with affected communities on the progress of the project and the implementation of compensation and redress measures;
- Effectively implement measures recommended by the 2010 ESIA, including particular measures to protect the traditions of the Bunong people and to ensure the sustainability of their livelihoods, as well as recommendations to ensure the adoption of a gender-sensitive approach;
- Assist the Bunong communities to gain legal registration and subsequently collective ownership, notably in giving the Bunong people unused portion of the concessions;
- Ensure sub-contractors act with due diligence in order to avoid, to the greatest extent possible, any adverse impact. In particular, Socfin-KCD should ensure sub-contractors operating bulldozers are aware of spiritual and burial ground sites' location;
- Review compensation provided to all affected families to ensure compliance with national and international standards on adequate and fair compensation. This includes:
  - Provide compensation for moral damage for families coerced to opt for monetary compensation as well as for families who have had to unduly wait to be relocated on a new parcel of land;
  - Activate, in good faith, the Tripartite Committee set up in 2010, including the participation of CSOs representatives and the UNHCHR. The Tripartite Committee should be mandated to review compensation provided to affected families with a view to ensure bring compensation provided in line with international standards . To this end, Socfin should, through disaggregated data according to the two different concessions and the three compensation options, disclose the details of compensation provided, including exact amounts (in USD) disbursed;
  - Adopt best practices on land compensation, including the creation of a social fund managed by communities affected according to their needs and under which funds could be allocated to ensure communities can, to the extent possible, continue to practice traditional agriculture (for instance by reserving parcels in the concession for collective shifting agriculture);
- Adapt Socfin's code of ethics to include explicit references to the principles and rights contained in the Universal Declaration of Human Rights, and in particular, include a specific reference to vulnerable groups affected by the activities of the group such as indigenous peoples. The code of ethics should be supported by senior level management and its scope

should go beyond employees to include the impact of its operations on local communities. Such code should also be included as a core element to all contracts signed by Socfin with its commercial and economic partners;

- Commit to respecting human rights and to conduct human rights due diligence. Accordingly, KCD should adopt a code of ethics as well as corresponding implementation measures to identify, prevent and mitigate adverse impacts their operations may cause;
- When supporting social projects (such as schools and health centres), Socfin-KCD should adopt a human rights-based approach centred on the participation of affected communities and taking into account the need to pay special attention to the preservation of the Bunong culture and traditions.

**FIDH urges other other companies operating Economic Land Concessions in Cambodia,** both national and foreign, to comply with their responsibility to respect human rights at all times. To this end:

- Act with due diligence, including making sure that they are not complicit with the authorities in the commission of violations;
- As part of their due diligence, ensure that they do not accept concessions where indigenous people reside and for which there have been no interim protection measures granted. Full and adequate environmental and social impacts assessments should be conducted prior to the beginning of any operations on concessions granted.

**FIDH urges Socfin and Socfinasia's investors and shareholders to:**

- Request that entities controlling Socfin and Socfinasia (such as Bolloré's group) comply with human rights and environmental international standards. Investment given should be conditioner to the companies commitment to respect of human rights and to take all necessary measures to ensure that they be respected by all entities, both holding and operational companies of Socfin.

**FIDH recommends to the international community, in particular to:**

**Cambodia's international donors:**

- Support indigenous communities seeking to obtain legal recognition as indigenous communities and collective ownership, in particular in sensitive cases;
- Include benchmarks within donor country assistance strategies to measure the implementation of reforms to improve recognition of indigenous land rights and prevent against ELCs operating in violation of the law. International donors should make aid disbursements conditional on achieving such reforms.

**The OIF:**

- Recalling the commitment of States and governments members of the international Organisation of La Francophonie, in Quebec in October 2008 to promote corporate social responsibility; to raise the concerns set out in this report in relation to ECLs with the host and home states concerned; and to encourage its members to undertake legislative and policy reform to ensure accountability of business enterprises in cases of human rights abuses and the access for victims to effective remedies.

**The European Union in particular:**

- Adopt legal reforms to enable victims in third countries to access justice in the EU, including in addressing practical and legal obstacles they face;
- Adopt legal reforms to improve the governance in the operations of multinational companies

concerning foreign subsidiaries by requiring, *inter alia*, to exercise oversight and control of subsidiaries in third countries in regard of their compliance with international standards of human rights and protection of the environment;

- Adopt legal reforms to protect peoples' right to access information by improving disclosure of information, including reporting of non-financial data and granting victims' with legal standing to request withheld information when necessary to exercise their rights;
- Fully implement the EU Guidelines on Human Rights Defenders and to pay a special attention to land rights activists;
- Take steps to avoid any complicity with the commission of human rights abuses in the context of ELCs, in particular to avoid granting specific advantages (quota and tariff) to products which then benefit to companies involved in human rights abuses. In this regard, the EU should undertake an independent investigation, in accordance with the procedures laid down in the GSP regulation, into the question of whether temporary withdrawal of EBA-status for Cambodian agricultural products may be justified in light of human rights abuses documented.

**The Member States of the Association of Southeast Asian Nations (ASEAN):**

- To raise the concerns set out in this report in relation to ECLs with the Cambodian authorities in the framework of bilateral discussions and all ASEAN processes, including the ASEAN Ministerial meetings and annual summits;
- To include, as part of the work of the Asean Intergovernmental Commission on Human Rights (AICHR) on business and human rights, proposals for legislative and policy reforms to ensure victims of corporate-related abuses can seek and obtain reparation, both in home and host States;
- To ensure that the proposed ASEAN Declaration on Human Rights will comply with international human rights law and standards and that it will make explicit commitment to protect economic, social and cultural rights, including land and housing rights, and ensure the right to effective remedies.

