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Cambodian Center for Human Rights

December 2018

Briefing Note on Business and Human Rights

Preventing, Mitigating and Remediating Land-Related Rights Violations
in the Kingdom of Cambodia: Seven Areas for Improvement



About CCHR

The Cambodian Center for Human Rights ('CCHR') is a non-aligned, independent, non-governmental organization that works to promote and protect democracy as well as respect for human rights throughout the Kingdom of Cambodia. CCHR's vision is of a non-violent Cambodia in which people can enjoy their fundamental human rights, are empowered to participate in democracy, and share equally the benefits of Cambodia's development. CCHR promotes the rule of law over impunity; strong institutions over strong men; and a pluralistic society in which variety is harnessed and celebrated rather than ignored or punished. CCHR's logo – a dove flying in a circle of blue sky – represents the twin principles of peace and freedom.

CCHR is a member of International Freedom of Expression Exchanges ('IFEX'), the global network for freedom of expression. CCHR is also a member of the World Organization Against Torture ('OMCT') SOS-Torture Network, Southeast Asian Press Alliance ('SEAPA'), and OECD-Watch. The Cambodian Human Rights Portal, www.sithi.org, managed by CCHR, is the 2011 winner of the Information Society Innovation Fund Award in the category of Rights and Freedoms and the 2013 winner of the Communication for Social Change Award, awarded by the Centre of Communication and Social Change at the University of Queensland in Brisbane, Australia.

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Queries and Feedbacks

This Briefing Note and all other publications by CCHR are available online at www.cchrcambodia.org and www.sithi.org.

Should you have any questions or require any further information about this Briefing Note, or if you would like to give any feedback, please email CCHR at info@cchrcambodia.org.

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ACRONYMS AND SHORT CITES

| | |
|---|--|
| April 2018 Thai Class Action Lawsuit against Mitr Phol | “Case Brief: class action lawsuit by Cambodian villagers against Mitr Phol Sugar Corporation”, Inclusive Development International, 2 April 2018 |
| Cambodia | Kingdom of Cambodia |
| CCHR | Cambodian Center for Human Rights |
| CDC | Council for the Development of Cambodia |
| CSO | Civil Society Organization |
| Directive 001 | Directive on Measure to strengthen and foster effectiveness of ELC management |
| IDI | Inclusive Development International |
| EC | Equitable Cambodia |
| ELC | Economic Land Concession |
| ESIA | Environmental and Social Impact Assessment |
| 10 February 2017 Ruling of the Nanterre’s Tribunal | Tribunal de Grande Instance de Nanterre, 6e Chambre, 10 February 2017, n° 15/10981 |
| FPIC | Free Prior and Informed Consent |
| HRD | Human Rights Defender |
| ICCPR | International Covenant on Civil and Political Rights |
| ICESCR | International Covenant on Economic, Social and Cultural Rights |
| MAFF | Ministry of Agriculture, Forestry and Fisheries |
| May 2015 the bitter taste of sugar report | Cambodia: the bitter taste of sugar displacement and dispossession in Oddar Meanchey Province”, Actionaid Cambodia & Oxfam, May 2015 |
| MLMUPC | Ministry of Land Management, Urban Planning and Construction |
| MRD | Ministry of Rural Development |
| NGO | Non-Governmental Organization |
| RGC | Royal Government of Cambodia |
| SEZ | Special Economic Zone |
| SLC | Social Land Concession |
| Socfin’s response to FIDH report | “Socfin’s right of reply to the FIDH’s report”, <i>Socfin</i> , 10 November 2011 |
| Sub-Decree 19 | Sub-Decree 19 on Social Land Concessions, 19 March 2003 |
| Sub-Decree 60 | Sub-Decree on the Organization and Functioning of the Council for the Development of Cambodia, N. 60 ANK.BK |
| Sub-Decree 146 | Sub-decree no. 146 on Economic Land Concessions |
| Sub-Decree 148 | Sub-Decree 148 on the Establishment and Management of the Special Economic Zones |
| UDHR | Universal Declaration on Human Rights |
| UN Basic principles & guidelines on development-based evictions & displacement | ‘Basic principles and guidelines on development-based evictions and displacement’, Special Rapporteur on Adequate Housing, A/HRC/4/18 |
| UNGPs | United Nations Guiding Principles on Business and Human Rights, OHCHR, 2011 |
| UN HRC General Comment No. 31 | General Comment No. 31, Nature of the general legal obligation imposed on States parties to the Covenant”, <i>UN Human Rights Committee</i> , May 2004 |

EXECUTIVE SUMMARY

Over the past two decades, the Kingdom of Cambodia has achieved “stellar economic growth and poverty reduction”, according to the World Bank. Between 2007 and 2014, its poverty rate reduced from 47.8% to 13.5%, exceeding its Millennium Development Goals poverty target. Since 1990, maternal mortality has reduced by half, close to universal primary education enrollment was achieved, and significant progress in combatting HIV/AIDs made. Over a 20 year period, Cambodia’s economic growth averaged 7.6 %, and it is expected to continue at a projected growth rate of 7% in 2019.

Nonetheless, land disputes remain one of the most cited obstacles to Cambodia’s sustainable development. As of March 2014, more than half a million people were reportedly involved in land disputes. Between 1990 and 2014, over 29,700 families were reportedly evicted or displaced from their homes in Phnom Penh alone. Estimates showed that in 2017 alone, indigenous communities in Cambodia lost 30% of their traditional land.

As part of its efforts to promote Cambodia’s sustainable development, solving land disputes has been high on the agenda of the Royal Government of Cambodia (‘RGC’). Public authorities have taken a number of steps, ranging from the promotion of land tenure security through the issuance of land titles, the creation of a communal land title process for indigenous communities, and the setting up of numerous committees, to resolve land disputes. In December 2017, Deputy Prime Minister Sar Kheng highlighted the need to allocate land with equity, transparency, efficiency and sustainability, and to speed up the registration of land titles. In August 2018, the Ministry of Land Management, Urban Planning and Construction (‘MLMUPC’) reported having received 9,131 complaints related to land disputes, with 1,459 yet to be solved. The RGC reported having provided communal land titles to 24 indigenous communities, amounting to 669 land titles and covering 2,335 households. These efforts could be significantly enhanced by ensuring that land disputes are resolved expeditiously, transparently and equitably, in full respect for Cambodia’s international human rights obligations and the United Nations Guiding Principles on Business and Human Rights (‘UNGPs’).

CCHR has been working on land issues in Cambodia since its creation in 2002. As part of its business and human rights project, it conducted research to assess the situation of land conflicts in Cambodia and their impact on human rights, focusing on three cases. In collaboration with AAC, CCHR identified three land disputes, which, taken together, affected more than 1,600 households:

- the dispute involving villagers and Mitr Phol Sugar Company in Koun Kriel Commune, Samraong District, Oddar Meanchey Province;
- the land dispute involving indigenous communities and rubber company Socfin-KCD in Bu Sra Commune, Pech Chreada District, Mondulhiri Province; and finally,
- the land dispute involving villagers and the MDS Company in the MDS Thmor Da Special Economic Zone (‘SEZ’) in Thma Da Commune, Veal Veang District, Pursat Province.

Following an extensive desk review of the existing national and international law applicable to land disputes and six field trips in which CCHR interviewed government officials, provincial and local authorities, and companies’ representatives as well as local NGOs and individuals who have been directly affected by the land conflicts, CCHR identified seven areas of concern at the core of land-related disputes in Cambodia that hinder fair, equitable and inclusive development in the country. It also found, however, that simple steps could be taken to effectively prevent, mitigate and remedy these concerns and promote a more fair, transparent and effective land dispute resolution process across the country.

First, CCHR’s research shows that despite the legal framework on human rights protection, land rights and technical requirements for the establishment of SEZs and economic land concessions (‘ELCs’) being relatively

strong, these processes were not always fully respected. There appeared to be no meaningful effort to assess whether or not the affected communities had a legal right to the affected land independently of whether they had a formal land possession or title. Furthermore, social and environmental impact assessments, including consultations, were not always undertaken, and when they were, they were done as a mere formality rather than a genuine effort to limit any detrimental effect of the project on local communities. People were often pressured, at best, or coerced, at worst, into signing over their land to the authorities or the company. Regrettably, many individuals were forcibly evicted in all three cases, at times violently. In order to avoid such situations, it is essential that property rights are given due consideration (**Finding 1**), that environmental and social impact assessment are conducted prior to the start of the operations (**Finding 2**), and that meaningful consultations take place prior to any development (**Finding 3**). Most importantly, the use of force and involuntary resettlement must be strictly prohibited (**Finding 4**).

CCHR's research also shows that communities which were negatively impacted by the SEZ or ELCs and who thus attempted to protest faced serious challenges, such as threats and intimidation, arrests and detention, surveillance and violence. In order to promote just and effective resolution of land disputes, it is essential that the authorities allow those affected to advocate for their rights unhindered (**Finding 5**).

Finally, CCHR's research shows that the impact of the land disputes went far beyond mere loss of land: people lost their homes and properties, including important administrative documents; indigenous communities lost their traditions and access to religious sites; people were unable to sustain themselves and children had to drop out of school due to relocation; family members were jailed; many became indebted. Despite such wide-ranging impacts, the fact that the three land disputes started more than a decade ago, and notwithstanding multiple attempts by the authorities aiming at solving the land disputes, most of those interviewed by CCHR reported not feeling free to accept the resolution proposed, and rather feeling they had no choice but to accept. In short, the dispute resolutions offered in the three cases did not fully remedy the violations suffered, and also failed to meet international standards. As a result, significant efforts must be made to ensure a timely and effective remedy for all victims (**Finding 6**), and access to alternative and innovative dispute resolution processes should be facilitated (**Finding 7**).

The Briefing Notes ends with **15 recommendations** to the RGC, to private companies operating in Cambodia, and to civil society organizations, outlining simple steps to be taken in order to prevent, mitigate and remedy human rights issues arising out of corporate activities in Cambodia.

Key recommendations include:

- Respect for the concept of free, prior and informed consent of affected communities when it comes to handing over land or accepting a remedy;
- Conduct, respect and monitor environmental and social impact assessments;
- Provide timely and effective remedies;
- Stop monitoring, harassing and punishing human rights defenders;
- Exercise due diligence in order to avoid adverse human rights impacts; and
- For CSOs, to continue monitoring land disputes and encourage dialogue with the RGC and corporate actors to promote respect for the UNGPs.

METHODOLOGY

This Briefing Note forms part of the "Strengthening CSOs to Advocate for Increasing Respect for Human Rights by Corporate Actors in the Land Sector" project, implemented by CCHR and ActionAid Cambodia. It aims to improve corporate conduct through advocating for the authorities to regulate corporate conduct; through supporting communities' rights and raising awareness; and by enabling a safe environment for civil society and human rights defenders, to create space for dialogue and collaboration between the government, corporate actors, local communities and CSOs and materialize the application of the business and human rights standards in the land sector. The responsibility for the content of this Briefing Note lies solely with CCHR, and affiliates to this Briefing Note do not necessarily share the views expressed within it.

Purpose

The purpose of this Briefing Note is to identify key issues pertaining to business human rights in Cambodia through the analysis of three land-related conflicts, and to propose recommendations in order to prevent and remedy related human rights violations. CCHR, in collaboration with AAC, selected three cases to focus on: the land dispute involving indigenous communities and rubber company Socfin-KCD in Bu Sra Commune, Pech Chreada District, Mondulhiri Province ('Socfin-KCD case'); one involving villagers and Mitr Phol Sugar Company in Koun Kriel Commune, Samraong District, Oddar Meanchey Province ('Mitr Phol case'); and finally, the land dispute involving villagers and the MDS Company in the MDS Thmor Da SEZ in Thma Da Commune, Veal Veang District, Pursat Province ('MDS case'). This Briefing Note is based on desk and field research conducted since January 2017. CCHR's team went on six field research missions that took place between March and May 2017, as well as May and June 2018, to meet CSOs working on the three cases. In addition, CCHR conducted extensive desk research in order to identify applicable legal standards, monitor cases-related developments, and conduct a detailed mapping of the structures of the companies involved.

Development of Questionnaires

In 2017, CCHR developed a questionnaire to be used to conduct interviews during field research missions, covering six topics: (a) Background ; (b) Information; (c) Consultation and access to information; (d) Due diligence, value chain and investors; (e) Legal compliance; (f) Ensuring respect for human rights; and (g) Remedies. They were designed for community members, CSOs, company representatives, and authorities. In 2018, CCHR developed follow-up questionnaires: for the authorities, the affected communities, CSOs working on the case, and for the companies. Each was designed and adapted specifically for each of the cases. The questionnaires covered 10 topics, namely: (a) Property rights; (b) Use of the disputed land; (c) Relationship between the authorities/companies/communities; (d) Force/threats/intimidation of the communities; (e) Previous dispute resolution process; (f) Ongoing dispute resolution process; (g) Impact of the dispute; and (h) Perceived obstacles; (i) Internal policies; (j) Environmental and social impact assessments. Once the interviews ended, they were read back to the interviewees, who were then given an opportunity to correct or clarify any information.

Field Visits

Between 27-31 March 2017, CCHR's Business and Human Rights Team travelled to Mondulhiri province and interviewed 23 residents, a representative of Socfin-KCD, local civil society organizations, as well as local and provincial authorities. From 24-26 April 2017, CCHR's team travelled to Oddar Meanchey province. It conducted interviews with 23 individuals affected by the land conflict, local civil society organizations, and local and provincial authorities. It was not able to meet with representatives of Mitr Phol, as the company

left Cambodia in 2015. From 27 April to 1 May 2017, CCHR's team travelled to Pursat Province and interviewed 16 affected families, one NGO, and five public authorities. Since its letter and phone calls requesting a meeting did not lead to any positive results, CCHR's team visited the MDS Company compound in Thma Da Commune. However, the person it met declined being interviewed, stating he did not have the authority to speak on MDS's behalf.

In May and June 2018, CCHR conducted field visits to the three locations. Between 6 and 10 May 2018, it went to Pursat Province and meet with 10 members of the affected community, one NGO, and 14 public authorities. Between 3 and 6 June 2018, CCHR's team again went to Oddar Meanchey Province. It met 24 individuals from the affected communities, one NGO and 12 public authorities. It was unable to meet with Mitr Phol, the company having left the country in 2015. Further, on 8 June 2018, CCHR and AAC representatives participated in a meeting at the provincial hall, involving 14 public authorities. Finally, between 7 and 9 June 2018, CCHR went to Monduliri Province and meet with 15 affected individuals, and four public authorities. Socfin-KCD declined to meet with CCHR in light of the ongoing confidential mediation process; NGOs approached by CCHR declined to answer its questionnaire. In September 2018, CCHR also meet with one OHCHR's representative in order to discuss the Socfin-KCD case.

CCHR elected not to disclose the names or positions of the persons it interviewed out of an abundance of caution in order to avoid negative repercussions. Unless indicated otherwise, the information contained in this Briefing Note is based on CCHR's interviews.

Limitations and Challenges

CCHR faced some limitations in preparing the present Briefing Note. First, CCHR was unable to meet key stakeholders. Other than Socfin-KCD, none of the companies positively responded to CCHR's requests for meetings. Similarly, some local and provincial authorities declined to meet the project team. Further, and despite repeated attempts through multiple means, CCHR was unable to meet with representatives of the Council for the Development of Cambodia ('CDC'), the entity in charge of special economic zones in Cambodia and of "NGO management, coordination and relations".¹ Second, when interviewing affected communities in May and June 2018, CCHR's meetings with the affected communities were monitored and interrupted by local authorities, who alleged that CCHR did not have an authorization from the Provincial Governor, despite the fact that this is not required under the law² and CCHR having sent official letters to the relevant authorities requesting an appointment prior to its field mission. Finally, in some locations, local and provincial authorities called community representatives and instructed them not to meet with CCHR.

The present Briefing Note must therefore be viewed in light of the fact that CCHR was unable to get the perspective of two out of the three companies involved in the three case studies, and that of the CDC. It does not incorporate their respective views on the issues discussed, unless they were publicly available elsewhere, for instance in news reports.

¹ 'Sub-Decree No. 60 on the Organization of the CDC', 27 Apr 2016, Arts 4 (7), 10 (3), <http://www.cambodiainvestment.gov.kh/sub-decree-60-on-the-organization-and-functioning-of-the-cdc-05042016.html>.

