



## COLONIALISM TODAY: HOW A SWISS-LUXEMBOURGIAN AGRIBUSINESS CORPORATION WHITEWASHES LAND GRABBING IN CAMBODIA WITH SUPPORT OF EUROPEAN STATES

*translated by DeepL*

Now **it's done**: The illegitimate appropriation of indigenous land by the agribusiness corporation Socfin in Cambodia has been concluded - superficially whitewashed by a more than questionable mediation process.



*The remnant of a sacred forest in the clearing area (BIPA)*

### The illegal granting and acceptance of land concessions

In 2008 and 2013, the Belgian-Luxembourgian palm oil and rubber company Socfin, which is now operated from Switzerland, acquired three «Economic land concessions» from the state in the highlands of Cambodia covering 12,000 hectares - in a forest area where hundreds of indigenous Bunong families of Bu Sra practised agriculture and pasture farming as well as forest use and were spiritually rooted through sacred sites and burial grounds. The state granted the concessions even though the required prior consultation and consent of the indigenous communities did not take place, the state and the company committed further procedural errors and, above all, the land was not even available for the granting of a concession according to the Cambodian land law. This is pointed out by a [draft legal memorandum](#) from 2009 (to which Socfin responded with a [letter](#) in 2010).

This means that the concessions are most likely illegal from a legal point of view. Accepting such concessions and establishing rubber plantations in indigenous territory is a serious violation of corporate human rights responsibilities.

The loss of large parts of their territory, its conversion into rubber monocultures and the forced conversion of their agriculture into stationary farming on residual land was and remains a tremendous shock for the Bunong, disrupting their daily, social and spiritual lives and plunging them into a perception of emptiness and dis-orientation. The corporation gave the affected families the choice of either accepting replacement land elsewhere or financial compensation, or becoming rubber contract farmers.

## Resistance of Bunong communities and conflict resolution attempts

Numerous families did not take up these imposed offers. Since then, the village communities have been fighting vehemently, but by now exhaustedly, against the confiscation and abuse of their territory. A round of negotiations with the state and the corporation, initiated by [BIPA](#) (Bunong Indigenous People's Association) and lasting several years, ended in 2016 because the financial resources ran out. Then, in 2017, the 'Mekong Region Land Governance' (MRLG) project, funded by Switzerland, Germany and Luxembourg, stepped in and, after a call for tenders, commissioned the (now defunct) company IMG to conduct a mediation between the corporation and the communities. Although BIPA's offer to conduct the mediation met all requirements, it was rejected by MRLG without further explanations, which at least raises questions.

The affected families could decide for themselves whether they wanted to participate in the mediation through elected representatives. Since the beginning of the process, a confidentiality agreement has been in place, which is said to have been imposed by the company. The indigenous representatives largely observed the duty of confidentiality also towards the represented families, for fear of a breach of duty. The mediation, which was scheduled to last six months, dragged on for four years without the communities knowing much about it, let alone outside organisations finding out anything at all. FIAN Switzerland and BIPA tried several times to gain insight into the mediation process and the relevant documents in talks and extensive exchanges of letters and emails with the State Secretariat for Economic Affairs SECO, the Swiss Agency for Development and Cooperation SDC and the Swiss embassy in Bangkok responsible for Cambodia. However, all requests were rejected by MRLG with reference to the confidentiality agreement.

Other initiatives to resolve the land conflict were blocked during this period because, on the one hand, the opinion was spread that they would jeopardise the mediation process and, on the other hand, it was kept secret which issues were negotiated in the mediation process. One village, where many families nevertheless dared to join a lawsuit against Socfin's major shareholder Bolloré in France, was excluded from the mediation.

## The devastating outcome of the failed mediation: entrenchment of the land grab and abandonment of all claims

In August 2020, the Swiss Federal Department of Foreign Affairs FDFA published the [article](#) «Land Dispute Settlements signed in Monduliri between indigenous communities and Socfin Cambodia». The respective agreement concerned just 500 hectares, or 4 % of the total concession area. In the autumn of 2021, MRLG's '[success story](#)' «The mediation between Busra Indigenous Communities and Socfin Cambodia concludes with agreements to end long-standing land disputes» popped up. However, field visits by BIPA board members a few months later revealed that at least the villagers interviewed had no knowledge of any agreements and were surprised by MRLG's announcement. The article pretended that the land conflicts of «the communities» had been resolved. First, however, the affected villages did not participate in corpore, but only a varying number of families. Secondly, not all seven affected villages participated, but only five. Even after this grandiose announcement, it remained unclear for a long time whether the mediation process had been officially concluded, or when it would actually end and the results be published.