**The UN Special Rapporteur on the situation of human rights in Cambodia:**

- To continue monitoring the pattern of violations of land and housing rights, including the role of business enterprises and the granting of ELCs, by for example undertaking a follow-up visit to the former Special Rapporteur's country visit on this issue in 2007;
- To actively and publicly communicate concerns to the Government of Cambodia, either individually or together with other relevant mandate holders, on serious violations of human rights and restrictions of fundamental freedoms, including land and housing rights.

**The UN Working Group on Business and Human Rights:**

- To pay a particular attention to human rights abuses linked to Economic Land Concessions in Cambodia, and envisage to conduct a field visit on this issue; assess and analyse the human rights responsibilities of the various corporate entities behind complex corporate legal structures.

# Appendix 1: List of people met by the mission

## **Cambodian authorities**

### **National**

- Mr. It Nody, Under Secretary of State, Ministry of Agriculture Forestry and Fisheries
- Dr. Mok Mareth, Senior Minister, Ministry of Environment
- Dr. Ou Vuddy, Permanent Deputy, Ministry of Land Management, Urban Planning and Construction
- Director General of General Secretariat of Council of Land Policy
- Mr. Len Vy, Director General, General Department of Local Administration, Ministry of Interior

### **Provincial**

- Deputy Provincial Governor of Mondulhiri
- Mr. Nam Peng, Deputy Officer, Cadastral Commission, Mondulhiri Provincial Department of Rural Development, Ministry of Rural Development -
- Mr. Yorn Sarom, Director of Mondulhiri Development Department Ministry of Rural Development
- Mr. Kin Chean, Deputy Director, Agriculture Department, Mondulhiri Province
- Mr Niem Ven Ny, Head of Police District, Police Commissioner, Mondulhiri Province

### **Local**

- Keng Nhok, Commune leader, Bou Sra
- Deputy Head of District

### **Community representatives**

- Villagers from PouTeth (village no.1)
- Villagers from PouRang (village no.2)
- Villagers from BouSra (village no.3)
- Villagers from LamMes (village no.5)
- Villagers from PouChar (village no.6)
- Villagers from village no.7

### **Companies**

- Mr. Khaou Phallaboth, President, Khaou Chuly Development Co., Ltd
- Mr. Try Sok Heng, Legal Corporate Advisor Khaou Chuly Development Co., Ltd
- Frederic Mertens, Coordinator, Sustainable Development, Groupe Socfin
- Patrick Lemaître, Director-general, Socfin-KCD
- Jeff Boedt, Assistant Site Manager, Socfin-KCD
- Sylvain Vogel, (former) Responsible of relations with communities, Socfin-KCD
- Emmanuel Casse, Finance and Human Resources Manager, Socfin-KCD
- Francois Massier, Site Manager
- Jeoffroy Vernoux, New site manager (as of December 2010)
- Alexandra Prigot, Responsible, Sustainable, social, hygiene and environmental department, Socfin-KCD

**United Nations and Foreign Embassies**

- Mr. Christophe Peschoux, Representative, Office of the United Nations High Commissioner for Human Rights
- His Excellency Mr. Christian Connan, Ambassador, Embassy of France in Cambodia
- Ms. Laurence Bernardi, Première Secrétaire, Embassy of France in Cambodia

**Donors agencies**

- Mr. Georges Cooper, Consultant, Land management project, GTZ

**NGOs**

- Mr. Thun Saray, President, ADHOC
- Mr. Nay Vanda, Deputy Head, ADHOC
- Mr. Sam Sarin, ADHOC's section in Monduliri
- Mr. Ny Chakrya, Head of Monitoring Section, ADHOC - Cambodian Human Rights And Development Association
- Mr. Yen Virak, Executive Director, CLEC
- Mr. Man Vuthy, Coordinator, CLEC
- Mr. Mathieu Pellerin, Consultant, LICADHO
- Mr. Sia Phearum, Secretariat Director HRTF – Housing Rights Task Force
- Mr. David Pred, Executive Director, Bridges Across Borders Cambodia
- Mr. Pen Ratana, Program Coordinator Resource Governance, Heinrich Boll Stiftung Cambodia



# Appendix 2: CONTRACT

KINGDOM OF CAMBODIA  
NATION RELIGION KING  
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## CONTRACT

On

### THE INVESTMENT OF RUBBER AND AGRO-INDUSTRY PLANTATION

**Ref :**

- The request of company dated 14 December , 2006.
- Law on Investment of the Kingdom of Cambodia promulgated by Royal Krom No. 03/៩៩៧/94 dated 05 August, 1994, and Law on Amendment of Law on Investment of the Kingdom of Cambodia promulgated by Royal Krom No. ៩៩៧/១៧៥/0303/009 dated 24 March, 2003.
- Land Law promulgated by Royal Krom No. ៩៩៧/១៧៥/0801114, dated 30 August, 2001.
- Sub Degree No. 17 អនក្រឹត្យ.ប្រកាស dated 07 April, 2000 on Organization and Function of the Ministry of Agriculture, Forestry and Fisheries.
- Sub Degree No. 146 អនក្រឹត្យ.ប្រកាស dated 27 December, 2007 on Economic Land Concession.
- Sub Degree No. 111 អនក្រឹត្យ.ប្រកាស dated 27 September, 2005 on Implementation of the Amendment of the Law on Investment of the Kingdom of Cambodia
- Letter No. 1459 ស្តីពីលិខិត dated 03 October, 2007 of the Office of Council of Ministers.
- Delegate of full Power No. 127 NLU dated 19 October, 2007 of the Royal Government of Cambodia.
- Result of Field Study of the Economic Land Concession No 030 អ.គ.វ on 22 September, 2008.
- Letter No. 1588/08 dated 20 June 2008 of the Council for the Development of Cambodia (CDC)

This contract made on the date of .....