² In October 2018, the Ministry of Interior has issued guidelines requiring that if local NGOs are conducting activity in a province other than where they are registered, then the local authority needs to be informed five days in advance. In some provinces, the guidelines are interpreted as directives that mean that approval for activity is required by provincial authorities. This contravenes human rights law, see 'NGO Law Monitor: Cambodia', ICNL, Jun 2016, <http://www.icnl.org/research/monitor/cambodia.html>.

INTRODUCTION

Over recent decades Cambodia has undergone rapid economic development. Between 2007 and 2014, its poverty rate went down from 47.8% to 13.5%,³ which largely exceeded the country's Millennium Development Goals poverty target.⁴ Since 1990, maternal mortality was reduced in half, nearly universal primary education enrollment was achieved, and significantly progress in combatting HIV/AIDs was made making it a "global leader in reducing poverty".⁵ Cambodia has achieved "stellar economic growth and poverty reduction" in the words of the World Bank,⁶ averaging an economic growth of 7.6% over the past 20 years. Its economic growth is expected to continue, albeit at a slightly slower pace, with a projected growth rate of 7% 2019.⁷

Nonetheless, land disputes remain one of the most cited obstacles to Cambodia's sustainable development.⁸ Many have been negatively affected by land disputes over the last decades: as of March 2014, more than half a million people were reportedly involved in land disputes.⁹ Between 1990 and 2014, over 29,700 families were reportedly evicted or displaced from their homes in Phnom Penh alone.¹⁰ In 2007, estimates showed that the indigenous communities in Cambodia lost 30% of their traditional land. Many of those affected by land disputes are indigenous groups, which have special social, cultural and economic connection to their traditional land, and are particularly vulnerable to the loss of land.¹¹

Solving land disputes has been high on the agenda of the Royal Government of Cambodia ('RGC'), and the Prime Minister has made various calls to resolve specific land disputes. In December 2017, the Deputy Prime Minister and Minister of Interior Sar Kheng highlighted the need to allocate land with equity, transparency, efficiency and sustainability, and to speed up the registration of land titles.¹² At the same time, the United Nations Office of the High Commissioner for Human Rights ('OHCHR') in Cambodia prepared a draft discussion paper on a potential reform of the communal land titling process.¹³ In October 2018, the MLMUPC reported having received 9,131 complaints related to land disputed as of August 2018, and that to date,

³ "Cambodia: Sustaining Strong Growth for the Benefit of All", *The World Bank*, 16 Aug 2017,

<http://www.worldbank.org/en/country/cambodia/publication/Cambodia-Systematic-Country-Diagnostics>.

⁴ "Cambodia Millennium Development Goals - CDC/CRDB", *RGC*, Jun 2018, p. viii, Overall Target 1, http://www.cdc-crdb.gov.kh/cdc/cmdgs_en.pdf.

⁵ "Cambodia is now a lower-middle income economy: What does this mean?", *Sodeth Ly*, 11 Aug 2016,

<http://blogs.worldbank.org/eastasiapacific/cambodia-is-now-a-lower-middle-income-economy-what-does-this-mean>.

⁶ "Cambodia, Sustaining Strong Growth for the Benefit of All, A Systematic Country Diagnostic", *The World Bank*, May 2017, p. 100, <https://openknowledge.worldbank.org/bitstream/handle/10986/27149/Cambodia-SCD-May-9-SEPCO-05242017.pdf?sequence=5&isAllowed=y> ('World Bank 2017 Report on Cambodia').

⁷ "Cambodia: Economy", Asian Development Bank, <https://www.adb.org/countries/cambodia/economy>. As a comparison, France's economic projected economic growth is of 1.5% for 2019 and 2020 (<http://www.oecd.org/economy/france-economic-forecast-summary.htm>), Japan's is 1% (<http://www.oecd.org/eco/outlook/japan-economic-forecast-summary.htm>) and Korea's 3% (<http://www.oecd.org/eco/outlook/korea-economic-forecast-summary.htm>).

⁸ See e.g. "Cambodia: Sustaining Strong Growth for the Benefit of All", *The World Bank*, 16 Aug 2017, p. 99,

<http://www.worldbank.org/en/country/cambodia/publication/Cambodia-Systematic-Country-Diagnostics>; "Report of the Special Rapporteur on the Situation of Human Rights in Cambodia", *Rhona Smith*, UN Doc A/HRC/39/73, 15 Aug 2018, para. 56, <https://undocs.org/A/HRC/39/73>.

⁹ "2014 brings a new wave of Cambodian land conflicts", *LICADHO*, 1 Apr 2014, <http://www.licadho-cambodia.org/pressrelease.php?perm=342>.

¹⁰ "Phnom Penh's History of Displacement – Evicted Communities from 1990 to 2014", *Sahmakum Teang Thaut* ('STT'), Dec 2014,

http://teangtnaut.org/wp-content/uploads/2014/12/FactFigures23_Evicted-Communities-PP-1990-2014_VsFinal.pdf.

¹¹ World Bank 2017 Report on Cambodia, p. 99.

¹² "Samdech Krohom Sarheng provided five key recommendations at the Ministry of Land Management's Annual Meeting", *Fresh News Asia*, Dec 2017, <http://freshnewsasia.com/index.php/en/localnews/74450-2017-12-28-05-43-55.html> (only available in Khmer).

¹³ "Report of the United Nations High Commissioner for Human Rights on the Rights of Indigenous People", *OHCHR*, UN Doc A/HRC/39/37, 6 Jul 2018, para. 27, <https://undocs.org/A/HRC/39/37>.

1,459 remained to be solved.¹⁴ As of May 2018, the RGC asserted having provided communal land titles to 24 indigenous communities, covering 2,335 households and amounting to 669 land titles.¹⁵

CCHR has been working on land issues in Cambodia since its creation in 2002.¹⁶ As part of CCHR's business and human rights project aiming at raising awareness on the adverse impact of companies' activities on people's rights, and improving corporate conduct,¹⁷ CCHR conducted research in order to assess the situation of land conflicts in Cambodia and their impact on human rights, by focusing on three land disputes. CCHR identified issues common to the three cases, which suggest the existing of crosscutting challenges that act as obstacles to greater respect for human rights by corporate actors in Cambodia.

On the basis of these issues, CCHR outlines seven areas where concrete steps can be taken in order to prevent, mitigate and remedy human rights violations arising out of land disputes in Cambodia. Those are:

Finding 1. Property rights must be given due consideration

Finding 2. Environmental and social impact assessment must be conducted prior to the start of the operations

Finding 3. Meaningful consultations must be conducted prior to any development taking place, and free, prior and informed consent must be respected

Finding 4. The use of force and involuntary resettlement must be strictly prohibited

Finding 5. Affected communities must be allowed to advocate for their rights freely

Finding 6. Efforts must be made to ensure a timely and effective remedy for the victims

Finding 7. Additional, alternative and innovative dispute resolution processes should be facilitated

This Briefing Note ends with 15 recommendations for the authorities and private actors to prevent, mitigate and remedy rights violations associated with land disputes.

¹⁴ 3,960 cases were resolved, 2,854 were rejected, 858 were withdrawn. "Report: over 1,000 land disputes remain unresolved", *Voice of Democracy*, 25 Oct 2018, <https://www.vodhotnews.com/2018/10/25/83753/over-1000-cases-of-land-disputes-unsolved/> (only available in Khmer).

¹⁵ "Report of the Special Rapporteur on the Situation of Human Rights in Cambodia: Comments by the State", UN Doc A/HRC/39/73/Add.2, 11 Sep 2018, p. 23, <https://undocs.org/A/HRC/39/73/ADD.2>.

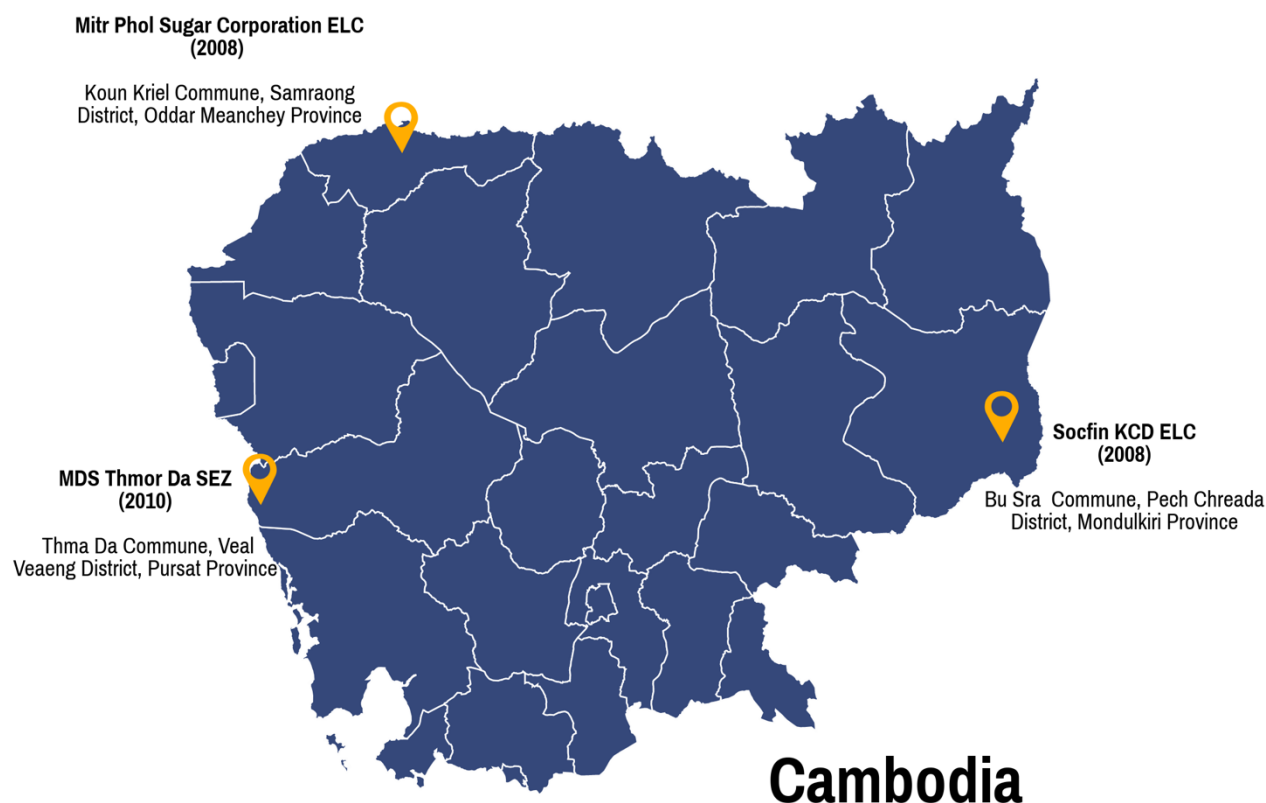
¹⁶ See "Community Trainings and Hearings", CCHR,

https://cchrcambodia.org/index_old.php?url=project_page/project_page.php&p=project_profile.php&id=3&pro=CTHP&pro_id=2&show=show.

¹⁷ This project, entitled "Strengthening Civil Society Organizations to Advocate for Increasing Respect for Human Rights by Corporate Actors in the Land Sector" is being funded by ActionAid Netherlands, and jointly implemented by CCHR and ActionAid Cambodia. For more details see

https://cchrcambodia.org/index_old.php?url=project_page/project_page.php&p=project_profile.php&id=3&pro=BHR2&pro_id=106&show=show&https://docs.google.com/viewerng/viewer?url=http://www.cchrcambodia.org/admin/projects/file/BHR_Project_Presentation+for_Eng_Aug_2016.pdf.

OVERVIEW OF THE THREE CASES



Three cases form the basis of CCHR's research:

- the Mitr Phol land dispute between villagers and Mitr Phol Sugar Company in Koun Kriel Commune, Samraong District, Oddar Meanchey Province ('Mitr Phol case');
- the Socfin-KCD land dispute, involving indigenous communities and rubber company Socfin-KCD in Bu Sra Commune, Pech Chreada District, Mondulakiri Province ('Socfin-KCD case'); and finally,
- the land dispute involving villagers and the MDS Company in the MDS Thmor Da Special Economic Zone ('SEZ') in Thma Da Commune, Veal Veang District, Pursat Province ('MDS case').

Two relate to ELCs – one involving indigenous communities (Socfin-KCD case), another one farmers (Mitr Phol case) – while the third one case relates to a SEZ (MDS case). Different companies are involved: a European multinational (Socfin-KCD), a Thai company (Mitr Phol), and a Cambodian company (MDS Thmorda SEZ Co., Ltd).

The Mitr-Phol Case

The first case concerns a land dispute about an ELC granted to a subsidiary of Mitr Phol Corporation Limited ('Mitr Phol'), a Thai sugarcane company, and families in 5 villages¹⁸ in Koun Kriel Commune, Samraong District, Oddar Meanchey Province, in the North West of Cambodia close to the border with Thailand. In total, approximately 712 households¹⁹ have been affected by the land dispute.²⁰ To date, at least 383 households are still awaiting a resolution.

¹⁸ Khtum (also spelt Ktum), Boss (also spelt Bos), O'Bat Moan, Ta Man (also spelt Taman), Trapeang Veang (also spelt Trapiang Veng).

¹⁹ 1 household = 1 name per parcel of land used/lost.

²⁰ Source: Equitable Cambodia.

The Economic Land Concession

In January 2008, three ELCs were granted by the Ministry of Agriculture, Forestry and Fisheries ('MAFF') to three different companies: Angkor Sugar Co. Ltd, ('Angkor Sugar') Tonle Sugar Company ('Tonle Sugar') and Cambodia Cane Sugar Valley Company ('Cambodia Cane Sugar Valley'),²¹ for the establishment of sugarcane plantations and the construction of processing factories, for a period of 70 years.²² The Angkor Sugar and Cambodia Cane Sugar Valley ELCs were located in the Samraong District and the Tonle Sugar Cane ELC in Chong Kal district of Oddar Meanchey province and totaled 19,736 hectares: 6,523 hectares for Angkor Sugar, 6,618 hectares for Tonle Sugar ELC and 6,595 hectares for the Cambodian Cane Sugar Valley ELC.²³ Altogether, the three ELCs affected 26 villages in four communes.²⁴ All three companies applied for an ELC at the same time, on 8 March 2007, all received approval on 18 December 2007, and signed the ELC contract on the same day, 24 January 2008.²⁵ The present Briefing Note focuses on the dispute related to the Angkor Sugar ELC, located mainly in Koun Kriel Commune.

At the time, Angkor Sugar Company's director was Tat Wanakornkul,²⁶ who was also Mitr Phol's executive vice-president.²⁷ In 2009, Mitr Phol became the sole shareholder of Angkor Sugar.²⁸

The ELC started being demarcated in May 2007, before the ELC was formally granted, and land clearing activities started in April 2008. Between 2008 and 2009, villagers were forced to give up their land for the Angkor Sugar ELC. On 9 August 2015, all three ELC agreements were cancelled.²⁹

About Mitr Phol Sugar Corporation Limited

Mitr Phol owns 17 subsidiaries in Thailand, Cambodia, United States, Lao, Australia, Singapore and China.³⁰ Mitr Phol claims to be world's third largest producer of sugar.³¹ It works in Australia, Cambodia, China, Lao and Vietnam, and supplies global brands such as Coca-Cola, Pepsi, Nestlé and Mars.³² Mitr Phol is 99.98% owned by Mid-Siam Sugar Co. Ltd,³³ a Thai holding company (a company which owns shares in other companies), and is reportedly controlled and owned mainly by the Vongkusolkit family,³⁴ a Thai family.

Mitr Phol has denied any involvement in human rights violations, and argued that the ELC attribution process was in conformity with the United Nations Guiding Principles on Business and Human Rights ('UNGPs').³⁵ However, in an oral testimony before the Thai National Human Rights Commission on 12 May 2015, Mitr

²¹ "Case Brief: class action lawsuit by Cambodian villagers against Mitr Phol Sugar Corporation", Inclusive Development International, 2 Apr 2018, p. 1, <https://www.inclusivedevelopment.net/wp-content/uploads/2018/03/Mitr-Phol-Class-Action-Case-Brief.pdf> ('April 2018 Thai Class Action Lawsuit against Mitr Phol').

²² April 2018 Thai Class Action Lawsuit against Mitr Phol, p. 2.

²³ "Cambodia: the bitter taste of sugar displacement and dispossession in Oddar Meanchey Province", AAC & Oxfam, May 2015, p. 15, table 3.1, http://www.actionaid.org/sites/files/actionaid/finalized_the_bitter_taste_of_sugar_displacement_and_dispossession_in_oddar_meanchey_2015_1.pdf ('May 2015 The bitter taste of sugar report').