After no news arrived until late summer 2022, FIAN Switzerland together with FIAN Germany and BIPA requested the SDC Cooperation Office for the Mekong Region in early September 2022 to organise a virtual exchange with MRLG. At the end of September 2022, a «Joint statement on dispute settlement through independent mediation» was signed between «the local communities» and the Socfin subsidiaries. FIAN and BIPA received a [scanned](#)

[version of this document](#) through unofficial channels; surprisingly, SDC, as a funder of the mediation process, had no knowledge of it.

The joint statement is a kind of shell agreement that refers to numerous 'agreements' or 'solutions agreed upon' that are not part of the shell agreement and remain secret. Therefore, it is completely unclear to how many and which families and which areas the agreements refer to. Thus, it remains unclear to what extent the large-scale land conflicts have been resolved. The title of the joint statement also suggests that the conflict has been resolved with «the communities», but makes it clear that the agreements only refer to «community members». The title is misleading and pretends a non-existent overall solution.

<p style="text-align: center;"><b>សេចក្តីថ្លែងការណ៍រួម</b></p> <p style="text-align: center;"><b>ស្តីពីការដោះស្រាយវិវាទតាមរយៈដំណើរការ</b></p> <p style="text-align: center;"><b>សម្រុះសម្រួលឯករាជ្យរវាងសហគមន៍ក្នុងស្រុកនៅក្នុង</b></p> <p style="text-align: center;"><b>ឃុំ បូស្រា និងក្រុមហ៊ុនដីសម្បទានសេដ្ឋកិច្ចកំណាស៊ី</b></p> <p style="text-align: center;"><b>និងក្រុមហ៊ុនសេដ្ឋកិច្ច (ក្រុមហ៊ុន សុកហ៊ុន-ខេស៊ីឌី)</b></p> <p style="text-align: center;"><b>និងក្រុមហ៊ុន ភូវិធាម</b></p> <p style="text-align: center;"><b>នៅថ្ងៃទី ២៧ ខែ កញ្ញា ឆ្នាំ ២០២២</b></p> <p>ដើម្បីអាចសម្រេចបាននូវកិច្ចព្រមព្រៀងស្តីពីវិវាទដីធ្លី</p> <p>រវាងសមាជិកសហគមន៍ទាំងប្រាំនៅក្នុងឃុំបូស្រា (ភូមិ</p> <p>ពូជិត ភូមិពូជិត ភូមិបូស្រា ភូមិពូជិត និងពូជិត) និងក្រុមហ៊ុន</p> <p>ភាគីទាំងអស់បានស្នើសុំឱ្យមានការចូលរួមដោះស្រាយ</p> <p>តាមដំណើរការសម្រុះសម្រួលដោយស្ម័គ្រចិត្ត។ សមាជិក</p> <p>សហគមន៍ដែលបានចូលរួមក្នុងដំណើរការនេះ បាន</p> <p>ជ្រើសរើសតំណាងរបស់ខ្លួនដើម្បីចូលរួមក្នុងកិច្ចប្រជុំ</p>	<p style="text-align: center;"><b>JOINT STATEMENT</b></p> <p style="text-align: center;"><b>On dispute settlement through</b></p> <p style="text-align: center;"><b>independent mediation</b></p> <p style="text-align: center;"><b>between the local communities in</b></p> <p style="text-align: center;"><b>Bousra Commune and the Economic</b></p> <p style="text-align: center;"><b>Land Concessions Varanasi and</b></p> <p style="text-align: center;"><b>Sethikula (Socfin-KCD company), and</b></p> <p style="text-align: center;"><b>Coviphama.</b></p> <p style="text-align: center;">On 27 September 2022</p> <p>In order to find mutual agreements on land</p> <p>disputes between members of five communities</p> <p>in Busra Commune (Pu Teut, Pu Raing, Bousra,</p> <p>Pu Char and Pu Luk) and the companies, the</p> <p>parties requested to join a voluntary mediation</p> <p>process. Community members joining the</p> <p>process elected their representatives to join</p> <p>negotiation meetings with the company held in</p> <p>Sen Monorom city and Bousra Commune,</p> <p>Mondulkiri Province, between 2017 and 2021.</p>
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#### *The first section of the 'Joint statement'*