Contract on the Investment of Rubber and Agro-Industry Plantation between MAFF and KHAOU CHOL YON DEVELOPMENT CO., LTD  
(K C D) 2

**Between**

**The Royal Government of Cambodia** represented by H.E CHAN SARUN, Minister of the Ministry of Agriculture, Forestry and Fisheries, located at building No. 200, Preah Norodom Boulevard, Phnom Penh, Kingdom of Cambodia. Telephone: (855) 23 217 320, holding of bank account No..... with the National Bank of Cambodia, and hereafter referred to as "Party A".

**And**

**KHAOU CHULY DEVELOPMENT Co; Ltd (K C D)** located at office building No. 62A, Prash Norodom Blvd, Sangkat CheyChomnach , Khan Don Penh, Phnom Penh, Cambodia, Telephone: (855) 12 812 465 and, 016 710 888, holding of bank account No.010-12-10-038779-9 within the CAMBODIAN PUBLIC Bank and represented by Mr. KHAOU PHALLABOTH, Director of the Company, Nationality: Chinese, hereafter referred to as "Party B".

**Pursuant to:**

In accordance with the Rectangular Strategy of the Royal Government of Cambodia, the "Party A" has the objective to promote the investment on agro-industry sector and considered that the "Party B" has ability and techniques with aiming to invest on agro-industry sector, the "Party A" agrees to grant concession land where located in, Pech chanda District, Mondoukiri province to the "Party B" for investment of Rubber and Agro-Industry plantation development.

After critical discussion, the two parties have agreed to sign on this contract with respect to the contents of the articles stated as follows:

**ARTICLE 1: LOCATION, PURPOSE, AND LAND USE OF ECONOMIC LAND CONCESSION**

**1.1 Location:**

The size of the concession land to be granted to the "Party B" to invest in Rubber and Agro-Industry Plantation covered with a total area of 2.386 hectares as indicated on the location map attached which certified by the Local and Provincial Authorities. This map is annexed to this contract and hereafter referred to as "Location". The geographical coordinates are given below:

X : 767652	Y : 1390777
X : 769607	Y : 1390780
X : 769608	Y : 1388841
X : 770673	Y : 1388851
X : 770663	Y : 1383997
X : 770009	Y : 1384000
X : 770013	Y : 1383024
X : 766505	Y : 1382993

**1.2 Purpose for Granting Economic Land Concession**

The purpose of the Party "A" in granting economic land concessions is to enable Party "B" to

Contract on the Investment of Rubber and Agro-Industry Plantation between MAFF and KHAOU CHULY DEVELOPMENT CO, LTD (K C D)



exploit, produce and carry out operation as follows:

- Main production: Plantation of Rubber plantation;
- Secondary production: Other industrial crops production.
- Construction: Construction of rubber processing plant, wood processing plant to process the trees planted, and develop infrastructure to support production and plantation development.

### 1.3 Land Utilization for Economic Land Concession

After signing the contract, Party "B" must prepare the master plan and submit to the Party "A" for review and approval not later than 03 (Three) months and after the two Parties have completely fulfill the responsibilities as stated in Article 2. The preparation of master plan, Party "B" shall use the land where allocated by year as follows:

- year1: Tree hundred and eighty six (386) hectares
- year2: One thousand (1,000) hectares
- year3: One thousand (1,000) hectares

### ARTICLE 2: DUTY TO BE FULFILL PRIOR TO GRANT THE LOCATION

The duty of the two Parties stated in this contract shall be carried out unless the main responsibilities and obligations that the two Parties have to be completely fulfilled, they are as follows:

- Party "A" and Party "B" shall collaborate with line-ministries and other competent authorities to conduct the study, field survey in order to clearly identify the location of the relevant area that the Party "A" has agreed in principle to invest, in consistence with the contents in this article, within the period of three (03) months after this contract signed and shall be cut off the areas which are:
  - Evergreen forest, semi-evergreen forest, deciduous forest, national cultural heritages, mine potential, natural conservation, mountains, lakes; and the sites where to be protected by other laws.
  - Peacefully uncoordinated with legal land owner, such as the location where people are living and productive. Meaning that, this permission shall not be granted the land concession with the size requested and indicated in the contract to company. For location where is incurred with the above-mentioned issues (if any), an Inter-ministerial Committee led by Ministry of Agriculture, Forestry and Fisheries shall conduct investigating and solved the related problems encountered in order to precisely identify and ensure that the investment supporting reforestation has to be carried out on degraded forest areas and avoiding of cutting anarchically down of evergreen, semi-evergreen and deciduous forests, which have economic value, and replanting agro industrial crops in stead. Meanwhile, if the location covered on the military development land, the company shall negotiate with military development unit in order to incorporate that land into the development with precisely make

Contract on the Investment of Rubber and Agro-Industry Plantation between MAFF and KIAOU CHULY DEVELOPMENT, LTD.  
(K C D)

contract to each other.

- Completely solve the issues of new-resettlement in accordance with the effective procedures within the period of not later than one (01) year from the date of signing contract.
- State land registration and land classification shall be made on the land areas remained after reduction within the period of not later than three (03) months after the master plan to be approved.
- Party "B" shall prepare preliminary environmental and social impact assessment document on the land use and development for this concession project and this document shall be submitted to the Party "A" to review and approve not later than one (01) year from the date of signing contract.

### ARTICLE 3: CONCESSION LAND GRANTING

After the two parties have fully implemented all duties and obligations stated in Article 2, the Party "A" shall issue an official letter on concession land granting to Party "B" within the period of not later than sixty (60) days. This letter shall clearly clarify the re-setting of the size of land that the Party "B" can be utilized by indicating also the areas where cut off additionally to be consistency with the land area shown in the master plan.