²⁴ May 2015 The bitter taste of sugar report, 3.3 Affected Communities, p. 16.

²⁵ May 2015 The bitter taste of sugar report, 3.4 Profile of the Concessionaires, p. 17.

²⁶ Open Corporates, https://cambodiaincorporates.globalwitness.org/search?type=ids&id=A5671_R12803_A4344.

²⁷ April 2018 Thai Class Action Lawsuit against Mitr Phol, p. 1.

²⁸ April 2018 Thai Class Action Lawsuit against Mitr Phol, p. 1.

²⁹ April 2018 Thai Class Action Lawsuit against Mitr Phol, pp 1-3.

³⁰ Orbis Database, Mid-Siam Sugar Co Ltd, as of 31 Dec 2017. Only available for registered users.

³¹ Mitr Phol Group's Website, Mitr Phol Sugar, <https://www.mitrphol.com/mitphol-sugar.php>

³² "Forcibly displaced Cambodians file historic lawsuit against Asia's largest sugar producer", *IDI*, 2 Apr 2018,

<https://www.inclusivedevelopment.net/forcibly-displaced-cambodians-file-historic-lawsuit-against-asias-largest-sugar-producer/>.

³³ April 2018 Thai Class Action Lawsuit against Mitr Phol, p. 1; May 2015 The bitter taste of sugar report, 3.4 Profile of the Concessionaires, p. 18; this is confirmed by a search on corporate database Orbis through research conducted by SOMO.

³⁴ May 2015 The bitter taste of sugar report, 3.4 Profiles of the Concessionaires, p. 18.

³⁵ "Investigation Report No: 1003/2015", *Thai National Human Rights Commission*, 12 Oct 2015, p. 13, https://www.inclusivedevelopment.net/wp-content/uploads/2016/09/Thai-Human-Rights-Commission-Report_Mitr-Phol_Unofficial-translation-.docx (unofficial English translation).

Phol's representatives acknowledged that villagers were "affected", and reportedly hired a company to survey the damages in the area.³⁶

The Socfin-KCD Case

The second case concerns a land dispute affecting six villages³⁷ in Bu Sra³⁸ Commune, Pech Chreada District, Monduliri Province, in the North-East of Cambodia, about 30 kilometers from the border with Vietnam and 382 kilometers from the capital, Phnom Penh. Monduliri, Cambodia's largest province, is rich in natural resources including fertile land and water resources.³⁹ More than 800 families have been affected,⁴⁰ most from the Pu Nong group,⁴¹ an indigenous community which has been officially recognized as such by the Ministry of Interior and the MRD. Today, at least 640 families are involved in a land dispute resolution process.

The Economic Land Concessions

On 8 October 2008, the MAFF and the Khaou Chuly Development Co. LTD ('KCD'), a Cambodian construction company, entered into a contract for the "investment of rubber and agro-industry plantation".⁴² An ELC of 2,386 hectares was granted to KCD for the plantation of rubber trees, and, accessorially, for the production of other industrial crops, for a period of 70 years.⁴³ At the time, KDC was directed by Khaou Phallaboth, referred to as a Chinese national in the contract⁴⁴ but reportedly the son of Sino-Cambodian tycoon Khaou Chuly.⁴⁵ The land which formed the subject of this contract later became the Varanasi concession.⁴⁶

On 3 April 2009, it appears that Socfin-KCD took over KCD's contract for the Varanasi ELC.⁴⁷ In early 2010, it signed the contract for the Sethikula lease.⁴⁸ In 2010, Socfin-KCD acquired 100% of the Sethikula Co LTD company.⁴⁹ As of time of writing, the Sethikula and Varanasi plantations are 100% owned by Socfin-KCD.⁵⁰ On its website, the Socfin Group refers to the Varanasi and Sethikula plantations as "Socfin-KCD's

³⁶ "Investigation Report No: 1003/2015", *Thai National Human Rights Commission*, 12 Oct 2015, p. 14, https://www.inclusivedevelopment.net/wp-content/uploads/2016/09/Thai-Human-Rights-Commission-Report_Mitr-Phol_Unofficial-translation-docx (unofficial English translation); see also "Thai firm: sugar farm damage assessment is almost finished", *Cambodia Daily*, 12 Feb 2016, <https://www.farmlandgrab.org/post/view/25763-thai-firm-sugar-farm-damage-assessment-is-almost-finished>.

³⁷ Pu Tuet, Pu Reang, Bu Sra, Lam Meh, Pu Cha and Pu Lu.

³⁸ Also spelt Bousra, Busra.

³⁹ CDC, Municipality and Province Investment Information, Monduliri Province, p. 68, http://www.cambodiainvestment.gov.kh/wp-content/uploads/2014/03/Monduliri-Province_eng-1.pdf.

⁴⁰ "Business and Human Rights in Cambodia Constructing the Three Pillars", *CCHR*, Nov 2010, para. 188, <https://cchrcambodia.org/admin/media/report/report/english/2010-11-30-%20Full%20Report%20%20Business%20and%20Human%20Rights%20in%20Cambodia%20Constructing%20the%20Three%20Pillars.pdf>.

⁴¹ Also spelt Bunong, Bu Nong, Punong, Phnong, Phnong.

⁴² "Cambodia - Land Cleared For Rubber Rights Bulldozed: The impact of rubber plantations by Socfin-KCD on indigenous communities in Bousra, Monduliri", *FIDH*, October 2011, Appendix 2, https://www.fidh.org/IMG/pdf/report_cambodia_socfin-kcd_low_def.pdf ('FIDH Report').

⁴³ Art. 1 (1.1.), 1 (1.2) & 4.

⁴⁴ FIDH Report, Appendix 2, p. 1.

⁴⁵ FIDH Report, p. 21.

⁴⁶ In June 2012, the name of the Khaou Chuly Development ELC became Varanasi in June 2012, *Open Development Cambodia*, Varanasi ELC, https://opendevelopmentcambodia.net/profiles/economic-land-concessions/?feature_id=elc_gdp_158; see also FIDH Report, fn. 68, p. 17.

⁴⁷ FIDH Report, p. 19, fn. 76, which refers to the contract for Varanasi being signed on 3 April 2009.

⁴⁸ FIDH Report, p. 19 refers to a date of 23 February 2010 as indicated in Socfin's documents, fn 76, but then a date of 9 April 2010 is referred to later in the report, p. 34. Socfin Group's website contains conflicting information – the Socfin-KCD page refers to a second concession obtained in 2010, "Socfin KCD and Coviphama", Socfin Group's Website, <http://www.socfin.com/en/locations/companies/detail/socfin-kcd-coviphama>; see also FIDH Report, p. 19; while the "History" page of Socfin refers to two concessions being obtained in 2007, see "Socfin Group, History", 2007, <http://www.socfin.com/en/socfin-group/history>. Socfin Annual Report for 2010 notes that Sethikula company was purchased in 2010 for 1,7 million euros, p. 26, http://paperjam.lu/sites/default/files/old-files/fichiers_contenus/rapports_annuels/2013/socfin_2010_fr.pdf (only available in French).

⁴⁹ "Socfin Annual Report for 2010", p. 26, http://paperjam.lu/sites/default/files/old-files/fichiers_contenus/rapports_annuels/2013/socfin_2010_fr.pdf (only available in French); see also "Socfinasia Annual Report for 2017", Note 30, p. 89, <http://www.socfin.com/frontend/files/userfiles/files/Asia%20RA%202017.pdf> (only available in French).

⁵⁰ Socfin Group's page on Sethikula plantation, "Shareholder": <http://www.socfin.com/en/sethikula>; Varanasi: <http://www.socfin.com/en/varanasi>.

plantations”,⁵¹ and has a map of the concessions available on its website.⁵² The company started clearing the land near Bu Sra Commune in April 2008, before the contract for the ELC was signed.⁵³

About Socfin-KCD

Socfin-KCD CO LTD (‘Socfin-KCD’) was created on 31 December 2007,⁵⁴ as a joint venture between KCD and Socfinasia.⁵⁵ At the time, Socfinasia owned 80% of the joint venture, and KCD 20%.⁵⁶ Since 30 July 2015, Socfinasia S.A. (‘Socfinasia’) owns 100% of Socfin-KCD.⁵⁷

Sethikula CO LTD and Varanasi CO LTD are also companies established under Cambodian law, established to grow rubber. Both are registered at the same address on the Cambodian Business Registry’s website, and both have Jef Charles Henri Boedt, Socfin-KCD’s General Manager,⁵⁸ as their chairman of the board of directors. Through these two concessions, Socfin-KCD manages more than 7,000 hectares of rubber trees.⁵⁹ To date, Socfin-KCD has reported planting on 3,897 hectares of the disputed land. Its plantations started producing rubber in 2015, and in 2017, Socfin-KCD announced that it started construction of a rubber processing factory, which appears to have started operation in 2018.⁶⁰

Socfinasia is a holding company registered in Luxembourg with the goal to manage a portfolio of companies operating palm oil and rubber plantations in Southeast Asia, covering almost 55,000 hectares.⁶¹ In August 2013, Socfinasia, through its subsidiary Plantation Nord-Sumatra LTD (‘PNS Ltd’), also purchased 90% of Coviphama Co Ltd, the company in charge of the Coviphama concession (5,345 ha).⁶² To date, Socfinasia manages Coviphama,⁶³ Sethikula,⁶⁴ and Varanasi.⁶⁵ Socfinasia is 57.79% owned by the Luxembourg-based

⁵¹ “Socfin-KCD & Coviphama”, *Socfin Group*, <http://www.socfin.com/en/locations/companies/detail/socfin-kcd-coviphama>.

⁵² “Concession boundaries of KCD Plantation – Cambodia”, *Socfin Group*, <http://www.socfin.com/frontend/files/userfiles/files/Socfin%20KCD%20-%20Map%20-%20KML%20file.pdf>.

⁵³ FIDH Report, p. 33.

⁵⁴ Socfin-KCD’s page on Socfin Group’s website: <http://www.socfin.com/en/socfin-kcd>, creation date: 2007; “Socfin Annual Report for 2012”, p. 4, [http://www.socfin.com/frontend/files/userfiles/files/SOCFINASIA%20-%20RAPPORT%20ANNUEL%20\(2012\).pdf](http://www.socfin.com/frontend/files/userfiles/files/SOCFINASIA%20-%20RAPPORT%20ANNUEL%20(2012).pdf) (only available in French).

⁵⁵ FIDH Report. 19, Fn 76, which refers to the contract for Varanasi being referred to as signed on 3 April 2009.

⁵⁶ FIDH Report, p. 19, last paragraph.

⁵⁷ Socfin-KCD’s page on Socfin’s website, “Shareholders”: <http://www.socfin.com/en/socfin-kcd>; “Socfinasia 2015 Annual Report”, p. 4, Entry of 30 July 2015; see also p. 25 “Faits marquants” (Notable Facts), [http://www.socfin.com/frontend/files/userfiles/files/SOCFINASIA%20-%20RAPPORT%20ANNUEL%20\(2015\).pdf](http://www.socfin.com/frontend/files/userfiles/files/SOCFINASIA%20-%20RAPPORT%20ANNUEL%20(2015).pdf) (only available in French); “Socfin KCD, Notification of Participation”, *Socfin Group*, <http://www.socfin.com/en/socfin-kcd>; “Organisation Chart”, *Socfin Group*, <http://www.socfin.com/en/socfin-group/organisation-chart>.

⁵⁸ Eurocham Cambodia, Socfin KCD page, <http://www.eurocham-cambodia.org/member/153/Socfin-KCD>.

⁵⁹ “2017 Sustainability Report”, *Socfin Cambodia*, p. 6,

http://www.socfin.com/frontend/files/userfiles/files/SocfinCambodia%20Report%202017_Final.pdf

⁶⁰ *Ibid*; see also “Business insider: rubber firm expands processing power”, *The Phnom Penh Post*, 26 Feb 2018,

<https://www.phnompenhpost.com/business/business-insider-rubber-firm-expands-processing-power>; see also “Socfin Cambodia improved the safety procedures”, *Socfin Cambodia*, 3 Oct 2018, <http://www.socfin.com/en/news/detail/socfin-cambodia-improved-the-safety-procedures>.

⁶¹ <http://www.socfin.com/en/investors/socfinasia>.

⁶² “Socfin KCD and Coviphama”, *Socfin Group*, <http://www.socfin.com/en/locations/companies/detail/socfin-kcd-coviphama>; Coviphama Co Ltd was bought at 90% by PNS Ltd, a subsidiary of Socfinasia SA on 13 August 2013 for 13,3 million euros, see Socfinasia 2017 Annual Report, p. 80, <http://www.socfin.com/frontend/files/userfiles/files/SOCFIN%20RA%202017.pdf> (only available in French); “Socfinasia 2013 Annual Report”, p. 25, [http://www.socfin.com/frontend/files/userfiles/files/SOCFINASIA%20-%20RAPPORT%20ANNUEL%20\(2013\).pdf](http://www.socfin.com/frontend/files/userfiles/files/SOCFINASIA%20-%20RAPPORT%20ANNUEL%20(2013).pdf) (only available in French).

⁶³ Socfin Group’s page on Coviphama plantation: <http://www.socfin.com/en/coviphama>.

⁶⁴ Socfin Group’s page on Sethikula plantation: <http://www.socfin.com/en/sethikula>.

⁶⁵ Socfin Group’s page on Varanasi plantation: <http://www.socfin.com/en/varanasi>

Socfin⁶⁶ Group,⁶⁷ while Bolloré Participations S.A.⁶⁸ owns 21.75% of Socfinasia.⁶⁹ CCHR was unable to identify the owners of the remaining 20.45%.

The Socfin Group⁷⁰ is a company specialized in development and the management of palm oil and rubber tree plantations, managing 15 agro-industrial projects, mostly on the African continent.⁷¹ It operates through a complex network of holding companies, such as Socfinasia, and operational companies and subsidiaries,⁷² and reports a turnover of 625.8 million euros (more than 724 million USD).⁷³ The Socfin Group itself is 54.24% owned by Belgian tycoon Hubert Fabri and 38.75% owned by Bolloré Participations.⁷⁴ Hubert Fabri therefore owns 31% of Socfinasia⁷⁵ while Bolloré Participations owns about 44%,⁷⁶ making them the main shareholders of Socfinasia and therefore of Socfin-KCD, which, as mentioned above, is 100% owned by Socfinasia. In addition to holding significant financial shares in Socfinasia, both Vincent Bolloré and Hubert Fabri are listed as members of the Socfin-KCD board of directors on the Cambodian Business Registration's website. Luc Jacques J. Boedt is listed as the chairman of the board of directors.⁷⁷ As of 2018, Hubert Fabri is the president of the board of directors ('*conseil d'administration*') for Socfin, Socfinasia, and is a board member ('*administrateur*') of Socfin-KCD.⁷⁸ Vincent Bolloré is a board member of both Socfinasia and Socfin.⁷⁹ In its 2017 Sustainability Report, Hubert Fabri is introduced as Socfin S.A.'s (Socfin Group) chairman.⁸⁰

Bolloré Participations is an investment holding company whose director is French tycoon Vincent Bolloré, who also owns the Bolloré group, one of the 500 largest companies in the world and which reports a net income of 2,081 million euros for 2017 (about 2,373 million USD).⁸¹ It manages a portfolio of shareholdings of more than 7.4 billion euros (8.5 billion USD) as of late 2017.⁸² Vincent Bolloré is also listed 207th in Forbes's billionaire list, with an estimated net worth of 7.4 billion USD for 2018.⁸³

Socfin S.A. reportedly follows a responsible management policy,⁸⁴ and in January 2017, it committed to sustainable management of its rubber plantations in Mondulhiri.⁸⁵ However, allegations of human rights

⁶⁶ Socfin stands for "Société Financière des Caoutchoucs" (Financial corporation for rubber).

⁶⁷ Also known as Socfin S.A and Socfinal, "Socfin (formerly known as Socfinal) 2010 Annual Report", 10 Jan 2011 entry, p. 5, http://paperjam.lu/sites/default/files/old-files/fichiers_contenus/rapports_annuels/2013/socfin_2010_fr.pdf (only available in French).

⁶⁸ S.A. stands for "société anonyme", namely a public limited liability company which limits the owner's personal liability of the company's actions. For more details, see <https://www.investopedia.com/terms/s/socit-anonyme.asp>.

