



FIAN DEUTSCHLAND



### Ministry of Foreign and European Affairs

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## Statement of civil society organisations to the government of the Grand Duchy of Luxembourg regarding the land conflict between indigenous communities in Cambodia and a Luxembourg-based transnational company



Zurich / Bu Cha / Luxembourg / Cologne / Brussels, 16 May 2023

### Most-likely illegal land concessions, and indigenous resistance

In 2008 and 2013, the Luxembourg-based palm oil and rubber company Socfin, which is operated today from Switzerland, received three «Economic Land Concessions» in the highlands of Cambodia covering 12,000 hectares, in a forest area where hundreds of indigenous Bunong families of Bu Sra commune have practised agriculture and pasture farming for centuries. Their way of life is spiritually rooted in their sacred sites and burial grounds. The state granted the concessions without

prior consultation and consent of the indigenous communities and on land that was not even available for concessions according to the Cambodian land law.

Accepting concessions that are most-likely illegal and establishing rubber plantations on indigenous land is a serious abuse of indigenous territory and a violation of corporate human rights responsibilities.

For the Bunong inhabitants in the region, the loss of large parts of their territory, its conversion into rubber monocultures and the forced conversion of their traditional form of agriculture into stationary farming on residual land was a tremendous shock. It disrupted their daily lives in both social and spiritual ways.

The corporation gave the affected families three choices: accepting replacement land elsewhere; accepting financial compensation; or becoming rubber contract farmers.

These offers were problematic in many ways. For example, the options offered and the way in which they could be combined were not made clear enough. Also, the measurement of the size of land a family had lost was considered inappropriate; and it was no longer possible to measure the size of land lost by the families whose farms had already been bulldozed. In some cases, the timeframe within which the company dealt with certain compensation claims was much too long and left affected villagers in a precarious and uncertain situation. Since Socfin's arrival, village communities have been fighting against the confiscation of their land. A round of tripartite negotiations with the state and the company, initiated by Bunong Indigenous People's Association BIPA, ended after some years in 2016 due to a lack of funding.

### **The mediation process co-funded by Luxembourg**

In 2017, the 'Mekong Region Land Governance' (MRLG) project, funded by Switzerland, Germany and Luxembourg, stepped in and commissioned the Independent Mediation Group (IMG) to implement a mediation process between the company and affected communities.

Roughly 210 families from five villages out of a total of 1000 families from seven villages participated in the mediation process through elected representatives. However, from the outset there was an almost complete lack of transparency due to a confidentiality agreement said to have been requested by the company. The mediation process was completed in autumn 2022 with the issuing of a 'Joint statement' and the conclusion of various separate agreements with each group of families from the various villages.

Because of the confidentiality, families as well as civil society organisations who were not involved in the mediation process did not get access to the mediation documents. Even many of the families who were involved were not informed about the outcomes, as conversations by different persons in 2019, 2021 and 2022 revealed. Nevertheless, civil society organisations received a copy of the 'Joint statement' and the agreements with the families of one village, but without the important annexes.

An analysis of the few documents available produced alarming conclusions: The agreements officialised and fixed the status quo which is in complete favour of the company. Nothing changes with regard to the access to land, and no land will be returned. The affected families give up all their claims. In return, they were given the promise of vague and limited 'community development' budgets and negligible road repairs. The land conflict is by no means resolved, especially as customary farmland - apparently the majority of farmland used by the communities - is allegedly not included in the agreements. With the absence of public authorities, the extreme power imbalance between the multinational corporation and the indigenous family representatives and with the almost complete lack of transparency, serious doubts remain about the legitimacy and fairness of the mediation process and its outcomes.

The mediation process even inflicted adverse impacts on the communities: «The process has divided and disrupted communities and has damaged mutual trust within Bu Sra commune. The communities are weakened», testified a Bunong villager. «It is like a house whose roof and walls are severely damaged and which must be rebuilt». Furthermore, other initiatives to resolve the land conflict were blocked because the opinion was spread that they would jeopardise the mediation process, and because it was kept secret which issues and areas were being negotiated.

## **The mediation evaluation report**

Now an [evaluation report](#) on the mediation has been published by the Australian Disputes Centre. This report was commissioned by MRLG, the same entity that commissioned the mediation itself. In the manner of an advertising brochure, the report praises the mediation beyond all measure.

Civil society largely rejects the report because it is problematic in approach and methodologically flawed. The report relies on data gathered among representatives of a limited number of families (p. 9 and 10) but draws conclusions about entire «villages» and the «community» (all involved villages), thereby misrepresenting the group of affected Bunong people. Testimonies gathered over the past years in Bu Sra contradict numerous findings of the report.