### ARTICLE 4: DURATION

This contract validates seventy (70) years effected from the date of issuance of concession land granting letter by Party "A" to Party "B". This period shall not be extended, except the results coming from the following situation:

- a. Extension for completion of remaining works or suspension of the process owing to the abuse of the contract by the Party "A", or by the actions of the other competent authorities.
- b. Extension for completion of remaining works or suspension of the process owing to force majeure as stated in the contract leading to the Party "B" could not recover the costs/expenditure or losses caused by the above situation, including the insurance of the project for the first concession period.

For the request of concession extension, the Party "B" shall make a written request to the Party "A" for continuation of the contract at least one (01) year prior to the expire date of the contract. Party "B" shall request for contract extension in case of :

- a) Party "B" properly or well performed the contract
- b) This land is not allocated for other purpose used by the state

### ARTICLE 5: RIGHTS AND OBLIGATIONS OF THE PARTY "B"

#### 5.1- Rights of the Party "A":

In the mandate of this contract, the Party "A" shall have the following rights

- Monitor and evaluate on the implementation of the obligations of the Party "B"

Contract on the Investment of Rubber and Agro-Industry Plantation between MAFF and KHAOU CHHUNTAI PROMBTEA, Ed. 5 (KCD)



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stated in this contract.

- Require the Party "B" to carry out activities followed the norms and techniques on cropping in order to increase productivity as well as the social-environmental benefits. Inspect the quantity and quality of the production prior to market. \*
- Extend, suspend, and terminate the contract in accordance with the validated procedures as stated in the laws and regulations.
- Carry out other works as stated in the laws and regulations.

## 5.2- Obligations of the Party "A"

In the mandate of the contract and adding to the contents of Articles as stated in the contract, the Party "A" shall bear the obligations as follows:

- Facilitate and coordinate with relevant competent line-ministries and institutions as well as other local competent authorities to facilitate the Party "B":
  - Successfully carry out business operation;
  - Receive investment incentives in accordance with the existing laws and regulations.
- Review and approve or make amendment on the master plan within the period of not later than one (01) month after receiving the mater plan from the Party "B".
- Provide interventions to the relevant institutions in order to solve the problems encountered and those who commit offense and violate the rights of Party "B" in relation of the contract implementation and location use or land grabbing of any part of the location.

## ARTICLE 6: RIGHTS AND OBLIGATIONS OF PARTY "B"

### 6.1- Rights of the Party "B":

In the mandate of this contract, the Party "B" shall have the rights as follows:

- Transfer to his/her successor in accordance with the effective laws and regulation allowed.
- Raise the suggestions or request to the Party "A" for consideration and approval on the amendment of the Master Plan if considered the amendment shall be providing the better improvement in project implementation.
- Collaborate with partners in the investment on this location of the concession land, with agreement at least thirty (30) days in advance from the Party "A".
- Have the rights in legal mortgaging the economic land concession rights in order to secure finance for investment, however, this shall be agreed in advance from Party "A". Party "A" shall have reasonable/proper reasons, if rejected.

### 6.2- Obligations of the Party "B":

In the mandate of this contract and adding to the contents of Articles as stated in the contract, the Party "B" shall have obligations as follows:

- As stipulated in Article 2, a master plan indicating land utilization on concession land

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(K.C.D.)



location of planting areas etc. shall be completely prepared within the period of not later than three (03) months after obtaining the concession land and this master plan shall be submitted to Party "A" for review and approval and it should also be supported by the relevant technical ministries and institutions, as well as the support from local authorities and communities. This master plan shall contain of land use schedule in the concession area, technical practices and technology used, forest rehabilitation plan, and economic-financial plan for long-term development (from the commencement to the final stage of the development in the concession area, and the continual period). At the same time, the annual plan shall be precisely prepared for annual investment and implementation. Party "B" shall commence the process of works unless the master plan and annual plan to be approved in advance by the Party "A".

- Take responsibilities to bear all capital expenses for the investment project in terms of the development and use of economic concession land, including the expenses for fulfillment of the duties as stipulated in Article 2 as well.
- Strictly respect to the laws and regulations in forced.
- Give the rights to the activities of exploration on mining "if any" in the investment area. The technical ministries (Ministry of Industry, Mine and Energy and Ministry of Agriculture, Forestry, and Fisheries) shall conduct critically study and exploration in advance in the mine overlapping areas. In case of the study found that, any area in the concession location exited more economic potentials for any sector (between mine and agriculture investment) then that sector shall be granted to invest in that areas.
- Secure people who are living in the investment zone to get proper benefit from the investment project, such as the use of infrastructure, road, school, health center and the creation of job opportunity linking with the investment project, including the integration of household farmers' production.
- Pay taxes in accordance with the laws and regulations imposed.
- Pay deposit and fees according to the Article 9 of this contract until the termination of the contract.
- Use local labor force. In the event that Khmer experts are unavailable, the company has the rights to hire foreign experts to advise and instruct on technical issues related to the business production as needed and this shall be following the laws and regulations of the Kingdom of Cambodia.
- Consider in improving the livelihood as well as health and education to its employees; workers and their families by building the suitable houses, hospitals, temples, schools and recreation centers.
- Carry out of production & business activities as planned such as: land clearance, road construction, land utilization by respecting the terms and conditions to sustainable maintain the natural resources of the location and minimize the environmental impact caused by the production and business operation.
- Bear responsibility for the protection and conservation of evergreen forest, semi evergreen forest, and deciduous forest where existed in the conserved & protected locations inside the concession land.
- As said in its technical report annexed to this contract, the business & production

Contract on the Investment of Rubber and Agro-Industry Plantation between MAFF and KHAOU CHULY DEVELOPMENT CO., LTD  
(K C D)



- operation shall be carried out as planned on the concession land.
- Facilitate and coordinate with the Party "A" and relevant institutions in monitoring and evaluation of its operation regarding on the environmental impact assessment. Party "B" shall improve its operation in according to the guidance/advices from the Party "A" and relevant institutions in the matters related to environmental protection.
  - Prepare semester (06 months) and annual reports on the progress and achievements of the implementation of investment project and submit those to the Party "A".