⁶⁹ "Socfinasia 2017 Annual Report", p. 30, <http://www.socfin.com/frontend/files/userfiles/files/Asia%20RA%202017.pdf> (only available in French); see also "Regulated Information", Financial Publications, Socfinasia, 2018, <http://www.socfin.com/en/investors/socfinasia/financial-publications>.

⁷⁰ Also known as Socfin S.A.

⁷¹ Socfin Group, About us, <http://www.socfin.com/en>.

⁷² Socfin Organizational Chart, <http://www.socfin.com/en/socfin-group/organisation-chart>.

⁷³ Socfin Group, about us, <http://www.socfin.com/en/socfin-group>.

⁷⁴ "Socfin 2017 Annual Report", p. 22, <http://www.socfin.com/frontend/files/userfiles/files/SOCFIN%20RA%202017.pdf> (only available in French).

⁷⁵ 54,24% of 57,79%.

⁷⁶ 38,75% of 57,79% + 21,75%.

⁷⁷ Cambodian Business Register, Socfin KCD Co. LTD, Address, Director, http://business.sithi.org/show_report_detail_land.php?id=68&lang=en; obtained on 27 Sep 2018 at <https://www.businessregistration.moc.gov.kh/>, see "online services", "search entity", Entity Name: Socfin; Register: any.

⁷⁸ "Compagnie du Cambodge's 2018 Annual Report", p. 25, http://www.compagnie-du-cambodge.com/DownloadHandler.ashx?url=/media/66204/rapport_annuel_cambodge_-_vsmf_6_-_20180427.pdf (only available in French).

⁷⁹ "Compagnie du Cambodge's 2018 Annual Report", p. 26, http://www.compagnie-du-cambodge.com/DownloadHandler.ashx?url=/media/66204/rapport_annuel_cambodge_-_vsmf_6_-_20180427.pdf (only available in French)

⁸⁰ In its 2017 Sustainability Report, Socfin S.A. refers to an external grievance management procedure in Cambodia, which was officially presented to the local communities and authorities, "Sustainability Report, 2007, Responsible Tropical Agriculture", Socfin, p. 6, "message from the Chairman", http://www.socfin.com/frontend/files/userfiles/files/2017%20Socfin_Sustainability%20Report_LR.pdf.

⁸¹ Bolloré Group, Key figures, <http://www.bollore.com/en-us/investors/key-figures>.

⁸² Bolloré Group, Portfolio of Shareholdings, <http://www.bollore.com/en-us/activities/portfolio-of-shareholdings>.

⁸³ "#207 Vincent Bolloré and Family", Forbes, <https://www.forbes.com/profile/vincent-bollore/?list=billionaires#4298a6f16651>.

⁸⁴ "Socfin Group policy for responsible management", Socfin, 22 Mar 2017,

http://www.socfin.com/frontend/files/userfiles/files/2017_03_22_Policy_responsible_management.pdf.

⁸⁵ "SOCFIN in Cambodia commits to a sustainable management of its rubber plantations in Mondulhiri", Socfin, 9 Jan 2017,

<http://www.socfin.com/en/news/detail/socfin-in-cambodia-commits-to-a-sustainable-management-of-its-rubber-plantations-in-mondulhiri>

violations, including lack of prior consultation, forced evictions, land grabbing, unfair compensation, pollution and poor working and life conditions on its concessions, have been made against various subsidiaries of the Group across the world.⁸⁶ In 2011, the report of the International Federation for Human Rights ('FIDH') on the Bu Sra land dispute was dismissed by the Socfin group as biased, unreliable, and defamatory.⁸⁷ Hubert Fabri assured that Socfin respected international human rights standards in its Mondulkiri operations,⁸⁸ but in the same time hinted to the possibility of libel and defamation actions against the FIDH.⁸⁹ In 2015, Socfin S.A. requested a 150 million euro loan⁹⁰ from the International Finance Corporation ('IFC'), a financial institution part of the World Bank Group⁹¹ which provides development-related loans to private actors in developing countries.⁹² When reviewing Socfin S.A.'s application, it noted that there were "major gaps" between Socfin S.A.'s performance and the applicable international environmental and social standards".⁹³

The MDS Case

The last case concerns a land dispute in Thma Da Commune,⁹⁴ Veal Veang District, Pursat Province, close to the border with Thailand. At least 97 families from three different villages have been affected by the land dispute.⁹⁵ To date, 15 families are still looking for a resolution.

The Special Economic Zone

On 19 November 2010, the RGC authorized the establishment of the MDS Thmor Da Special Economic Zone ('SEZ') in Thma Da Commune.⁹⁶ It was granted to MDS Thmorda SEZ Co. Ltd ('MDS'), a Cambodian company. The SEZ was set up to include an import-export market to exchange goods, a warehouse for agricultural products, a casino,⁹⁷ a golf club, a sport club, a parking lot and a petrol station over a surface of 2,265

⁸⁶ "Farmers Seek Independent Inquiry into Controversial Sierra Leone Palm Oil Deal", *VOA News*, 5 Apr 2017, <https://www.voanews.com/a/farmers-look-independent-inquiry-controversial-sierra-leone-palm-oil-deal/3798486.html>; "The palm oil company at the centre of a bitter land rights struggle in Cameroon", *The Guardian*, 27 Jul 2015, <https://www.theguardian.com/sustainable-business/2015/jul/27/palm-oil-boom-cameroon-land-ownership-protest>; "Conflict around the Socfin-Bolloré plantation: New Occupation in Liberia", *landgrab.org*, 15 May 2015, <https://www.farmlandgrab.org/post/view/24908>; "Bolloré criticized at anti-land grabbing protests in Africa, Europe", *Africa News*, 3 Jun 2016, <http://www.africanews.com/2016/06/03/bollor%C3%A9-criticized-at-anti-land-grabbing-protests-in-africa-europe/>; Investigation of the investments of the Bolloré Group and its Belgian partner Hubert Fabri, Africa's forests under threat", *Greenpeace*, Feb 2016, p. 8, https://www.greenpeace.org/africa/Global/africa/publications/forests/2016/AFRICA'S_FORESTS_UNDER_THREAT_1.pdf.

⁸⁷ "Socfin's right of reply to the FIDH's report", *Socfin*, 10 Nov 2011, https://www.fidh.org/IMG/pdf/droit_de_reponse_socfin_novembre_2011.pdf ('Socfin's response to FIDH report').

⁸⁸ "Indigenous and Tribal Peoples Convention", 1989 (No. 169), International Labor Organization, 27 Jun 1989, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169.

⁸⁹ Socfin's response to FIDH report.

⁹⁰ CCHR obtained the IFC Environmental and Social Review Summary as well as the Environmental and Social Action Plan, which were available on the IFC's website in 2015, however, to date, those are no longer available on the IFC's website. Socfin Corporate Loan, Environmental and Social Review Summary, IFC, 31 Jul 2015, http://business.sithi.org/show_report_detail_land.php?id=69&ng=en; Socfin Corporate Loan (#35930) – Environmental and Social Action Plan, International Finance Corporation, 31 Jul 2015, http://business.sithi.org/show_report_detail_land.php?id=70&lang=en.

⁹¹ "Socapalm Specific Instance – Bolloré and Socfin Groups, Statement from the French National Contact Point on 18 May 2016", France National Contact Point, pp. 5-6, <https://www.tresor.economie.gouv.fr/Ressources/File/426854>; see also "Investigation of the investments of the Bolloré Group and its Belgian partner Hubert Fabri, Africa's forests under threat", *Greenpeace*, Feb 2016, p. 8, https://www.greenpeace.org/africa/Global/africa/publications/forests/2016/AFRICA'S_FORESTS_UNDER_THREAT_1.pdf.

⁹² "About Us", IFC, https://www.ifc.org/wps/wcm/connect/corp_ext_content/ifc_external_corporate_site/about+ifc_new.

⁹³ "Socapalm Specific Instance – Bolloré and Socfin Groups, Statement from the French National Contact Point on 18 May 2016", *France National Contact Point*, p. 5, <https://www.tresor.economie.gouv.fr/Ressources/File/426854>.

⁹⁴ Also spelt Thmorda, Thma Da, or Thmar Da. 3 villages form the commune: Aekakpheap, Kandal and Sangkum Thmei.

⁹⁵ Sangkum Thmei, Kandal and Aekakpheap. Sangkum Thmei, Kandal and Aekakpheap villages. See "Brief Report on the Impact of Project development of MDS Company in Thma Da Commune, Veal Veng District, Pur Sat Province", Joint Report, *NGO Forum on Cambodia, CHRAC, CLEC, ADHOC, CCHR, LICADHO Pursat*, 19 Apr 2017, pp. 2-4 (only available in hard copy from NGO Forum on Cambodia and CCHR).

⁹⁶ The Council of Ministers, Notification 1334, in which the Council of Minister grants the SEZ, is dated 19 November 2010, http://business.sithi.org/ressource_detail.php?ressource_id=29&lang=en; However, official documents refer to 30 September 2010, see "Laws and Regulations related to the Establishment and Management of Special Economic Zone," Ministry of Economy and Finance, 2013, p. 2, entry 23, <http://www.customs.gov.kh/wp-content/uploads/2017/04/All-Regulations-related-to-SEZ-Eng.pdf>.

⁹⁷ Try Pheap's Group website, <http://trypheapgroup.com/en/?page=7>.

hectares.⁹⁸ In October 2010, before the SEZ was granted, MDS started to clear the land to make space, destroying houses and properties, and clearing farmland. The clearing continued sporadically until 2014, despite various efforts on the part of the communities to obtain a resolution. In May 2018, public authorities told CCHR that 60-70% of the SEZ was completed, that they had received the provincial authorities' masterplan for the SEZ, and that an administrative post/gate would be set up at the Thai/Cambodian border to facilitate trade of agricultural products, with the MDS SEZ used as an import/export area. They added that once the road from Pursat Provincial Town to Thma Da Commune, currently being built, was completed, the SEZ development process would drastically increase. The authorities assured CCHR that they would speed up the dispute resolution process in order to ensure that the whole process go unhindered. Community members told CCHR that MDS machinery to bulldoze the disputed land has been seen on the disputed land since 15 August 2018, accompanied by soldiers and local authorities, and that construction work has been ongoing on the SEZ since that time.

About MDS

MDS Thmorda SEZ Co., Ltd's director is Cambodian tycoon Try Pheap,⁹⁹ whose company, the Try Pheap Group Co. Ltd. ('Try Pheap Group'), is managing the SEZ.¹⁰⁰ Two agro-industrial Economic Land Concessions ('ELCs') in the area, totaling 6,352 hectares, have also been granted to the MDS Import Export Company,¹⁰¹ also owned by Try Pheap.¹⁰² The Try Pheap Group is a large Cambodian company operating on a wide range of business activities including agro-industry, tourism, the hotel business, handicrafts, dry ports, SEZs and petrol distribution.¹⁰³ Try Pheap owns at least 22 companies in Cambodia.¹⁰⁴

⁹⁸ Council of Ministers, Notification 1334, 19 Nov 2010, http://business.sithi.org/ressource_detail.php?ressource_id=29&lang=en.

⁹⁹ Cambodian Business Register, MDS Thmorda SEZ Co LTD, Directors, http://business.sithi.org/show_report_detail_land.php?id=72&lang=en, obtained on 18 Sep 2018 <https://www.businessregistration.moc.gov.kh/on>, "online services", "search entity", Entity Name: MDS; Register: any.

¹⁰⁰ Try Pheap Group Official Webpage, "Special Economic Zones", Try Pheap Group Co., Ltd, 2018, <http://bit.ly/2Dangrz>.

¹⁰¹ Municipality and Province Investment Information, "Pursat Province", CDC, Mar 2014, p. 113, http://www.cambodiainvestment.gov.kh/wp-content/uploads/2014/03/Pursat-Province_eng.pdf.

¹⁰² See Cambodian Business Register, MDS Import Export Co LTS, General Details, http://business.sithi.org/show_report_detail_land.php?id=73&lang=en and Directors, http://business.sithi.org/show_report_detail_land.php?id=74&lang=en, obtained on 18 Sep 2018 at <https://www.businessregistration.moc.gov.kh/>.

¹⁰³ Try Pheap Group's Website, "Our Businesses", <http://trypheapgroup.com/en/?page=1#>.

¹⁰⁴ Open Corporate, Try Pheap is listed as director or chairman of board of director in 22 companies, <https://opencorporates.com/officers?q=Try+PHEAP>. For more background information see 'The Cost of Luxury', *Global Witness*, 6 Feb 2015, <https://www.globalwitness.org/en/campaigns/forests/cost-of-luxury/>; 'Logging Mogul Blasted', *The Phnom Penh Post*, 29 Oct 2013, <https://www.phnompenhpost.com/national/logging-mogul-blasted>; "Report Calls out Try Pheap by Phnom Penh Post", *Cambodian Human Rights Task Force*, 23 Dec 2013, <http://chrtf.blogspot.com/2013/12/report-calls-out-try-pheap-by-phnom.html>; "Who profits from death of democracy", *Global Witness*, 20 Jul 2018, <https://www.globalwitness.org/en/campaigns/cambodia/who-profits-death-cambodias-democracy/>. MDS Company's officials and Try Pheap have systematically denied any violations or misconduct, see e.g. "Logging Mogul Blasted", *The Phnom Penh Post*, 29 Oct 2013, <https://www.phnompenhpost.com/national/logging-mogul-blastedb>.

Finding 1. Property rights must be given due consideration

In 2017, the World Bank Group found that “a related area of concern is the lack of comprehensive State Land Designation and Registration, which allows inefficient and nontransparent decisions on state assets use”.¹⁰⁵ It further noted that land and mineral concessions were made “without proper location or size information” and with “inadequate consideration of the actual land use on the ground”¹⁰⁶ and that many poor people in Cambodia were left without secure tradeable land rights.¹⁰⁷

In the three cases discussed in this Briefing Note, while having legitimate claims to the land on which they have lived for decades, most people did not have formal official land titles; what they did possess was a letter from the local authorities which recognized their possession of the land. For the few who did have official land titles, it did not prevent the companies or the authorities from taking their land.

Historical Background

Between 1975 and 1979, during Khmer Rouge regime, a large part of the population was displaced, administrative documents were lost or destroyed, and the principle of collective ownership was imposed; people fled their homes, which were then occupied by others who had fled their own homes.

At the end of the regime, some stayed where they were, others attempted to move back to where they lived before the war. Since official property ownership documents did not exist, only through testimonials could individuals’ property be established.

The local authorities play a key role in such recognition; yet, they have to follow instructions from the higher authorities, which often have an interest in the land being used for development projects, leaving the local authorities in a difficult situation and villagers without official land property rights.

In the **Mitr Phol case**, the victims have been living or using the land for decades, with most of them having come as a result of the RGC’s land allocation between 1995 and 2005.¹⁰⁸ Some of the interviewees who met with CCHR stated that they did not have a formal land title, and never applied for one as they did not know how to do so; they do possess letters from the *Sangkat* (commune) chief, stating that they reside on their land. All claimed to have lived on the disputed land for decades. Others stated that they were in possession of an “information sheet” noting the disputed land’s delimitation, its size, and the name of the landowner, given to them in September 2017 after the Cadastral Commission recorded them and their land. The sheet amounts to a record of what the affected families told the authorities, and not an official document recognizing their property rights.

As discussed below under the same section, those sheets were then used to identify the families considered by the authorities to still being affected by the land dispute and to whom a Social Land Concession (‘SLC’) would be proposed.

In the **Socfin-KCD case**, the Pu Nong community has been living on the disputed land for generations. While, during the Khmer Rouge period, many Pu Nong people were forced to flee from Bu Sra commune, they began return in 1981. Most had returned by 1986, to continue living their traditional lifestyle. However, the indigenous Pu Nong community does not have collective land title. They have registered as an indigenous group, as well as a legal personality, the two pre-requisites to a request for collective land titling. However, as of now, they are unable to apply for collective land titles since the land has been leased to Socfin-KCD.

In the **MDS case**, many of the affected villagers had applied to the District Cadastral Officer for a land title in relation to the land which is now within the SEZ back in 1999/2000, and have a receipt of their application;

¹⁰⁵ World Bank 2017 Report on Cambodia, p. 100.

¹⁰⁶ World Bank 2017 Report on Cambodia, p. 100.

¹⁰⁷ World Bank 2017 Report on Cambodia p. 99.