An analysis of the substantive content of the shell agreement shows that

- regarding communal land: The status quo is officialised.
- regarding land along the streams: The status quo is fixed.
- regarding the 'rubber families' (contract farmers): The handling of grievances is postponed to a future agreement (!), and Socfin repairs 100 meters (!) of road every year.
- regarding 'related farmland': The status quo regarding land and compensation is fixed. Socfin promises project budgets for 'community development' (but only for the families involved in mediation), with varying scope and duration depending on the village.

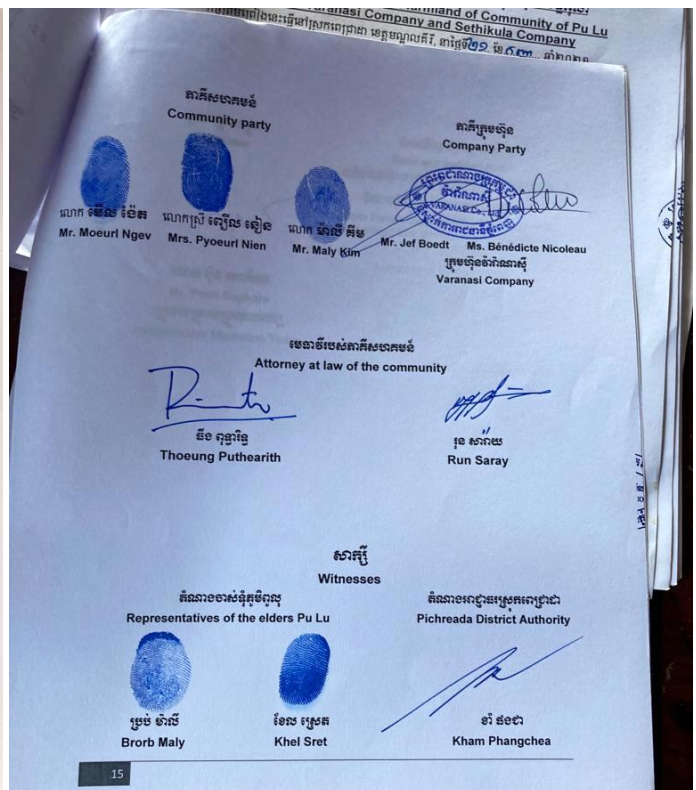
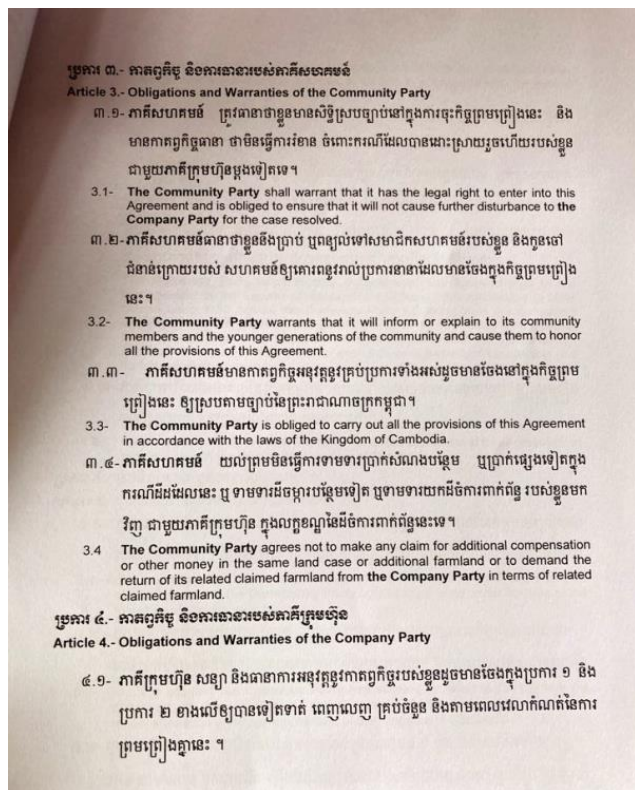
With regard to the economically, socially and culturally crucial issues of access to and use of land, the result is: Nothing changes as a result of the mediation, no land is returned.