#### **ARTICLE 7: CONSTRUCTION PERMITS**

- 7.1- Party "B" shall have the rights to develop and carry out all construction activities on the investment location by following the steps indicated in the master plan and time schedule agreed by Party "A" and Ministries concerned. These activities shall be made in accordance with the laws and regulation in effect in the Kingdom of Cambodia and these shall be response to the objectives specified in Article 1 of this contract.
- 7.2- All constructions of infrastructure, such as dams and canals that may affect to the people and surrounding areas, shall be permitted by Party "A" and/or relevant & concerned institutions.

#### **ARTICLE 8: RIGHTS ON NATURAL RESOURCES AND HERITAGE**

- 8.1- Before clearing the land for planting, the Party "B" shall request permission from Party "A". For the logs obtained from land clearance, the Party "B" shall collect and keep in a specific area and report to the Party "A" so as for the public procurement or for royalty & fee payment in accordance with the principles and Forestry Law in effect.
- 8.2- Mine resources and national heritage objects/items existed upper or underground are the state property, the Party "B" has no rights for management or utilization of these resources. If the Party "B" discovers mine resources, precious stones, gold or items of national heritage, either upper or underground, the Party "B" shall terminate the activities and inform those to Party "A" immediately. In the case that Party "B" does not cease activities and fail to inform those to Party "A" on time, the Party "B" shall has to bear all responsibilities that subject to the Laws and Regulations of the Kingdom of Cambodia.
- 8.3- In case of the concession land existed mineral resources which would be having highly economic potentials and those declared and certified by competent agencies, Party "A" has the rights to cut off partly or wholly these mineral resources' areas and extract those from the concession land.
- 8.4- The cultural and historical heritages found in the concession areas shall be kept as national or state properties or the areas existed of those heritages shall be cut off from the concession land location.



## ARTICLE 9: DEPOSIT AND FEE

### 9.1- Deposit Payment

In order to guarantee the execution of this investment project, Party "B" shall pay a deposit of USD 10 (ten) US dollar per hectare into the bank account of the Ministry of Agriculture, Forestry and Fisheries at the National Bank of Cambodia after signing the contract.

Two (02) months after signing this contract, if the Party "B" fails to pay the deposit to the Party "A" as mentioned above, this contract should be abrogated. End of the period of two months after provision of concession land location, if the Party "B" does not prepare the master plan, this contract should also become abrogation and the deposit shall be automatically returned into national budget.

The above said deposit shall be refunded to Party "B" after completion of the cultivation or planting activities as planned, which indicated in the master plan.

### 9.2- Land Fee Payment

- Party "B" shall annually pay the land fee according to the concessionary land rate defined by the Royal Government of Cambodia and competent institutions through the letter No. 803 នជណ dated 31 May 2000 and the fee shall be re-checked every five (05) years. The fee shall be annually paid into the national budget through the bank account number 0102.35-121IT023 at the National Bank of Cambodia before January 31 of each year. After fee has been paid, the Party "B" shall send fee receipt to the Party "A" and the Ministry of Economy and Finance for monitoring purpose.
- In case of being late of fee payment up to sixty (60) days, the Party "B" shall be fined two percents (02%) per month on the amount of fee to be paid by each year. The amount of the penalty payment shall be calculated according to the composed interest rate formula.

## ARTICLE 10: TRANSFERRING

The Party "B" cannot transfer this contract to the third party, except the Party "B" executed at least 30% of plantation development and after the evaluation made by Party "A".

The transferring the contract to the third party shall be made through new contract re-signed by all parties involved to enable that third party takes directly responsibilities with Party "A" in accordance with the terms and conditions of this contract.

## ARTICLE 11: SUSPENSION OF THE CONTRACT

In addition to the rights for guidance, warning to the Party "B" who conducted faults or other mistakes, the Party "A" shall suspend the implementation of this contract, in partly or fully on the concession location within a specific period. The suspension shall be made by written letter to indicate any or all causes specified as follows:

- Party "B" fails to fulfill any terms and conditions stipulated in the contract, master plan or Environmental and Social Impact Assessment (ESIA) reports.

Contract on the Investment of Rubber and Agro-Industry Plantation between MAFF and KHIAOU CHULY DEVELOPMENT Co., Ltd (KCD)





- b. Disputes occurred with the local people or the third parties related to the rights of land tenures in parts of the concession land;
- c. Legally mining activities that to be considered high economic potentials.

#### ARTICLE 12: TERMINATION OF THE CONTRACT

The economic land concession contract shall be terminated by any cases that specified as follows:

- a. Following the contract duration which stipulated in the contract;
- b. Agreement of both parties;
- c. Confiscation of concession land followed by administrative decision: Party "A" shall unilaterally confiscate the economic concession land from Party "BOO without any compensation in any case that Party "B" :
  - Fails to implement the terms and conditions stipulated in the contract or fails to obey any rules and regulations defined by the laws;
  - Fails to start implementing the production, exploitation later than 12 (twelve) months after the concession land has been provided;
  - Fails to produce or carry out operation later than 12 (twelve) months without reasonable/appropriate reasons;
  - Convert concession land to become the private land;
  - Party "B" fails to pay land fee later than 0 1 (one) year counted from the date to be made payment;
  - Transfer the concession land without renewal of the contract with Party "A";
  - Commit mistakes or crimes considered as heavy condition.