¹⁰⁸ April 2018 Thai Class Action Lawsuit against Mitr Phol, p. 1.

however, they never received an answer. In 2012, the Prime Minister's Student Volunteers came to measure the land pursuant to Directive 001, but MDS prevented them from measuring that of 23 families, stating that the delimitation of the land was subject to a dispute between it and the villagers, and that therefore it could not be measured. In June 2013, environmental officers, accompanied by local authorities, gendarmes and police, came to measure the land. Nothing has happened since then. When the communities approached the local authorities for updated information, they were told that the authorities were too busy, and therefore they would get back to the communities later.

In all three cases, the authorities did not take all of the necessary steps to assert whether the affected communities have legal rights to the property even if they might not own a formal land title. Many of the affected community members whom CCHR interviewed asserted that the local authorities were fully aware that they had been on the land for several decades, and that their land tenure rights were never challenged. Yet, because the formal recognition of land property depends on the local authorities, who are instructed by the higher authorities to implement the ELC or SEZ, they have proven unable, or unwilling, to assist the affected communities in asserting their property rights. At the same time, several members of the authorities alleged that the villagers had produced fake land possession documents, or that many in fact only came to the land once the development project was in place, in order to "benefit" from the land dispute by presenting themselves as long-standing villagers and obtaining financial compensation.

Finding 2. The requirement to undertake and respect ESIA must be enforced and monitored

Article 4 of the Sub-Decree No.146 ANK/BK on ELCs unequivocally states that an ELC can only be granted if, amongst others, environmental and social impact assessments ('ESIA') have been completed.¹⁰⁹ A social impact assessment is the process of analyzing, monitoring and managing the intended and unintended social consequences, both positive and negative, of planned interventions (policies, programs, plans, projects) and any social change processes invoked by those interventions.¹¹⁰ An ESIA is a time-consuming process which includes a variety of steps, ranging from screening to on-the-ground studies and mitigation.¹¹¹ It must include consultation with the relevant stakeholders, as well as the creation of a social and environmental management plan.¹¹² While the law does not contain a similar requirement for the granting of SEZs, the CDC, which is responsible for the creation and operations of SEZs,¹¹³ and which is composed of senior ministers from relevant government departments and chaired by the Prime Minister,¹¹⁴ is a public entity acting on behalf of the RGC, which must respect internationally recognized human rights as enshrined in the

¹⁰⁹ For more details on the applicable legal framework, see FIDH Report, Section 4.2, p. 26 and following.

¹¹⁰ "A Comprehensive Guide For Social Impact Assessment," *Centre for Good Governance*, 2006, para. 1.8, <http://unpan1.un.org/intradoc/groups/public/documents/cgg/unpan026197.pdf>; see also "International Principles for Social Impact Assessment, Impact Assessment and Project Appraisal," *Frank Vanclay*, Mar 2003, pp. 5-11, <https://www.tandfonline.com/doi/pdf/10.3152/147154603781766491?needAccess=true&>; "Guiding Principles on Business and Human Rights", *OHCHR*, 2011, Principle 18, https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf ('UNGPs').

¹¹¹ All the steps required for an ESIA can be found in "The Social and Environmental Impact Assessment Process", *IFC*, p.1, <https://www.ifc.org/wps/wcm/connect/296ae980488551f5aa0cfa6a6515bb18/ESIA.pdf?MOD=AJPERES>.

¹¹² "The Social and Environmental Impact Assessment Process", *IFC*, <https://www.ifc.org/wps/wcm/connect/296ae980488551f5aa0cfa6a6515bb18/ESIA.pdf?MOD=AJPERES>; see also "A Comprehensive Guide For Social Impact Assessment," *Centre for Good Governance*, 2006, para. 2.3 & figure 4, <http://unpan1.un.org/intradoc/groups/public/documents/cgg/unpan026197.pdf>; "Overview of Performance Standards on Environmental and Social Sustainability," *IFC*, 1 Jan 2012, https://www.ifc.org/wps/wcm/connect/3be1a68049a78dc8b7e4f7a8c6a8312a/PS1_English_2012.pdf?MOD=AJPERES; UNGP 19.

¹¹³ Sub-decree 149, Arts 10 (1), 10 (9), 13, 30, [http://portal.mrcmekong.org/assets/documents/Cambodian-Law/-Sub-decree-on-Role-of-CDC-\(2004\).pdf](http://portal.mrcmekong.org/assets/documents/Cambodian-Law/-Sub-decree-on-Role-of-CDC-(2004).pdf).

¹¹⁴ Law on Investment of the Kingdom of Cambodia, 1994, Art. 1, http://ibccambodia.com/wp-content/uploads/2016/06/Law_on_investment_English.pdf; "SEZs and Value Extraction from the Mekong", *Focus on the Global South*, Jul 2017, p. 16, para. 2, https://focusweb.org/system/files/sezs_and_value_extraction_in_the_mekong_english.pdf.

Cambodian Constitution and international treaties ratified by Cambodia at all times.¹¹⁵ This includes the obligation to prevent human rights violations, which require a careful social impact assessment before any SEZ is granted.

In the **Mitr Phol case**, CCHR received relatively consistent information that an ESIA was conducted by the provincial authorities between 2006 and 2009, prior to the ELC being granted. It was however unable to obtain a copy. Notably, an NGO representative working on the case told CCHR that in such a document, the disputed land was referred to as being State land and the forest as being abandoned. In 2018, CCHR was told that only a SIA was done, but that no EIA was done. However, since the result of the said-ESIA are not publicly available, it is impossible to verify whether the ESIA actually took place. Notwithstanding this fact, the mere conduct of an ESIA/EIA alone is insufficient; rather, concrete steps must be contained to mitigate the risks identified therein. According to the information available, no such action has been taken in the past 10 years.

In the **Socfin-KCD case**, KCD began clearing land for the plantation in April 2008, before any comprehensive environmental and social impact assessments,¹¹⁶ and before the ELC was formally granted to KCD – in a contract which also required the preparation of a preliminary environmental and social impact assessment on the land use and concession project, no later than one year from the date from the signature of the contract¹¹⁷ and which notes that the implementation of the contract may be suspended, in part or in full, if, amongst others, KCD fails to respect “any terms and conditions” in the ESIA report, or if “disputes occurred with the local people [...] related to the rights of land tenures in part of the concession land”.¹¹⁸ CCHR has heard from numerous sources that an ESIA was in fact conducted, although the dates as to which it was conducted differ – and most information point to the fact that the ESIA was conducted years after the ELC had been granted.

One local authority which CCHR met in May 2018 said that an ESIA had been undertaken by the Ministry of Environment, and that it was done after the ELC had been granted. It did not receive any information on it nor did they have a copy, and stated that the results were with the Ministry of Environment. A provincial authority told CCHR that an ESIA was done prior to the ELC being granted, but only partially, and also admitted that they were not the ones responsible for it. The interviewee added that the ESIA was still ongoing, as such process “take time”, and that it was under the responsibility of the Ministry of Environment at the national level. CCHR was also told that Socfin-KCD hired a consultant to do an ESIA in 2007-2008.

When CCHR met Socfin-KCD’s representative, they asserted that an ESIA had been done by the authorities prior to the ELC being granted, and that all its operations fell within this framework. However, the only evidence about the conduct of an ESIA link show that it was conducted after the ELC’s grant. In 2011, the Socfin Group – discussing the Socfin-KCD concession in Cambodia, asserted that an ESIA was conducted from September 2009, and that it took the engagement to respect all ESIA’s recommendations.¹¹⁹ International NGO FIDH reports having been allowed by Socfin-KCD to review the document, and that it was only

¹¹⁵ Constitution of Cambodia, Art. 31, [http://sithi.org/admin/upload/law/2008_02_19_Constitution\(EN\)_including%20Amendment%20\(1\).pdf](http://sithi.org/admin/upload/law/2008_02_19_Constitution(EN)_including%20Amendment%20(1).pdf). The direct applicability of these international legal provisions was recognized by a decision of the Constitutional Council of the Kingdom of Cambodia dated 10 July 2007, Kingdom of Cambodia, ‘The Constitutional Council’, 10 July 2008, Decision no. 092/003/2007; see also Sub-Decree 148 on the Establishment and Management of the Special Economic Zone, 29 Dec 2005, http://www.cambodiainvestment.gov.kh/sub-decree-148-ankr-bk-on-the-establishment-and-management-of-the-special-economic-zone-final_060314.html (‘Sub-Decree 148’), Art. 11 which states that the rights and protections contained in Cambodia’s Constitution apply within the zones and explicitly outlines that workers have the right to various safeguards as specified in the 1997 Labour Law and other related statutes. Article 15 of the 1997 Law of Investment outlines that all relevant laws and regulations apply to activities in SEZs if not specified in the Sub-Decree, http://ibccambodia.com/wp-content/uploads/2016/06/Law_on_investment_English.pdf.

¹¹⁶ Based on an interview that CCHR had with one provincial officer in 2017.

¹¹⁷ Art. 2, hyphen 2.

¹¹⁸ Art. 11.

¹¹⁹ Socfin’s response to FIDH report, p. 3.

conducted in 2010, or two years after the ELC had been granted, which contravenes Cambodian law.¹²⁰ Further, Socfin-KCD's 2017 sustainability report makes no reference to a social impact assessment for its concessions in Cambodia, only referring to EIAs.¹²¹ In 2011, the Socfin Group also stated that land clearing operations were suspended until a solution was negotiated with the local population,¹²² which is contradicted by its actions: not only has the company continued to bulldoze the communities' land, the ELC's development is at its final stages, with rubber being produced and a processing factory being built.¹²³

In the **MDS case**, a Pursat Provincial Officer told CCHR that he only "assumed" that an ESIA was done, as otherwise no SEZ could have been established; but another official said that one was done, and that a copy was given to the Ministry of Environment. Neither CCHR nor the affected communities have seen the assessment.

In all three cases, no ESIA was completed prior to the ELC or SEZ being granted, and all community members interviewed by CCHR alleged that they were not properly consulted, as detailed further in Finding 3 below. It further transpired that the pre-requisite for the establishment of projects were not respected, and that the local authorities often limited themselves to implementing the orders from their superiors, rather than ensuring that all requisite steps had been respected. Where an ESIA was reportedly undertaken, CCHR could not find information showing that an action plan was put into place in order to mitigate the associated risks and monitor the ESIA implementation.

Finding 3. Meaningful consultations must be held with affected communities

In all of the three cases, two main points emerge: first, most of the affected villagers told CCHR that they were not aware of the development project until they effectively saw their land being measured/seized/bulldozed. Second, when there were meetings prior to the destruction/seizing of property, they were merely informative meetings, where the authorities or the company informed the affected communities about the project and offered compensation; the views of the individuals were not sought. In other words, there was no proper consultation where the views of the affected communities were sought and considered; the affected villagers were simply told that they had to give away their land.

In the **Mitr Phol case**, a public official told CCHR that consultations with affected communities were undertaken at the provincial level. All relevant stakeholders were reportedly involved in the process, and the authorities "always accepted the opinions of the people". However, NGO representatives told CCHR that while there were meetings in 2009, those were mere discussions, rather than meaningful consultations where the opinions of the villagers were sought. The affected communities confirmed that they were not asked to provide their views or opinions in general, and that the very few times it happened, they were simply ignored. Further, villagers reported having been told by the authorities and the company that whether or not they signed the requisite paperwork, their land would be given away. Many told CCHR they had been threatened with repercussions if they did not give away their land, some alleging that they were threatened with imprisonment if they did not leave their land.

In the **Socfin-KCD case**, there was some form of consultation, however, CCHR was told that the coercive environment in which they took place did not allow the affected community members to take any decision

¹²⁰ FIDH Report, pp. 6, 19.

¹²¹ "2017 Sustainability Report", *Socfin Cambodia*, p. 8,

http://www.socfin.com/frontend/files/userfiles/files/SocfinCambodia%20Report%202017_Final.pdf

¹²² "Socfin's right of reply to the FIDH's report", 10 Nov 2011, p. 3, https://www.fidh.org/IMG/pdf/droit_de_reponse_socfin_novembre_2011.pdf.

¹²³ "2017 Sustainability Report", *Socfin Cambodia*, p. 6,

http://www.socfin.com/frontend/files/userfiles/files/SocfinCambodia%20Report%202017_Final.pdf; "Business insider: rubber firm expands processing power", *The Phnom Penh Post*, 26 Feb 2018, <https://www.phnompenhpost.com/business/business-insider-rubber-firm-expands-processing-power>.

with Free Prior and Informed Consent ('FPIC'). Some asserted having been told by Socfin KCD representatives that, regardless of their decision, their land would be taken away. Many said that they were forced to sign paperwork giving away their land, after being told that if they did not, they would not receive any form of compensation. One person reported that he was forced to sign a paper of which he did not know the contents. Others villagers reported that they were indeed consulted, able to express their demands, and promised an opportunity to either plant rubber on the ELC, or to have new land in exchange, but that their requests were not followed through. Further, several interviewees reported having been threatened into giving away their land by either Socfin-KCD's representatives or the local authorities. One individual reported having been told that she would be put in jail if she did not agree to give away her land. In contrast, the provincial authorities told CCHR that there were many consultations, where the communities were informed of the developments of the project, and that the authorities encouraged the communities to raise their concerns and their requests when they met with them.

Similarly, Socfin-KCD's representative told CCHR that he had organized a meeting in the communes and informed them about the plans, and that he discussed the situation with representatives from seven villages. He added that, since the beginning of the project, regular meetings were organized with the commune authorities and the local administration, and that a specific consultant was hired to head the consultation with the local authorities and the communities. Yet, the local authorities told CCHR that they only learnt about the project when the machines arrived to delineate the ELC land. Socfin S.A, Socfin-KCD's mother company, vehemently denied any wrongdoing and asserted that they respected both international and Cambodian law.¹²⁴ In particular, it asserted that an expert group was created and tasked with Socfin-KCD's relations with the affected community members, and which was delivering a monthly report on the communities' situation and the group's activities.¹²⁵

Notably, in relation to Socfin S.A.'s loan request to the IFC mentioned above,¹²⁶ the IFC made the preliminary loan contingent upon Socfin S.A.'s respect for the rights of indigenous people, including in Cambodia. In particular, it requested Socfin S.A. to "engage with relevant organizations and enter into negotiations with Affected Indigenous Peoples and agree on an action plan to ensure impacts of the concession are clarified and gaps in compensation process are addressed in compliance with IFC requirements" by October 2017; to enter a FPIC process; and to commission a third-party audit to ensure "livelihood restoration".¹²⁷ Socfin S.A. was required to report to the IFC on the outcomes. CCHR was not able to find any information as to the status of the loan, none of Socfin S.A.'s subsequent annual reports referred to this loan, and the loan request is no longer available on the IFC's website, which most likely means that it was never granted.

In the **MDS case**, the affected community members who CCHR interviewed in 2017 said that they had no agreement with the company or the authorities when their land was taken, and the majority said that they had not been consulted before their land was bulldozed. Many claimed having been told by the district authorities that they had to sign over their land to the company, whether or not they agreed. The local authorities however, told CCHR that there were several meetings with the affected communities in 2010, where a map of the SEZ was even shown; but that however, "no agreement" had been reached. Other local authorities told CCHR that the opinion of the affected communities was not sought, and that they only

¹²⁴ Socfin's response to FIDH report, p. 2.

¹²⁵ Socfin's response to FIDH report, p. 3.

¹²⁶ See *supra*, overview of the Socfin-KCD company, pp. 9-12; see also "Socfin Corporate Loan, Environmental and Social Review Summary", IFC, 31 Jul 2015, http://business.sithi.org/show_report_detail_land.php?id=69&ng=en; "Socfin Corporate Loan (#35930) – Environmental and Social Action Plan", IFC, 31 Jul 2015, http://business.sithi.org/show_report_detail_land.php?id=70&lang=en.

¹²⁷ "Socfin Corporate Loan (#35930) – Environmental and Social Action Plan", IFC, 31 Jul 2015, Performance Standard 7: Indigenous People, pp. 16-17, http://business.sithi.org/show_report_detail_land.php?id=70&lang=en.

became aware of the SEZ once individuals came to measure their land. In 2015, the district and provincial authorities invited affected community members to a joint resolution process about land exchange. Even though the communities did not agree, they were told that they had to thumbprint the documents related to land exchange.

In sum, what transpired is that the authorities appeared to define “consultations” as a simple meeting during which they informed the affected communities about what would happen; a one-way discussion, rather than meaningful consultations where the views of the communities were sought, their concerns heard, and solutions discussed. In all the three cases, consent was vitiated by the existence of a coercive environment and, at times, direct threats. Further, not all information was provided to the affected communities, thereby preventing them from giving their informed consent.