Socfin has thus scored a complete success: The status quo is cemented and ostensibly legalised (even if it remains, because of the most likely illegal land concessions, correspondingly illegal of course). What the affected families effectively get in return from this process is the promise of unclear and limited 'community development' budgets and negligible road repairs. Socfin has thus bought the entrenchment of the status quo and its 'legalisation', and this on the cheap.

FIAN and BIPA have gained access to the four specific agreements with the families of a village who participated in the mediation. They show how skilfully Socfin safeguards itself. In the agreement on farmland, the three community representatives warrant in Art. 3 that they have «the legal right to enter into this Agreement», that they «will not cause further disturbance» and will not «make any claim for additional compensation or other money in the same land case or additional farmland or to demand the return of its related claimed farmland». In Art.



7, they confirm that they «are willing to enter into the Agreement without coercion or threat», that they have «received an explanation» and that they «fully understand of the contents of this Agreement from the beginning until the date of signing».



### Extracts from village-specific agreements

With these articles, the affected families give up all claims. And no one can argue that they were insufficiently informed, that they were overwhelmed and that they do not really understand what their representatives signed. The agreements are written in Khmer - a foreign language for the Bunong - and deal mainly with formal and methodological aspects in a legal way.

We have not yet obtained access to the annexes of the agreement on farmland, but these will be crucial for assessing the agreement: the «list of family members» affected by the agreement, the «maps showing the locations of farmland claimed» and the «list of data related to size of farmland claimed».

And what good are the agreements if the Socfin subsidiaries do not comply with them? How can the affected families enforce them? MRLG suggested «communities could request help from local officials to ensure outstanding agreements were upheld» - which seems rather cynical. The elementary aspect of accountability and enforcement was obviously forgotten, if not deliberately ignored.

### The voices of community representatives and villagers

In October 2022, CamboJa News journalists Jack Brook and Khuon Narim researched on site and spoke with community representatives and villagers. In early November 2022, their insightful [article](#) «After Rubber Firm Deal, Bunong Fear Broken Promises, Uncertain Land Tenure» was published.

One representative complained that his community «felt deceived». His village «has not received most of the benefits they were promised by the firms in exchange for ceding most of their customary land claims.» When the agreement was signed, «the community was happy», «but now we are unhappy. People think the company lied to us.»

Bunong customary farmland not included in the agreements – the majority of farmland used, according to a village chief - will only be eligible for community land titling after the concessions end, because it remains disputed and was not part of Socfin-approved mapping. «It is not right, it's unfair» he said. «The company will be allowed to use the land for 50 more years, then hand the land to the state without the [communal land] title.»



*A representative of the Pu Lu village community holds one of the agreements he signed after five years of negotiations. (Jack Brook/CamboJA)*

Representatives from two villages said that they shared no information with their neighbours during the negotiations due to the confidentiality agreement imposed by the company. «I don't know the reason [for the confidentiality agreement]. The company did not give any explanation», said one representative. He said he consented because «we were concerned the negotiations would not go well and I was scared, scared that the company would not give the land back» - exactly what then happened. One villager said that even after the negotiations concluded, the village representatives did not share the outcome with others. «Whether the result is good or not they never told us». Village leaders confirmed that the outcomes of the negotiations, including the creation of communal land maps, remain opaque due to confidentiality agreements. They were not sure what land would be included following the mediation, they said.