The confiscation shall be made through the administrative decision with reasonable evident and will be informed within 60 (sixty) days. Party "B" could claim and request to Party "A" to review on decision made within 28 (twenty eight) working days after receiving the decision to confiscate the concession land. In the case that agreement is not to be reached, Party "B" has the rights to complain to the court followed by the procedures defined by the laws.
- d. Based on the court decision to terminate the economic land concession, Party "A" shall request the court to terminate the contract on economic land concession in any of the following cases:
  - Party "B" is in a position of bankruptcy or lost legal characteristic due to the reason of liquidation or closing of the company;
  - Party "B" fails to obey any of the obligations stated in the contract after receiving alert advises or warning by defining the time to correct mistakes, twice respectively.

Party "A" shall deliver the official letter to Party "B" within 28 (twenty eight) working days for Party "B" reacts before submitting the complaints to the court.



### ARTICLE 13: RIGHTS OF PARTY "A" AFTER CONTRACT TERMINATION

In any form after the termination of the contract, the concession land, including all crops produced in according the master plan that Party "B" lost investment rights, shall be transferred to Party "A" for management. For the building, infrastructures in condition that can be utilizable in the location of concession land and also the intellectual property rights shall be automatically transferred to Party "A" and without compensation.

### ARTICLE 14: RESPONSIBILITIES

- 14.1 Both parties agree to take responsibilities to fully obey all terms and conditions stated in this contract from the signing date;
- 14.2 In all cases of contract termination, even the contract terminated before contract validity period or at the validity date, there will not be allowed for any party to evade the obligations for the state/government and third parties' debts or other obligations which have been stipulated in this contract;
- 14.3 In the case that the contract terminated because of fault of Party "B", this party shall bear responsibilities in accordance with the law and regulations to the damages of environment, such as forest, and Party "B" must restore and rehabilitate the forestry, environment to become same condition as before contract implementation.

### ARTICLE 15: PARTIAL INVALIDITY OF THE CONTRACT

If any conditions stated in the articles of this contract are in contradiction with the laws, invalidity or made ineffective, this case will not nullified to the whole contract. It is understood that this contract has validity through the validated articles existed. The purpose of signatory parties in this contract is to agree that any conditions in article considered invalidity or contradiction with the laws, shall not be implemented. However, the other articles shall be still fully remained validity and effectiveness for implementation.

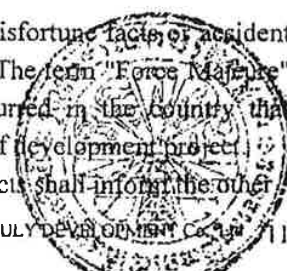
After any judgment to be made as stated in the above, the signatory parties shall promptly negotiate for creation of new terms and conditions or new article to replace those for revalidity by the ways that considered being possible to implement with consistency of original consideration or ideas.

### ARTICLE 16: CASES OF FORCE MAJEURE

The failures to fulfill contract obligations of any party shall not be used to benefit compensations to another party in implementing this contract or shall not be regarded as abuse of the contract if the failures resulted from force majeure.

The characteristic of force majeure is referred to occurrences of misfortune facts or accident happened out of control and unmanageable for the party affected. The term "Force Majeure" refers to war, strike, civil unrest, heavy natural calamities occurred in the country that adversely affected to the project operation and/or the continuation of development project. In the case that force majeure occurred, party affected from these facts shall inform the other

Contract on the Investment of Rubber and Agro-Industry Plantation between MAFF and KHAOU CHULY DEVELOPMENT Co., Ltd  
(KCD)



party by written within 14 (fourteen) days. The party affected by force majeure has the duty to convince to the other party for acceptance of the facts and the other party should not reject the proposal or request without appropriate reasons.

In the case that any party of this contract required using the measures of force majeure by reasons of inability to fulfill its obligations within 06 (six) months due to the occurrence of force majeure, each party has the rights to terminate this contract, but this required the party that wishes to terminate the contract to inform by written in advance to other party.

#### **ARTICLE 17: OBLIGATIONS OF CONTRACT SUCCESSOR**

The legal successors of both parties shall continue to fulfill obligations stated in this contract.

#### **ARTICLE 18: AMENDMENT**

The initiatives to amend any article of this contract shall be possibly made if the written request by any party proposed with mutual agreement by both signatory parties.

#### **ARTICLE 19: PROVISION OF NOTICE**

The provision of information or notice to any party shall be made by written in Khmer or English and this shall be signed by a full authorized representative.

The provision of information or notice considered as valid if:

- (a) Other party signed for acceptance the notice/information letter or
- (b) This notice/information letter received, on behalf, by local authority for delivering to other party accepted or
- (c) This notice/information is sent to other party by various means to the address specified in Article 20 which evident of receipt made.

#### **ARTICLE 20: ADDRESS FOR NOTICE DELIVERY**

- **Party "A" :**

No. 200, Preah Norodom Blvd, Sangkat Tonle Bassac, Khan Chamkarmon, Phnom Penh, Kingdom of Cambodia.

Telephone No.: 023-726 128 or 023-726 129

Fax No.: (855) 23-217 320

- **Party "B":**

House No. 62A, Prash Norodom Blvd, Sangkat CheyChomnach , Khan Don Penh, Phnom Penh, Cambodia,

Telephone: (855) 12 812 465 and, 016 710 888,

Fax No.: (855) .....

In the case that the address of any party is changed, that party should inform to the other party at least 30 (thirty) days before address changed.



Contract on the Investment of Rubber and Agro-Industry Plantation between MAFF and KHIAOU CHULY DEVELOPMENT Co., Ltd. (K C D)

**ARTICLE 21: EFFECT OF THE CONTRACT**

This contract shall be taking into effect from the date of signing the contract.