Finding 4. Use of force and involuntary resettlement must be strictly prohibited

In all three cases, all victims reported that they were not aware of the ELC or the SEZ prior to the company encroaching on the land to demarcate it. In addition, they did not have access to key documents. Further, in all three cases, people were forcibly evicted from their land. Often, public authorities – and sometimes police forces – accompanied the companies’ representatives when the people were forcibly evicted. Yet, the authorities which CCHR interviewed denied that the villagers were forcibly evicted.

In the **Socfin-KCD and Mitr Phol cases**, affected communities were not aware of the alleged ESIA, nor were they given a copy of the report, or of any implementation report, if any. In the **MDS case** for instance, no community member or NGO could access official documents related to the granting the SEZ until May 2018, when CCHR obtained the Council of Ministers’ Notification 1334.¹²⁸ To date, the sub-decree supposed to have been adopted for the SEZ cannot be located.

In the **Mitr Phol case**, a woman saw her house burnt, was injured while being forcibly evicted, and was then threatened with imprisonment if she protested; another was told that, if she did not leave her house and her land, her and her family would be jailed. Individuals who did not accept the land exchange were forcibly evicted without prior notice. All their personal property was destroyed. Many saw their houses burnt, and lost their land and rice fields. In April 2008, the entire village of O’Bat Moan was destroyed as part of the land clearing for the ELC. 154 homes were demolished by company staff while the local authorities were present.¹²⁹ In October 2009, approximately 100 homes were burnt down by a group of around 150 police, military police and hired demolition workers.¹³⁰ Several individuals who had protested the land grab were imprisoned, including two community leaders who were sentenced to two years in jail and two others who were held in pre-trial detention for more than six months, in violation of Cambodian law.¹³¹

In 2008, in the **Socfin-KCD case**, affected villagers saw bulldozers come and destroy their houses and the property inside, with no prior notice, and those who protested were reportedly threatened with prison. Affected community members told CCHR that the houses of those who did not want to leave their land were burned down by the authorities.

In the **MDS case**, the company came to bulldoze the houses and plantations of 11 families in November 2014. While doing so, it was protected by armed forces, while local and provincial authorities were present at the scene. A woman who attempted to stop the bulldozers from coming and destroying her land was pushed in

¹²⁸ Council of Ministers, Notification 1334, 19 Nov 2010, http://business.sithi.org/ressource_detail.php?ressource_id=29&lang=en.

¹²⁹ April 2018 Thai Class Action Lawsuit against Mitr Phol, p. 2.

¹³⁰ April 2018 Thai Class Action Lawsuit against Mitr Phol, p. 2.

¹³¹ April 2018 Thai Class Action Lawsuit against Mitr Phol, p. 3.

front of the bulldozer, and threatened with being buried. In 2010, one individual who was taking photos was pushed around by the military police, and an environmental officer prevented him from accessing his land.

Acts associated with forced eviction included the burning of homes, the bulldozing of homes and land without prior notice, threats of criminal charges, the use of weapons, and physical violence, with reports of the authorities and the companies colluding.

Finding 5. Communities must be allowed to advocate for their rights and protected accordingly

Despite a relatively strong legal framework protecting freedom of expression, assembly and association in Cambodia,¹³² in practice, victims of land disputes who attempt to advocate for their rights, either before, during or after the ELC or SEZ was granted, have faced countless challenges, ranging from intimidation to threats, physical violence and even imprisonment.¹³³ In Cambodia, one or more individuals are often selected by the affected communities to be the main contact point with the authorities and the company. They qualify as human rights defenders ('HRDs') under international human rights law, as they advocate for the protection of the rights of others.

5.1. Victims report facing ongoing intimidation, threats and violence

In all three cases, affected individuals told CCHR that when they attempted to protest the violation of their rights, or to seek a remedy, they were threatened by both the authorities and the companies' representatives.

In the **Mitr Phol case**, some affected villagers informed CCHR that they were told they would be put in jail, if they did not leave their land or continued to protest the ELC. At the early stages of the dispute, a community member was run after by a mix of armed forces who threatened to shoot them, while another was told that the community members would be shot if she continued to protest against the company. Several individuals reported to CCHR having been told that their houses would be burnt down if they continued to protest. While those cases were reported to the authorities, no further action was taken; on the contrary, those who approached the local authorities were threatened with imprisonment. In March 2017, the affected communities participated in a press conference which aimed to raise awareness about the human rights violations associated with sugar companies.¹³⁴ After the conference, the authorities accused the organizers of "harming Cambodia's reputation, social order, peace, unity, and reconciliation", and threatened legal action against those who participated but who were not victims of ELCs.¹³⁵

Who is a Human Rights Defender?

"Human rights defender" is a term used to describe people who, individually or with others, act to promote or protect human rights. Human rights defenders are identified above all by what they do. It is through a description of their actions and of some of the contexts in which they work that the term can best be explained.

To be a human rights defender, a person can act to address any human right (or rights) on behalf of individuals or groups. Human rights defenders seek the promotion and protection of civil and political rights as well as the promotion, protection and realization of economic, social and cultural rights.

UN OHCHR, <https://bit.ly/2NEIb7p>

¹³² "Cambodia Freedom Monitor, First Annual Report", CCHR, ADHOC, Solidarity Center & ICNL, Aug 2017, p. 3,

<https://cchrcambodia.org/admin/media/report/report/english/2017-08-10-CCHR-FFMP-Annual-Report-Eng.pdf>.

¹³³ See, generally, "Cambodia Freedom Monitor, Second Annual Report", CCHR, ADHOC, Solidarity Center & ICNL, Sep 2018, pp. 3-11,

https://cchrcambodia.org/index_old.php?url=media/media.php&p=report_detail.php&reid=128&id=5

¹³⁴ The conference was on "The Bitter Taste of Sugarcane in Cambodia: Forced Departure and Land Tenures Revocation in Oddar Mean Chey".

¹³⁵ "Conference on Sugarcane industry hurts Cambodia's reputation", *Fresh News Asia (ENG)*, 24 Mar 2017,

<http://en.freshnewsasia.com/index.php/en/3957-conference-on-sugarcane-industry-hurts-cambodia-s-reputation.html>.

In April 2017, the authorities prevented community members from undertaking trainings on land rights and summonsed them to the police post, being accused of “mobilizing” and “inciting” people in “standing up against the authorities”. Other community members who were active in advocating for their rights were similarly prevented from undertaking certain actions, told to “stop mobilizing” others and threatened with arrest, something which continues at time of writing. In May 2018, the Provincial Governor cancelled a meeting where SLCs were to be discussed, reportedly alleging that some people were inciting others to demonstrate against the Provincial Governor, and inciting other community members not to accept the proposed exchange land. Further, several community members were jailed and charged with illegal logging when they tried to challenge the ELC. In particular, two community leaders were sentenced to two years in jail, for “clearing state forest”, while two others were released after more than six months in pre-trial detention.¹³⁶

Last but not least, one of the main challenges cited by the community members affected by the Mitr Phol land dispute was that the authorities would prevent them from meeting together and discuss the land dispute, or would disrupt the meetings, threatening them with jail. Notably, all individuals interviewed by CCHR in June 2018 reported being “observed” by the authorities.

In the **Socfin-KCD case**, many community members reported having been threatened by both the authorities and Socfin-KCD’s representatives, and several alleged that they were threatened with being put in jail, should they continue to protest. A woman told CCHR that a gun was pointed at her during a protest, while others reported having been arrested and kept in police custody as a result of opposing the ELC. In 2008, a woman was detained by the local police after having protested the bulldozing of her land, and accused of violating the company’s land. While no charges were brought, she was warned “not to do it again”. Between 2013 and 2015, the affected villagers were prevented from holding traditional ceremonies to mark the international day of the world’s indigenous people.¹³⁷ CCHR further heard reports that some community members were threatened with legal action should they continue to protest. Since 2017, however, those involved in the Socfin-KCD land dispute and whom CCHR interviewed said that they have not faced intimidation or threats in relation to the land dispute.

In the **MDS case**, a community member who attempted to take a photo when the bulldozers arrived on the land in 2010 was pushed around by the military police; another was temporarily handcuffed and threatened. A former deputy village chief was removed from her position because she challenged the land grab with the authorities, and was charged with destroying the forest in 2013. Many were threatened with arrest if they continued to farm on their land, or protested. In 2014, protesters were prevented from accessing their land by the military police. When members of the affected community attempted to submit a petition to the Prime Minister’s office, members of the Royal Forces attempted to forcibly remove them, reportedly telling them that if they did not leave, they would be “taken away”. Some community members also reported being followed. In April 2018, one of the most active community members reported having had a mine put on her land, close to her home, presumably as an attempt to intimidate her. While she reported the incident to the authorities and to CMAC, which said that they would send someone to remove the mine, as of July 2018, the mine had not yet been removed, precluding her from using her land.

The judicial system was also used to impair the work of HRDs. In October 2010, the police threatened villagers who were protesting MDS’s clearing of the land with arrest, while others were actually arrested a month later. In 2014, one community member was arrested and detained for four days. In 2013, three activists were

¹³⁶ April 2018 IDI complaint to Thai court, p. 3.

¹³⁷ “Get Rid of Governor, Ethnic Minority says”, *Khmer Times*, 5 Oct 2015, <https://www.khmertimeskh.com/news/16540/get-rid-of-governor-ethnic-minority-says/>.

accused of illegal logging, for gathering wood reportedly collected from the forest inside the SEZ for private use. They were reportedly working on the land they had used since 1997 and which they continued to use even after the SEZ was established. The community members have been under judicial supervision ever since, and one was summonsed again to court in early 2018. His hearing was delayed as he did not have a lawyer to represent him. At time of writing, there is no new development on this case. Villagers from the MDS case also reported being subject to constant surveillance.

In September 2018, while on the SEZ land, MDS representatives reportedly stopped the bulldozing to discuss and negotiate with the villagers, and proposed to buy a plot of land of a family in the disputed SEZ land for \$190,000.¹³⁸ Reporters published a video showing the Provincial Committee objecting to the dispute resolution, explaining that the dispute resolution was to be decided by the Provincial Committee and not between the company and the family.¹³⁹ On the same day, the two reporters who reported on this were arrested by the local police on 17 September 2018 and charged with incitement and spreading fake news, following a complaint by MDS.¹⁴⁰ They were released on 20 September 2018.¹⁴¹

Threats, judicial harassment and intimidation allegedly occurred in all three cases, from the early stages of the dispute until today. It violates both Cambodian law and international human rights law, and precludes the victims from asserting the rights they are entitled to. The recurring surveillance not only intimidates the community members, it also negatively affects their freedom of movement and their ability to meet and discuss the land dispute, and therefore their ability to seek a remedy to their human rights violations. It sends a negative signal to other individuals whose rights are impacted by a land dispute, who may be more reluctant to advocate for a fair resolution of the matter out of fear of negative repercussions.

5.2. Intimidation and threats extend to NGOs assisting the victims

Local NGOs who supported the victims of the land disputes – through advocacy skills strengthening, human rights education training, or legal assistance – were also intimidated, monitored and harassed, which contravened their freedom of expression and their freedom of association.

In the **Mitr Phol case**, NGO members were also harassed by the authorities in relation to their work with the evictees.¹⁴² Some reported to CCHR being followed when going to the conflict site. In 2014, land-rights NGO representatives were systematically prevented from conducting interviews related to the land dispute, with some staff members being taken to the police station and held in police custody overnight.¹⁴³ It should be noted that in the **Socfin-KCD case**, no NGO reported having been targeted. However, in June 2018, when CCHR met with community members affected by the dispute, local authorities, including the police, came to monitor the interviews, and attempted to interrupt the meeting, alleging that prior authorization was not obtained, despite this not being a requirement under the law.

¹³⁸ This family is not among the 15 remaining affected families who are advocating to seek a solution.

¹³⁹ The video was published on TNM's Facebook page, but it was subsequently removed.

¹⁴⁰ "Journos held for 'fake news'", *The Phnom Penh Post*, 20 Sep 2018, <https://www.phnompenhpost.com/national/journos-held-fake-news>; "Journalists accused of incitement over land dispute reporting", *Khmer Times*, 20 Sep 2018, <https://www.khmertimeskh.com/50534495/journalists-accused-of-incitement-over-land-dispute-reporting/>; "Oknha Try Pheap faces two journalists accused of publishing false and provocative information, both journalists arrested", *Fresh News*, <http://freshnewsasia.com/index.php/en/localnews/99542-2018-09-19-07-54-29.html> (only available in Khmer).

¹⁴¹ It is unclear whether the charges were dropped, if any fine was paid, or if any trial will take place.

¹⁴² "Rights Group Claims Continued Harassment in Oddar Meanchey", *The Cambodia Daily*, 13 Oct 2014, <https://www.cambodiadaily.com/news/rights-group-claims-continued-harassment-in-oddar-meanchey-69650/>.

¹⁴³ "Oddar Meanchey Authorities' Continued Illegal Conduct Towards Equitable Cambodia's Staff", *LICADHO*, 16 Oct 2014, <http://www.licadho-cambodia.org/pressrelease.php?perm=360>.

In the **MDS case**, CCHR staff and documentary filmmakers, hired by AAC, were prevented from leaving Sangkum Thmey village while investigating the forced evictions.¹⁴⁴ In 2017, a Pursat provincial official told CCHR that NGOs were preventing the land dispute from being solved, accusing them of spreading false information and of setting unrealistic expectations. In May 2018, when CCHR interviewed the community members, local authorities and the police came to interrupt the meetings, alleging that CCHR did not have the requisite paperwork. While CCHR was eventually able to continue the interviews, this constituted an impermissible restriction of the right to assemble and on freedom of expression. When CCHR met the district authorities in May 2018, they implied that CCHR and the community leader were attempting to form a land resolution group, which would not be accepted by authorities.

Finding 6. Significant efforts must be made to ensure victims' access to timely and effective remedies

In cases of human rights violations, victims must be entitled to an effective remedy. Such remedy must not only compensate for the material loss (land, house, properties, farmed products, etc.), it must also compensate for the other, immaterial prejudice suffered such as loss of income, the costs associated with moving somewhere else, the costs associated with mental health expenses, etc. In the case of forced evictions, international law provides that an effective remedy should include return, restitution, resettlement, rehabilitation and compensation.¹⁴⁵ Principles 25 to 31 of the UNGPs specifically deal with the State's obligation to provide an effective remedy for human rights violations by businesses. What is essential is that the process is impartial and fair,¹⁴⁶ and that the remedy be effective – that is, that the remedy must actually lead to a redress of the violation, rather than being a mere procedure with no results. Further, the process must be accessible, meaning that individuals must be aware of it, and must be able to use it without undue hindrance.¹⁴⁷ To be truly effective, a remedy must involve the cessation of an ongoing violation.¹⁴⁸ Similarly, those found responsible for a human rights violation must be brought to justice by the State.¹⁴⁹ According to the UNGPs, businesses must also take an active part in ensuring that individuals whose rights are adversely affected by their operations can obtain an effective remedy.¹⁵⁰

What CCHR's research shows is that the dispute resolution process took place on a case by case rather than systematic basis, and only after significant violations and irreparable damage had already taken place. Despite multiple and diverse attempts, for all three cases, the resolution is still ongoing – although each is at a different stage. Notably, little consideration is given to the remediation of the human rights violations suffered; instead, any land dispute resolution focuses on the material loss of the communities, even though Cambodia's international obligations requires that any human rights violation be provided with an effective remedy. When there was some form of remedy, most interviewees alleged that they felt they had no other choice but to accept it; yet, they described it as insufficient.

¹⁴⁴ "Pursat yells 'cut' on CCHR", *The Phnom Penh Post*, 26 Dec 2016, <https://www.phnompenhpost.com/national/pursat-yells-cut-cchr>; "Civil society condemns harassment and obstruction of staff and film crew in Pursat province", *CCHR*, 24 Dec 2016,

https://docs.google.com/viewerng/viewer?url=http://www.cchrcambodia.org/media/files/press_release/645_212jschaosafcippe_en.pdf.

¹⁴⁵ "Basic principles and guidelines on development-based evictions and displacement", *Special Rapporteur on Adequate Housing*, A/HRC/4/18, para. 59, https://www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf ('UN Basic principles and guidelines on development-based evictions and displacement').

¹⁴⁶ UNGP 25.

¹⁴⁷ UNGP 26.