Even as the report praises the mediation, it reveals the unacceptable premise of the mediation: «[...] the Community was pragmatic. They recognised that the land now in Socfin Cambodia rubber plantations would not be returned to them» based on the fact that «the land was no longer in its original state» (p. 20 and 21).

## **The responsibility of the donor states**

The funding of this mediation process was presumably a well-intentioned effort on the part of the donor states Switzerland, Germany and Luxembourg. But tragically it uncritically supported — even if unintentionally — the conclusion and whitewashing of a present-day colonial process, failing to resolve the land conflict and to provide proper reparations to the disenfranchised and uprooted communities for the abuse of their territory. This places a significant responsibility on the donor states.

As one of Socfin's home states (state of domicile), Luxembourg is subject to human rights obligations. Indeed, the United Nations Committee on Economic, Social and Cultural Rights reiterated in its [General Comment No. 24](#), «that States parties' obligations under the Covenant did not stop at their territorial borders. States parties were required to take the steps necessary to prevent human rights violations abroad by corporations domiciled in their territory and/or jurisdiction [...]» (para. 26), and «a State party would be in breach of its obligations under the Covenant where the violation reveals a failure by the State to take reasonable measures that could have prevented the occurrence of the event» (para. 32).

## **Exchange between civil society and donor states**

With a view to raising questions, seeking transparency, and exploring pathways towards possible solutions, various civil society organisations had virtual meetings and mail exchanges with public authorities of Switzerland and Germany. However, when the relevant Luxembourgish authority was asked for a meeting, the request was «respectfully declined». The authority did at least promise that «Luxembourg will further follow-up with SDC<sup>1</sup> and MRLG to solve the remaining issues at every stakeholder's content».

That is why we are respectfully raising the issue through this statement to the government of Luxembourg.

The «remaining issues» are as follows: There is still no solution to the land conflict in sight for the large number of families that were not involved in the mediation process. No arable land will be returned to the families involved in the mediation process, only the status quo of land tenure is fixed. The seven Bu Sra village communities as a whole are still dramatically lacking (secured) land for their livelihoods and cultural/religious practices. Stark inequities have emerged, as some have improved their economic situation while others have been impoverished. Proper compensation and reparations for the abuse of indigenous territory in the last 14 years are still outstanding.

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<sup>1</sup> Swiss Agency for Development and Cooperation

## Expectations

In this unacceptable situation, the undersigned civil society organisations call on the government of Luxembourg to take into account the human rights obligations emanating from ICESCR<sup>2</sup>, UNDRIP<sup>3</sup> and UNDROP<sup>4</sup>, and to

- **collaborate** in good faith with Switzerland (SDC and SECO), Germany (BMZ) and pertinent civil society organisations in
  - **independently assessing the mediation** process and its outcomes and impacts, based on the mediation documents (still to be disclosed)
  - **defining and implementing immediate compensation measures** for the adverse effects of the mediation process (e.g., requiring interim protection of the indigenous lands and effectively supporting the communal land titling process) and
  - **setting up a true and comprehensive, human-rights-based conflict resolution and reparation process** with the involvement of the public authorities of Cambodia, Luxembourg, Switzerland and Germany, and to
- **urge Socfin** (based on UN Guiding Principles on Business and Human Rights No. 11, 13 and 22)
  - to **agree to the disclosure** of all mediation documents and
  - to assume its human rights responsibilities and **contribute substantively** to the future conflict resolution and reparation process.

When envisioning justice for the Bunong communities, the **revocation of large parts of the economic land concessions** and their **return as titled communal land** to the communities must be a realistic option, as well as adequate **compensation for the long-lasting abuse** of their territories.

The undersigned civil society organisations will willingly supply further information and are open to a substantive exchange on the issue. We thank you very much for your attention and for considering the above-mentioned expectations.

With kind regards,

**FIAN Switzerland**  
**BIPA, Cambodia**  
**SOS Faim, Luxembourg**  
**Action Solidarité Tiers Monde – ASTM, Luxembourg**  
**FIAN Germany**  
**FIAN Belgium**  
**HEKS, Switzerland**  
**Solidar Suisse**

## Copy to:

Swiss Agency for Development and Cooperation SDC  
Swiss State Secretariat for Economic Affairs SECO  
German Ministry for Economic Cooperation and Development BMZ  
Deutsche Gesellschaft für internationale Zusammenarbeit GIZ  
Interdepartmental Committee on Human Rights, Luxembourg

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<sup>2</sup> International Covenant on Economic, Social and Cultural Rights

<sup>3</sup> UN Declaration on the Rights of Indigenous Peoples

<sup>4</sup> UN Declaration on the Rights of Peasants and Other People Working in Rural Areas