**ARTICLE 22: GOVERNING LAW**

This contract shall be governed by the laws and regulations of the Kingdom of Cambodia.

**ARTICLE 23: DISPUTES AND RESOLUTION (ARBITRATION)**

In case of dispute incurred during the execution of this contract, the two parties shall peacefully resolve the dispute with an understandable manner. In the event that the two parties cannot resolve the dispute within 02 (two) months, the dispute shall be resolved by the court of the Kingdom of Cambodia. The resolution of the dispute could also be possibly made through any international arbitration in accordance with the mutual agreement reached.

**ARTICLE 24: LANGUAGES**

This contract has been made in Phnom Penh with 11 (eleven) copies in the Khmer versions and 11 (eleven) copies in English versions. Each copy has equal value. In the event of discrepancy, the Khmer language version will be prevailed.

This contract archived at:

- Party "A" 02 copies for both versions
- Party "B" 02 copies for both versions
- Ministry of Economy and Finance 02 copies for both versions
- Council for the Development of Cambodia 02 copies for both versions
- Office of the Council of Ministers 01 copy for both versions
- Ministry of Justice 01 copy for both versions
- Mundulkiri Provincial Office 01 copy for both versions


Made in Phnom Penh, Day 08. Month ...A.O., 2008

Party "A"  
 Minister,  
 Ministry of Agriculture, Forestry and Fisheries



*[Handwritten signature]*

Party "B"  
 Director,  
 Khaou Chuly Development Co, Ltd



*[Handwritten signature]*  
**Oknha KHAOU PHALLABOTH**

# Appendix 3:

Accord d'implantation d'une ferme sur concession Socfin-KCD .../09/BSR

Entre

**Monsieur** ....., **agriculteur**, de nationalité cambodgienne, domicilié à ....., Village

.....

Commune de ....., District de ....., Province de .....

Ci-après dénommé « la famille »

Et

**Monsieur Patrick LEMAITRE, Directeur Général de la société SOCFIN-KCD Co Ltd, société privée au capital de 20, 000,000 RIELS, enregistrée au Ministère du Commerce sous le numéro Co.4111/07E et dont le siège social est situé au 76 rue 592, Boeung Kak II, Khan Tuol Kok, Phnom Penh/ Cambodge- tél: +855 (0) 23 881 779**

Ci-après dénommé « le concessionnaire »

Considérant que le concessionnaire souhaite développer une concession d'hévéaculture dans la province de Mondolkiri et qu'elle doit réaliser la préparation de centaines d'hectares sur ladite concession, en vue d'y planter des hévéas,

Considérant que la famille occupe une parcelle de terre sur la concession et qu'elle accepte de libérer la dite parcelle pour s'implanter sur une des zones délimitées par le concessionnaire à l'intérieur de la concession.

Les deux parties se sont entendues sur les dispositions suivantes

## ARTICLE I Taille de la parcelle

La parcelle en question est mesurée pour une surface de ..... hectares.

Les cultures présentes sur la parcelle sont :

..... arbres en croissance

..... arbres en production

..... hectares de ..... en production.

## ARTICLE II Evaluation

Le travail effectué pour la préparation est estimé à .....riels par hectare.

Les arbres en croissance sont estimés à .....riels par arbres.

Les arbres en production sont estimés à .....riels par arbres.

Les hectares de culture sont estimés à ..... riels par hectares.

## ARTICLE III Règlement

Le concessionnaire règle à la signature de cet accord les montants suivants :

.....riels pour le prix du travail et des cultures présentes sur la parcelle.

## ARTICLE IV Nouvelle parcelle

La famille accepte de s'implanter sur la parcelle équivalente en hectares à la parcelle d'origine et définie par les coordonnées suivantes (système UTM, référence Indian Datum 1960) :

Point 1 longitude : \_\_\_\_\_ latitude : \_\_\_\_\_

Point 2 longitude : \_\_\_\_\_ latitude : \_\_\_\_\_

Point 3 longitude : \_\_\_\_\_ latitude : \_\_\_\_\_

Point 4 longitude : \_\_\_\_\_ latitude : \_\_\_\_\_

Point 5 longitude : \_\_\_\_\_ latitude : \_\_\_\_\_

Point 6 longitude : \_\_\_\_\_ latitude : \_\_\_\_\_

Point 7 longitude : \_\_\_\_\_ latitude : \_\_\_\_\_

Point 8 longitude : \_\_\_\_\_ latitude : \_\_\_\_\_

## ARTICLE V Engagement de la famille

La famille renonce à l'occupation de la parcelle d'origine et s'engage à la libérer dans un délai de ..... jours après la signature.

La famille s'engage à ne pas s'implanter à nouveau sur les terres de concessionnaire en dehors de la nouvelle parcelle qui lui est attribuée par le présent accord.

La famille s'engage à ne pas vendre la parcelle attribuée.

La famille s'engage à ne pas utiliser la parcelle attribuée à des fins commerciales autres que le développement de produits agricoles.

**ARTICLE VI Engagement du concessionnaire**

Le concessionnaire s'engage à ne commencer aucuns travaux sur la parcelle avant le départ de la famille dans les délais prévus à l'article 5.

Le concessionnaire reconnaît le droit de la famille à céder la parcelle à ses héritiers directs.

Fait à Bousra le .....

Le Concessionnaire La famille

## **Accord de compensation pour occupation de parcelle sur concession Socfin-KCD .../09/BSR**

Entre

Monsieur ....., agriculteur, de nationalité cambodgienne, domicilié à .....,  
Village .....,

Commune de ....., District de ....., Province de .....