¹⁴⁸ "General Comment No. 31, Nature of the general legal obligation imposed on States parties to the Covenant", *UN Human Rights Committee*, May 2004, para. 15, ('UN HRC General Comment No. 31')

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRICAqhKb7yhsjYoiCfMkoiRv2FVaVzRkMjTnjRO%2Bfud3cPVrcM9YR0iW6Txaxgp3f9kUfPWoq%2FhW%2FTpKi2tPhZsbEJw%2FGeZRASjdFuujQRnbJeaUhby31WlQPl2mLFDe6ZSwMMvmQGVHA%3D%3D>.

¹⁴⁹ UNHRC General Comment No. 31, para. 18.

¹⁵⁰ UNGP 19.

In all three cases, authorities interviewed by CCHR implied that the land dispute was not resolved as a result of the affected communities' lack of cooperation, implying that they were being "difficult" by not accepting the proposed resolution. Further, several representatives from the authorities told CCHR that no human rights violation was committed and that no one was forcibly evicted. It appeared from the interviews that for many, since the SEZ or ELC had been authorized by the Government, it had to be respected, and everything which followed was legal. Their position was that, since the companies had a license from the RGC, there could not be any violation of the law. By contrast, nearly all community members interviewed told CCHR that, in their view, the main obstacle to the dispute resolution was the lack of effort on the part of the authorities, which did not seem to give due consideration to their situation, and who were also perceived as promoting the company's interests over that of the affected communities.

6.1. The land disputes have long-lasting and far-reaching impacts

The land disputes, which have been ongoing for eight to 10 years, have had severe consequences on more than 1,600 affected families. For those that CCHR interviewed, the damage went much further than material loss, including psychological and emotional impacts. Despite significant efforts being made by the authorities at all levels, very little has been achieved in terms of effective remedy in the three cases.

In the **Mitr Phol case**, approximately 712 households¹⁵¹ have been affected by the land dispute,¹⁵² which started in 2008. To date, 383 households are still left with no remedy at all.¹⁵³ In the **Socfin-KCD case**, more than 800 families over seven villages have been affected¹⁵⁴ since 2008; CCHR has been unable to identify a precise number of individuals who were still awaiting resolution, however, to date, 640 affected villagers are engaged in a dispute resolution process. In the **MDS case**, at least 97 families from three different villages have been affected by the land dispute¹⁵⁵ since late 2010. At time of writing, 15 families are still awaiting a remedy, almost a decade after the start of the land dispute.

In all three cases, in addition to the forced evictions, the loss of homes and properties, all victims interviewed by CCHR reported facing increased poverty, often due to reduced income as a result of the loss of their farmland. In the **MDS and Mitr Phol cases**, villagers told CCHR that they had to take out loans in order to survive, and therefore became indebted, with some having to sell their home and properties to repay the debt. Many had to take their children out of school. In the **Socfin-KCD case**, victims reported having lost access to natural resources such as sources of water, animals, and fishing areas, and therefore their livelihood. They also reported that their health worsened as a result of what they believe are chemicals from the rubber plantation and factory present in the lake's water. In all three cases, those interviewed faced several mental health issues including depression and stress, and in the **MDS and Mitr Phol cases**, they reported increased instances of domestic violence as a result. In these two cases, victims also reported that many family members and children migrated out of the area as a result of the land dispute.

6.2. A multitude of dispute resolution mechanisms were used

Multiple and diverse attempts were made by the authorities as part of an effort to solve the land dispute; nonetheless, most of those interviewed by CCHR stated that no one was satisfied by the land dispute

¹⁵¹ 1 household = 1 name per parcel of land used/lost.

¹⁵² Source: Equitable Cambodia.

¹⁵³ According to the lists compiled by Equitable Cambodia during field research and in collaboration with the affected communities.

¹⁵⁴ "Business and Human Rights in Cambodia, Constructing the Three Pillars", CCHR, Nov 2010, para. 188,

<https://cchrcambodia.org/admin/media/report/report/english/2010-11-30->

[%20Full%20Report%20%20Business%20and%20Human%20Rights%20in%20Cambodia%20Constructing%20the%20Three%20Pillars.pdf](https://cchrcambodia.org/admin/media/report/report/english/2010-11-30-%20Full%20Report%20%20Business%20and%20Human%20Rights%20in%20Cambodia%20Constructing%20the%20Three%20Pillars.pdf).

¹⁵⁵ Sangkum Thmei, Kandal and Aekakpheap, see "Brief Report on the Impact of Project development of MDS Company in Thma Da Commune, Veal Veng District, Pur Sat Province", Joint Report, *NGO Forum on Cambodia*, CHRAC, CLEC, ADHOC, CCHR, LICADHO Pursat, 19 Apr 2017, pp. 2-4 (only available in hard copy from NGO Forum on Cambodia and CCHR).

resolution so far. In all three cases, the resolution is still ongoing – although each is at a different stage of dispute resolution.

A multitude of processes have taken in place over the years, sometimes simultaneously. All involved affected communities or their representatives, local authorities, and the companies' representatives. Some involved the provincial, national authorities, or international organizations such as the United Nations, or international networks. In all cases, the affected communities approached the local, provincial and national authorities through the submissions of petitions, intervention letters and complaints – largely the Prime Minister, the MAFF, the Ministry of Environment ('MENV'), the MLMUPC, the CDC, National Assembly.

Other mechanisms used included multi-stakeholder meetings and international advocacy. In the **Socfin-KCD case**, in 2015, OHCHR Cambodia put into place a bi-yearly multi-stakeholder meeting, which also included NGOs working on the case, aiming to promote transparency through the sharing of information and enhance the coordination of actions by the different actors. OHCHR Cambodia further trained Socfin-KCD staff on business and human rights and on indigenous people's rights, and helped them to prepare their external grievance management policy.¹⁵⁶ In the **Mitr Phol case**, a complaint was filed against Mitr Phol to the international network of sugar producers, the Better Sugar Initiative (now known as Bonsucro) in 2011, and re-submitted in 2016,¹⁵⁷ after Mitr Phol was re-admitted to the network. Despite multiple attempts by the NGOs to follow up, very little action has been taken by the network to date. In 2013, the communities also filed a complaint to the National Human Rights Commission of Thailand, which concluded, in 2015, that systematic human rights abuses had occurred between 2008 and 2009.¹⁵⁸ Unfortunately, nothing concrete happened as a result. Multinational companies which purchase sugar from Mitr Phol, namely Coca-Cola, Pepsi, Nestlé and Mars, have been approached by NGOs in an effort to get them to put pressure on Mitr Phol to engage in the dispute resolution process in Cambodia and provide an effective remedy. At time of writing, little has been done.¹⁵⁹

In only one of the three cases did the communities go to the Cambodian court. In 2014 in **the MDS case**, some community members filed a complaint to the Pursat Provincial Court Prosecutor, against the Deputy Provincial Governor, for the actions of the mixed armed forces which bulldozed and destroyed the houses and plantations of 11 families inside the SEZ land in November 2014. The complaint alleged that the Deputy Provincial Governor was the one who ordered the mixed armed forces to undertake the destruction. They reportedly asked for US\$2,000 per family as compensation, as well as for legal action to be taken against the Deputy Provincial Governor. While the four community members who filed the complaint were interviewed in January 2015, nothing has happened since.

¹⁵⁶ In its 2017 Sustainability Report, Socfin S.A. refers to an external grievance management procedure in Cambodia, which was officially presented to the local communities and authorities, and which included a summary in Khmer, "Sustainability Report, 2007, Responsible Tropical Agriculture", *Socfin*, p. 27, http://www.socfin.com/frontend/files/userfiles/files/2017%20Socfin_Sustainability%20report_LR.pdf.

¹⁵⁷ Complaint to Better Sugar Cane Initiative Re: Mitr Phol Group, Equitable Cambodia, Inclusive Development International, *LICADHO*, 5 Feb 2016, <https://www.inclusivedevelopment.net/wp-content/uploads/2016/02/Amended-Complaint-to-Bonsucro-re-Mitr-Phol-Group-05-February-2016.pdf>.

¹⁵⁸ "Investigation Report No: 1003/2015, Re: Community Rights: Mitr Phol Sugar Company Limited negative impacts on people living in Samrong District and Chongkal District, Oddar Meanchey Province, Northeastern Cambodia", *National Human Rights Commission of Thailand*, 12 Oct 2015, https://www.inclusivedevelopment.net/wp-content/uploads/2016/09/Thai-Human-Rights-Commission-Report_Mitr-Phol_Unofficial-translation.docx; see also "Sugar giant in spotlight for abuse", *The Phnom Penh Post*, 14 Aug 2014, <https://www.phnompenhpost.com/national/sugar-giant-spotlight-abuse>; "New complaint challenges Thai company's membership in sustainable sugar group", *IDI*, 19 Feb 2016, <https://www.inclusivedevelopment.net/idi-and-partners-challenge-thai-companys-membership-in-sustainable-sugar-group/>.

¹⁵⁹ "Thai Court Accepts Cambodian Land Grabbing Case, Orders Mediation", *IDI*, 5 Sep 2018, <https://www.inclusivedevelopment.net/thai-court-accepts-cambodian-land-grabbing-case-orders-mediation/>.

6.3. The remedies offered do not qualify as an effective remedy under human rights law

Many reported having accepted the dispute resolution mechanism offered out of fear that, should they refused, they would be left with no remedy altogether. Notably, where remedies are discussed, little consideration is given to the remediation of the human rights violations suffered; instead, land dispute resolution mechanisms solely focus on the material loss of the victims.

Under human rights law, a remedy must be timely, and repair all aspects of the human rights violation. All victims must also be entitled to compensation for the loss of the properties, irrespective of whether or not they hold a property title.¹⁶⁰ In particular, any financial compensation for forced evictions must cover all economically assessable damage, such as the loss of life or limb, or of livestock/land/tree/crops; physical or mental harm; lost opportunities, including employment, education and social benefits; material damages and loss of earnings, including loss of earning potential; moral damage; costs required for legal or expert assistance, medicine and medical services, and psychological and social services; administrative costs; resettlement and transportation losses.¹⁶¹ Where land has been taken, the victim should be compensated with land of the same quality, size and value, or better.¹⁶² In case of relocation, the State should provide safe and secure access to essential food, potable water and sanitation, basic shelter and housing, appropriate clothing, essential medical services, livelihood sources, fodder for livestock and access to common property resources previously depended upon, as well as education for children and childcare facilities.¹⁶³

Three types of remedies have been used: leopard skin policy, financial compensation and land exchange.

Leopard skin policy and family plantations

In the **MDS case**, the local, provincial and national authorities were approached to provide a land dispute resolution. Most of the affected families saw their land demarcated after the implementation of Directive 001.¹⁶⁴ Plots of land belonging to 23 families were not demarcated, as MDS prevented the volunteers from measuring it, asserting that the land was the subject of a land dispute and therefore outside of the scope of Directive 001.¹⁶⁵ Four of the 23 families were able to stay on parts or all of their land, pursuant to the leopard skin policy; however, while the process provides for the issuance of land titles, none of them have received it to date. In the **Socfin-KCD case** in 2009, 150 families signed a contract with Socfin-KCD, accepting the so-called “family plantations”,¹⁶⁶ namely, plots of land on the ELC’s land, where Socfin-KCD would prepare the land and the plantations, and where the family would maintain, harvest and sell the rubber to Socfin-KCD. Shortly after, many families discovered that the contract referred to them “renting” the land from Socfin-KCD for 60 years, and therefore disengaged from the contract. To date, CCHR does not have the total amount of affected families who accepted this form of land dispute resolution; however, the renegotiation of those contracts is included in the ongoing mediation process discussed below.

¹⁶⁰ UN Basic principles and guidelines on development-based evictions and displacement, para. 61.

¹⁶¹ UN Basic principles and guidelines on development-based evictions and displacement, paras 60, 63.

¹⁶² UN Basic principles and guidelines on development-based evictions and displacement, para. 60.

¹⁶³ UN Basic principles and guidelines on development-based evictions and displacement, para. 52.

¹⁶⁴ CCHR does not have information as to how many people actually had their land demarcated, and about how many, if any, have been able to obtain a land title as a result. CCHR also could not get information as to how many simply abandoned the dispute resolution process.

¹⁶⁵ See “Brief Report on the Impact of Project development of MDS Company in Thma Da Commune, Veal Veng District, Pur Sat Province”, Joint Report, *NGO Forum on Cambodia, CHRAC, CLEC, ADHOC, CCHR, LICADHO Pursat*, 19 Apr 2017, pp. 2-4 (only available in hard copy from NGO Forum on Cambodia and CCHR).

¹⁶⁶ Sometimes known as “rubber families”.

Financial compensation

In the cases where financial compensation was an option, the amount proposed was insufficient to cover all losses and to allow the victims to resettle elsewhere in the same conditions as they were used to prior to the dispute. In the **Socfin-KCD case**, many of the affected community members did receive financial compensation between 2009 and 2012. Affected community members whom CCHR met in 2017 reported that not everyone received the same compensation for the same amount of land, with some getting 100 USD per hectare, while others received 200 USD per hectare. Some reported that the financial compensation did not cover the land itself, but only the trees planted on them, for which people received about 10,000 riels (2.50 USD) per tree. The authorities explained the different amounts offered to different families by the fact that each family negotiated individually with Socfin-KCD. Some villagers alleged having felt forced into accepting the compensation, as the company representative told them that if they did not accept it, they would not get anything at all. The authorities denied this allegation, adding that most affected community members chose this option. They further alleged that some villagers who had previously received compensation were now asking for more money, because the price of the land has increased, but Socfin-KCD told CCHR in 2017 that the financial compensation provided was higher than the amount identified in the first ESIA. One issue is also that the land value significantly increased over the years, creating discontent between those who received financial compensation at the early stages in the dispute, and those who received it more recently, as the amounts significantly differed.

In the **MDS Case**, only three of the 97 affected families accepted financial compensation: two in 2016, and one in mid-September 2018, who received financial compensation of \$60,000. One of these families never received the amount, as it had moved to Battambang in the meantime and stopped advocating for a resolution of the land dispute in which it was involved, for reasons unknown to CCHR. According to those interviewed by CCHR in May 2018, the family who accepted and received the financial compensation is not satisfied by the amount provided.

Land exchange

Social Land Concessions ('SLCs') have been presented as a form of remedy in two of the three cases: Mitr Phol and MDS. From the outset, such practice is flawed, since SLCs are aimed to provide land tenure to the landless. Therefore, accepting an SLC amounts to admitting that one does not have valid property claims to the disputed land. Further, SLCs are limited in size: a SCLs granted for residential purpose is 1,200 square meters, and cannot be larger than 3,600 square meters,¹⁶⁷ while a SLC granted for "family farming purposes" is generally two hectares, although it can be increased to five hectares.¹⁶⁸

In the **MDS Case**, in 2016, three families accepted a social land concession, although they still have not received it at time of writing.¹⁶⁹ To date, this is the sole solution proposed by the authorities, yet many concerns remain. First of all, some community members alleged having been forced to accept SLCs back in May 2017. Further, in May 2018, a representative of the affected families reported having been told that if they did not accept the SLC, no other solution would be proposed. Second, the proposed SLCs are located in the area surrounding the SEZ, and on land filled with landmines.¹⁷⁰ When CCHR met with public authorities

¹⁶⁷ Sub-Decree 19 on Social Land Concessions, 19 Mar 2003, Art. 16, http://www.cambodiainvestment.gov.kh/sub-decree-19-on-social-land-concessions_030319.html ('Sub-Decree 19').

¹⁶⁸ Sub-Decree 19, Art. 17.

¹⁶⁹ As outlined below, these families never actually obtained the SLC since the land is full of mines.

¹⁷⁰ Indeed, the part of Cambodia along the North-western border is considered as one of the largest high-density minefields in the world, and the proposed SLC land is located in an area containing landmines dating back from 1979-1998 civil war; see 'RGC's National Mine Action Strategy 2018-2025', 12 Dec 2017, Introduction, p. 1, http://www.cmaa.gov.kh/images/contents/NMAS/NMAS_in%20English.pdf.

in May 2018, they acknowledged the problem, and admitted that the proposed land had not yet been cleared of landmines. On 20 August 2018, following a letter of the National Assembly,¹⁷¹ which itself followed a petition by the affected families,¹⁷² the director of the MLMUPC's provincial department promised to solve and end the land dispute by 22 August 2018. Shortly after, the main community representative was approached by three different persons – the commune chief, a military commander who works at the border, and one of MDS's representative – who requested to meet her in order to discuss a possible solution. They asserted that the solution had to be processed individually, and that she should meet them alone. Out of will that the solution be processed publicly, transparently and for all the families at once, and due to security concerns, the community representative did not meet with them.