Various representatives stated that **«they felt compelled to accept the company's terms** or risk securing none of the land they claimed» - which has now exactly happened. «It took a long time. We were tired," said one representative. «We gave up demanding our land». Another said, «we had no choice: if we do not agree, they will still take our land. **But I fear we won't have land for the next generation.**»

## The mediation process: the wrong instrument from the start and wrongly designed

The disastrous outcome of the mediation process is not surprising, since mediation was both the wrong instrument for resolving this conflict and was wrongly designed. Mediation is a consensual solution-finding process between disputing parties. But human rights are not negotiable; the claims and entitlements arising from them are absolute and must be protected and enforced by the state as the human rights duty bearer. And of all things, the state was absent as a party in the mediation - which is even more disturbing in view of the fact that the Cambodian state is the main culprit in the land conflict with the most likely illegal award of the concessions. The state thus assumes no obligations and no reparations. The mediation was a private attempt to solve a conflict both caused and not resolved by the state. And it was clear from the beginning that Socfin would not assume the obligations and reparations owed by the state.

The massive power imbalance that existed from the outset between the multinational corporation and the indigenous communities was exacerbated by several factors:

- Firstly, the company held the disputed land as a bargaining chip. Fearing that they would lose any willingness on the part of the company to return the land, the family representatives could not negotiate freely and on an equal footing.
- Secondly, the families had to actively fight for reparation and for the return of the land that had been taken from them. The corporation could passively limit itself to defending its possession.
- Thirdly, time worked for the corporation and against the families. It was clear - especially in view of the long protraction - that the families would first run out of energy and patience, that they would give up exhausted and accept the corporation's conditions.
- Fourth, the confidentiality agreement between and - perhaps mistakenly - within the communities, combined with the division of mediation by village and issue, considerably weakened the bargaining position of the communities - but not that of the corporation, which could act as an undivided power.

Not only did the confidentiality agreement massively hinder and damage the process, it also contradicted the Bunong's traditional way of resolving conflicts. This further weakened their position.

It is true that the representatives of the affected families received mediation training. But wasn't this just a desperate attempt to make them fit to fight for their rights and for reparations - a role that should have been taken over by the state in the whole dispute? Were they thus pushed forward in place of the state and burnt out?

According to CamboJa News, only 210 families were involved in the mediation process - out of the originally more than 850 affected families, which have now grown to more than 1,000. For this reason alone, there can be no talk of a solution to the land conflict.

In our assessment, the winners of mediation are

- Socfin, since the illegitimate status quo has been codified and whitewashed, the families involved have given up all claims and the corporation can claim that the land conflict has been resolved,
- the Cambodian state, as the pretended resolution of the conflict puts it in a position to refuse to take responsibility;

and the losers are

- the 210 families involved, as they receive hardly anything - especially no land - and give up all claims,
- the more than 800 non-involved families, as conflict resolution on their side was blocked for many years,
- the communities, as the risk of division between and within them has become greater.

The mediation was supposedly a well-intentioned attempt by the donor states Switzerland, Germany and Luxembourg. But they tragically supported - probably unintentionally but uncritically - the conclusion and whitewashing of a colonial process in the present without resolving the land conflict and providing reparations to the disenfranchised and uprooted communities. This places a significant responsibility on the donor states.

## How will the disenfranchised communities get justice and redress?

An independent external evaluation of the mediation process and outcome is currently underway.

All agreements, maps and basic documents of the mediation must be disclosed. On this basis, it is possible to establish which families and land areas were actually involved in the mediation, what factual results the individual agreements have produced for the families, and for which families and land areas conflict resolution is still pending.

After examining all relevant mediation documents, it remains to be decided whether the mediation process and its results can be recognised as legitimate from a civil society perspective. If the previous findings are confirmed that the families and representatives involved in a process alien to them were pushed forward in place of the state and ripped off by the company, the validity of the signed agreements will probably have to be fundamentally questioned.

On this basis, a new, strictly human rights-based and comprehensive conflict resolution process would have to be established, involving the states of Cambodia, Switzerland, Luxembourg and Germany. One goal of this process may well be that the Cambodian government revokes large parts of the land concessions and returns



them to the communities as communal land, and that the communities receive adequate compensation for the many years of abuse of their territory. But the likelihood that the states, especially Cambodia, will agree to such a process is extremely low. But modern colonialism cannot be allowed to rob indigenous communities of their livelihoods and fob them off with useless agreements, while shareholders in Europe rake in the dividends.



*Rows of rubber trees in one of Socfin's plantations (Jack Brook/CamboJA)*

Michael Nanz