Ci-après dénommé « la famille »

Et

**Monsieur Patrick LEMAITRE, Directeur Général de la société SOCFIN-KCD Co Ltd,**  
société privée au capital de 20, 000,000 RIELS, enregistrée au Ministère du Commerce sous le  
numéro Co.4111/07E et dont le siège social est situé au 76 rue 592, Boeung Kak II, Khan Tuol  
Kok, Phnom Penh/ Cambodge- tél: +855 (0) 23 881 779

Ci-après dénommé « le concessionnaire »

Considérant que le concessionnaire souhaite développer une concession d'hévéaculture dans  
la province de Mondolkiri et qu'elle doit réaliser pour l'année 2009 la préparation de centaines  
d'hectares sur ladite concession, en vue d'y planter des hévéas,

Considérant que la famille occupe une parcelle de terre sur la concession pour ses cultures  
vivrières et de rentes

Les deux parties se sont entendues sur les dispositions suivantes

### **ARTICLE I Taille de la parcelle**

La parcelle en question est mesurée pour une surface de ..... hectares.

Les cultures présentes sur la parcelle sont :

..... arbres en croissance

..... arbres en production

..... hectares de ..... en production

### **ARTICLE II Evaluation**

La parcelle est évalué à un montant de .....riels par hectare.

Le travail effectué pour la préparation est estimé à .....riels par hectare.

Les arbres en croissance sont estimés à .....riels par arbres.

Les arbres en production sont estimés à .....riels par arbres.

Les hectares de culture sont estimés à ..... riels par hectares.

### **ARTICLE III Règlement**

Le concessionnaire règle à la signature de cet accord les montants suivants :

.....riels pour la valeur de la parcelle

.....riels pour le prix du travail et des cultures présentes sur la parcelle.

### **ARTICLE IV Engagement de la famille**

La famille renonce à l'occupation du terrain concerné et s'engage à libérer la parcelle dans un  
délai de ..... Jours après la signature.

La famille s'engage à ne pas s'implanter à nouveau sur les terres de concessionnaire.

**ARTICLE V Engagement du concessionnaire**

Le concessionnaire s'engage à ne commencer aucuns travaux sur la parcelle avant le départ de la famille dans les délais prévus à l'article 4

Fait à Bousra le .....

**Le Concessionnaire**

**La famille**



# List of abbreviations

ADHOC:	Cambodian Human Rights and Development Association
AFD:	Agence Française de Développement (French Development Agency)
CERD:	Committee on the Elimination of Racial Discrimination
CESCR:	Committee on Economic, Social and Cultural Rights
CLEC:	Community Legal Education Centre
CSO:	Civil Society Organisation
ELC:	Economic Land Concession
ESIA:	Environmental and Social Impact Assessment
EU:	European Union
FIDH:	International Federation for Human Rights
Ha:	Hectare
ILO:	International Labour Organisation
ICERD:	Convention on the Elimination of Racial Discrimination
ICESCR:	International Covenant on Economic, Social and Cultural Rights
ICCPR:	International Covenant on Civil and Political Rights
KCD:	Khaou Chuly Development Company Limited
LICADHO:	Cambodian League for the Promotion and Defence of Human Rights
MAFF:	Ministry of Agriculture, Forestry and Fisheries
MLMUPC:	Ministry of Land Management, Urban Planning and Construction
MOE:	Ministry of Environment
MOI:	Ministry of Interior
MRD:	Ministry of Rural Development
NARLD:	National Authority for Resolution and Land Disputes
NGO:	Non-Governmental Organisation
PNLWS:	Phnom Nam Lyr Wildlife Sanctuary
SRSG:	Special Representative of the UN Secretary-General
UNHCHR:	United Nations Office of the High Commissioner for Human Rights
UNDRIP:	United Nations Declaration on the Rights of Indigenous Peoples
USD:	US dollar

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This report is undertaken as part of a European campaign coordinated by the European Coalition for Corporate Justice (ECCJ).

# FIDH represents **164** human rights organisations on **5** continents

## Keep your eyes open

### Establishing the facts

#### investigative and trial observation missions

Through activities ranging from sending trial observers to organising international investigative missions, FIDH has developed, rigorous and impartial procedures to establish facts and responsibility. Experts sent to the field give their time to FIDH on a voluntary basis.

FIDH has conducted more than 1 500 missions in over 100 countries in the past 25 years. These activities reinforce FIDH's alert and advocacy campaigns.

### Supporting civil society

#### training and exchange

FIDH organises numerous activities in partnership with its member organisations, in the countries in which they are based. The core aim is to strengthen the influence and capacity of human rights activists to boost changes at the local level.

### Mobilising the international community

#### permanent lobbying before intergovernmental bodies

FIDH supports its member organisations and local partners in their efforts before intergovernmental organisations. FIDH alerts international bodies to violations of human rights and refers individual cases to them. FIDH also takes part in the development of international legal instruments.

### Informing and reporting

#### mobilising public opinion

FIDH informs and mobilises public opinion. Press releases, press conferences, open letters to authorities, mission reports, urgent appeals, petitions, campaigns, website... FIDH makes full use of all means of communication to raise awareness of human rights violations.

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of person. Article 4: No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. Article 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Article 6: Everyone has the right to recognition everywhere as a person before the law. Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. Article 8: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. Article 9: No one shall be subjected to arbitrary arrest,

## ABOUT FIDH

- FIDH takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice.

- A broad mandate

FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights.

- A universal movement

FIDH was established in 1922, and today unites 164 member organisations in more than 100 countries around the world. FIDH coordinates and supports their activities and provides them with a voice at the international level.

- An independent organisation

Like its member organisations, FIDH is not linked to any party or religion and is independent of all governments.

**fidh**

International Federation for Human Rights

Find information concerning FIDH's 164 member organisations on [www.fidh.org](http://www.fidh.org)