To date, 15 families are therefore still awaiting a solution to the dispute. In light of the information given by the authorities back in May 2018 about the upcoming “import-export” gate between Cambodia and Thailand, with the goods transitioning through the MDS SEZ, it is likely that further pressure will be put on the families to accept a resolution and leave their land located on the SEZ. Yet, given that to be allocated, SLCs must also include basic infrastructure such as roads, water, electricity, schools, markets, health care centers, and tools and equipment to develop the land, other services, information about how and when to prepare these physical infrastructures and to provide those public services,¹⁷³ it appears to be that, even if all the affected families accepted SLCs, they would not be able to use the land until for at least several months.

In June 2018, in the **Mitr Phol case**, the authorities told CCHR and the affected communities that they were going to offer two hectare SLCs to the victims. The SLCs were to be offered to 414 families who had registered with the MLMUPC back in October 2017, and were located on their former land, inside the ELC. A lucky draw took place in June 2018 and all families accepted what the authorities referred to as SLCs. Plots of land were received by 329 families from five of the affected villages.¹⁷⁴ CCHR was informed that other parts of the land inside the ELC would be given to retired military veterans.

Regrettably, a number of issues marred the process. First, not all those affected by the land dispute could register with the MLMUPC, largely because they had not been informed, and/or had immigrated to Thailand and were unable to travel back to Cambodia. Second, many told CCHR that they agreed to the settlement out of fear that no other remedy would be proposed. Third, some felt they were treated unfairly, with some alleging that they received land smaller than two hectares and others that they were given remote and barely accessible land, which requires significant time and effort to be cleared and readied for farming activities. Many villagers also complained that the size of the land was much smaller than the land they initially lived on. Third, while the authorities have consistently referred to the land as a SLC, none of the official documents actually state so. The only document which community members were given was a receipt listing their name, the size and the location of the attributed land. This is particularly concerning since land rights associated with a SLC – for which five years must pass before the beneficiary can request a land title, and which cannot be sold – are significantly different from that of a regular land exchange, for which land titles can be requested immediately and for which the land can be sold.

At time of writing, 383 households were not registered with the MLMUPC and are therefore still awaiting a dispute resolution. Out of these, 92 were told by the authorities that they were working on finding a solution

¹⁷¹ The first letter was sent on 8 November 2016, the second on 11 April 2017. Both were sent to the MLMUPC.

¹⁷² The 17 families were concerned when they submitted their petition, but as mentioned above, two found a resolution and therefore, 15 families are continuing to seek a solution.

¹⁷³ Sub-decree 19, Art. 19 (f), listing requirements for SLC planning.

¹⁷⁴ This number, which was obtained directly from the community representatives through CCHR's research, and which have also been verified by Equitable Cambodia, differs from the number of 385 given by the MLMUPC. Villagers came from from Ta Man, Khtum, Thnal Bat, Trapeang Veaeng and Boss village.

for them, but are still awaiting a solution. In October 2018, community representatives told CCHR that the 291 remaining households have been encouraged by the authorities to register with the local authorities instead of seeking to resolve the land dispute through community representatives. The figures above were obtained directly from the community representatives and have been thoroughly verified,¹⁷⁵ and differ from the figures mentioned by public authorities during interviews and in public documents.¹⁷⁶

The three land disputes affected more than 1,600 individuals and had long-term negative consequences for the victims and their families, materially and emotionally. To date, around 1,038 households are still looking for a resolution, while those who already took part in a dispute resolution reported feeling left with no choice but to accept it. What the three cases show is that despite multiple processes being put into place to resolve the dispute, and several remedies being proposed to the victims, the vast majority of the victims have yet to find an effective remedy, decades after the start of the land dispute.

Finding 7. Alternative and innovative dispute resolution mechanisms should be facilitated

In the two cases involving foreign companies, which are also the cases where the dispute has lasted the longest (more than 10 years), victims have used alternative processes to seek a resolution to the dispute. While those are not to substitute the recourses which should be put into place in Cambodia itself, they may constitute additional ways by which the victims can obtain a remedy for the land dispute.

7.1. Recourse to foreign courts

In the two cases involving foreign companies, communities are attempting to obtain a remedy by filing a civil suit in the courts where the companies are registered: Thailand, for Mitr Phol; and France, for Socfin-KCD.

On 27 March 2018, community representatives involved in the **Mitr Phol dispute**, went to Thailand to file a class action civil lawsuit against Mitr Phol, on behalf of more than 700 families (3,000 people),¹⁷⁷ alleging that a number of human rights violations took place following Mitr Phol's sugar plantations. These include forced evictions, forcible displacement, burning of houses, looting of crops and livestock, and the taking of legally owned farmland, but also that those who resisted were threatened, arrested and imprisoned.¹⁷⁸ The complaint is the first of its kind filed by foreign victims in relation to allegations of crimes occurring outside of Thailand.¹⁷⁹ The complaint was accepted, and on 6 September 2018 a mediation was organized by the Thai Judges.¹⁸⁰ According to the information given to CCHR, Mitr Phol decline to engage in the negotiation process. As a result, the court is now moving on to assess whether the case is admissible as a class action under Thai law.

In the **Socfin-KCD case**, in July 2015, a civil liability lawsuit was started in France, against two major Socfin-KCD's shareholders, the Bolloré group and the "*Compagnie du Cambodge*" ('Company from Cambodia')

¹⁷⁵ Land-rights NGO Equitable Cambodia has been working together with affected communities to establish a comprehensive list of affected households, which CCHR was able to access and which it considers to be the most authoritative document available.

¹⁷⁶ "Report of the Special Rapporteur on the Situation of Human Rights in Cambodia: Comments by the State", UN Doc A/HRC/39/73/Add.2, 11 Sep 2018, p. 21, <https://undocs.org/A/HRC/39/73/ADD.2>.

¹⁷⁷ "Forcibly displaced Cambodians file historic lawsuit against Asia's largest sugar producer", *IDI*, 2 Apr 2018, <https://www.inclusivedevelopment.net/forcibly-displaced-cambodians-file-historic-lawsuit-against-asias-largest-sugar-producer/>; "Thai Court Accepts Cambodian Land Grabbing Case, Orders Mediation", *IDI*, 5 Sep 2018, <https://www.inclusivedevelopment.net/thai-court-accepts-cambodian-land-grabbing-case-orders-mediation/>.

¹⁷⁸ "Forcibly displaced Cambodians file historic lawsuit against Asia's largest sugar producer", *IDI*, 2 Apr 2018,

<https://www.inclusivedevelopment.net/forcibly-displaced-cambodians-file-historic-lawsuit-against-asias-largest-sugar-producer/>;

¹⁷⁹ "Thai Court Accepts Cambodian Land Grabbing Case, Orders Mediation", *IDI*, 5 Sep 2018, <https://www.inclusivedevelopment.net/thai-court-accepts-cambodian-land-grabbing-case-orders-mediation/>.

¹⁸⁰ *Ibid.*

owned by French tycoon Vincent Bolloré, on behalf of 51 plaintiffs from Bu Sra village.¹⁸¹ The plaintiffs allege human rights violations and environmental damage¹⁸² and request the restitution of their land as well as 65,000 euros as compensation for material and moral damages.¹⁸³ On 10 February 2017, following a request by the two companies, the Tribunal required the plaintiff to submit a number of documents to establish that they have a legitimate claim to the land they accuse the companies of grabbing, including official documents establishing the “existence, nature, location, exact size and reference” of the land which is requested to be given back and official and notarized documents establishing property rights of each individual over the disputed land.¹⁸⁴ The decision further scheduled a status conference on 29 May 2017.¹⁸⁵ CCHR could not locate further information on the case, but when it met the communities, it was told that a hearing was scheduled for late 2018, where the victims would travel to France and be heard. CCHR was also informed that some community representatives withdrew from the complaint in order to join the mediation process. The Bolloré group denied having any control over Socfin-KCD’s actions, which it alleged were under Socfin Group’s Chief Executive Officer (‘CEO’), Hubert Fabri.¹⁸⁶ In light of the difficulty of holding companies responsible for activities of subsidiaries alone (referred to as the ‘corporate veil’), the disbalance between an indigenous community with limited means and a multinational group worth billions of euros, and the fact that it will be challenging for the plaintiffs to provide the requisite documents, there is little chance of the lawsuit’s success.

7.2. Independent mediation

In the **Socfin-KCD case**, 589 families across five villages¹⁸⁷ are participating in an independent mediation process which has been ongoing since November 2016, conducted by the Independent Mediation Organization (‘IMG’) and supported by OHCHR Cambodia.¹⁸⁸ It covers the ELCs of Varanasi, Sethikula and Coviphama. As far as CCHR is aware, the use of such an independent and structured mediation process is a first in Cambodia. While the process is often referred to as mediation, there are in fact several mediations going on at the same time, involving different groups and covering a variety of topics, going above and beyond the land dispute, such as a review of the status of the “family plantations” and the question of sacred forests inside the ELC. Notably, all those who participate are required to sign a confidentiality agreement, which explains why there is limited publicly available information on the process.

The mediation includes villagers’ representatives, OHCHR,¹⁸⁹ former members of the trilateral group, which used to negotiate with Socfin-KCD in the past on behalf of the communities, Socfin-KCD, and representatives

¹⁸¹ *Tribunal de Grande Instance de Nanterre, 6e Chambre*, 10 Feb 2017, n° 15/10981, (Only available in French), https://www.doctrine.fr/d/TGI/Nanterre/2017/FREEBB840C2C3837B691D0?q=socfin-KCD&only_top_results=true&original_query_key=1b5bc479c33900e1aac7ef720a03ed5c&selected_keywords=%5B%5D&position=1&action=result&query_key=1b5bc479c33900e1aac7ef720a03ed5c&event_key=2018-09-04-4958878&source=excerpt_results (‘10 February 2017 Ruling of the Nanterre’s Tribunal’); unofficial English translation at http://business.sithi.org/show_report_detail_land.php?id=75&lang=en; “In Cambodia, Bunong people fight for their land against Vincent Bolloré”, *Mediapart*, 4 Nov 2015, <https://www.mediapart.fr/journal/international/041115/au-cambodge-les-bunongs-luttent-pour-leurs-terres-contre-vincent-bollore?onglet=full> (only available in French); “Cambodian farmers sue the Bolloré Group in France”, *Le Monde*, 29 Jul 2015, https://www.lemonde.fr/planete/article/2015/07/29/spoliee-de-sa-terre-une-population-autochtone-du-cambodge-assigne-le-groupe-bollore-en-justice_4703542_3244.html (only available in French).

¹⁸² “Bolloré attacked in France for his plantations in Cambodia”, *Mediapart*, 28 Jul 2015, <https://www.mediapart.fr/journal/economie/280715/bollore-attaque-en-france-pour-ses-plantations-au-cambodge?onglet=full> (only available in French).

¹⁸³ 10 February 2017 Ruling of the Nanterre’s Tribunal, p. 5.

¹⁸⁴ 10 February 2017 Ruling of the Nanterre’s Tribunal, pp. 6, 7.

¹⁸⁵ 10 February 2017 Ruling of the Nanterre’s Tribunal, p. 7, (‘*Motifs*’ - reasons).

¹⁸⁶ Bolloré attacked in France for his plantations in Cambodia, *Mediapart*, 28 Jul 2015, <https://www.mediapart.fr/journal/economie/280715/bollore-attaque-en-france-pour-ses-plantations-au-cambodge?onglet=full> (only available in French).

¹⁸⁷ Pu Cha, Pu Reang, Pu Lu, Pu Tuet, and Bu Sra. Source: OHCHR.

¹⁸⁸ See <http://img-cambodia.org/en/imgprojects/claim>.

¹⁸⁹ “Report of the United Nations High Commissioner for Human Rights on the Rights of Indigenous People”, OHCHR, 6 Jul 2018, para. 29, <https://undocs.org/A/HRC/39/37>.

from the commune and district levels. Legal Aid Cambodia ('LAC'), an NGO which provides legal aid services throughout Cambodia, trains the communities on negotiating skills and supports them before, during and after the mediation process. At time of writing, the first step of the mediation, which relates to communal land, was to be completed during the first week of October 2018. A mediation agreement was set to be signed on 2nd and 3rd October 2018. The remaining issues to be addressed by the mediation are now: the land that is at the border of the river, the family plantations, and the land compensation, and the mediation process may continue for approximately another year.

Independent mediation and the submission of complaints to foreign courts can complement State-based dispute resolution mechanisms which have at times proven ineffective and/or unsatisfactory for the victims of land disputes. However, it is essential to recall that the primary duty to provide an effective remedy for a human rights violation belongs to the State. Therefore, the existence of such processes must not deter the RGC from actively seeking a fair and just resolution to the existing land disputes.

CONCLUSION AND RECOMMENDATIONS

The Cambodian legal framework allows, in theory, for relatively strong protection of land rights. It provides for meaningful consultations, protects against forcible evictions and guarantees the right to freedom of expression. Similarly, the authorities have acknowledged the issue of land disputes in Cambodia and publicly announced a number of steps to be taken in order to solve them.

Yet CCHR's research shows that the reality differs. ESIA's are not conducted or not respected; affected communities are not properly informed, consulted or listened to; human rights defenders are monitored, threatened and harassed; and most victims interviewed by CCHR report having been forced into giving away their land and accepting whatever form of "resolution" the authorities proposed. Several years after the start of the land disputes, and despite a number of dispute resolution processes having taken place, in all three cases, the victims of the land disputes have not received an appropriate remedy covering both the loss of their land and the human rights violations they suffered thereafter.

Most of the issues listed in the present Briefing Note could have been avoided were the pre-requisites for ELCs and SEZs properly and effectively put into place, implemented and followed up. Ultimately, this would save time, money and effort for all relevant stakeholders, avoid land disputes, and allow for the sustainable development of Cambodia.

Recommendations to the Royal Government of Cambodia

- R1.** Unequivocally **require ESIA's before** allowing any development, infrastructure project or SEZ, require that they are made available to affected communities and to the public in a timely manner, and demand that **mechanisms to monitor their implementation** are put into place in accordance with international human rights standards, including Principle 18 of the UNGPs, and the IFC; and **reconsider the contracts of companies** operating ELCs or SEZs, require those who have not done so to conduct an ESIA, to establish a mitigation plan for the risks identified and to monitor its implementation, and demand that they provide an effective remedy;
- R2.** Ensure that **meaningful consultations with communities** affected by land dispute take place prior to any contract being given, that they are kept apprised of the developments, and ensure that the principle of **Free Prior and Informed Consent** is respected;
- R3.** **Ensure timely resolutions of land disputes**, failure of which causes the disputed land to be given back to the victims, in accordance with international standards such Article 3 (a) of the ICCPR, and Principle 26 of the UNGPs;
- R4.** Ensure that **remedies respect international standards**, including the UN Basic principles and guidelines on development-based evictions and displacement, and meets the effectiveness requirements of Principle 31 of UNGPs;
- R5.** **Stop all forms of monitoring, harassment and punishment of human rights defenders** in relation to land disputes;
- R6.** Create an **independent, impartial and effective grievance mechanism** to receive and resolve complaints from SEZ workers and local communities whose human rights are negatively affected by the SEZ; and
- R7.** Develop and adopt a **National Action Plan on Business and Human Rights**, in consultation with civil society, to disseminate and implement the UNGPs.

Recommendations to Businesses

- R8.** Exercise **due diligence** prior to starting any operation in Cambodia, in accordance with Principles 15, 17 and 18 of the UNGPs;
- R9.** **Conduct ESIA**s, make them available to affected communities and to the public in a timely manner, and put into place **mechanisms to monitor their implementation**, in accordance with international human rights standards such as Principle 18 of the UNGPs, and following the IFC's requirements;
- R10.** Identify affected communities, ensure **meaningful consultations** and respect the principle of **Free Prior and Informed Consent**, and **engage** with affected communities and CSOs involved in land dispute resolution; and
- R11.** **Effectively remedy all human rights violations**, and ensure that any remedy meets the effectiveness requirements of Principle 31 of the UNGPs.

Recommendations to Civil Society Organizations

- R12.** **Continue to actively monitor** land disputes and keep a record of affected individuals as well as of human rights violations, and **publicly report on dispute resolution processes** ;
- R13.** **Encourage and facilitate dialogue** between affected communities, corporate actors and public authorities to discuss the resolution of land disputes in accordance with the UNGPs;
- R14.** **Increase awareness on business and human rights issues** to all relevant stakeholders including the RGC, corporate actors, communities and CSOs; and
- R15.** Ensure that communities are informed and aware of **what constitutes an effective remedy under international human rights law**.