



06.10.2023

## «CAMBODIAN LAND DISPUTE INDEPENDENT MEDIATION»: COMMENT ON THE EVALUATION REPORT OF THE AUSTRALIAN DISPUTES CENTRE

### A mediation based on an unacceptable premise

Apart from numerous shortcomings, the [report](#) does have considerable merit. 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). No need to say that this is not only extremely unfair, but that the company has won from the outset.

### A colonial attitude and a capitulation

The report mentions another premise that the affected communities simply have to accept: The «changed world in which they find themselves» (p. 21). But not only that, the indigenous communities are expected to welcome western and capitalist values like «commercial opportunities», «cash crops», «income streams» and to become «efficient farmers» (p. 21). **That's not about respecting Bunong culture, it is about imposing foreign 'values' on them and naively assuming it's their attitude and needs.** The very decision to commission a Western agency with the evaluation is evidence of a colonial attitude.

Don't these premises and attitudes suggest that the mediation and the evaluation base on the unquestioned assumption that indigenous Cambodian people and their land use matter less than an European corporation and its highly likely illegal plantations, and that indigenous people are considered as second class people compared to European investors and shareholders? Is this not tantamount to a capitulation of the donor states to the company and its plantations, a capitulation to the colonial process?

### Far away from human rights

Stating «Mediation offers an independent process, outside of local authority decision-making» and the parties were «negotiating needs and interests (rather than rights and obligations)» (p. 29 and 30), the report confirms that the process was not human rights based, leaving the human rights duty bearers, rights and obligations outside the process.

**Although the legal training «focused the Community on learning about the other party's needs and then generating options» (p. 21), the report complains that «no options would be put forward» by village representatives (p. 17). Right on! It is the disenfranchised communities who have needs that are to be taken into account. There shall be no compulsion for presenting options, particularly for the victims. Options may benefit more the company than the villagers. And above all: Legal rights and human rights in particular can't be the object of negotiations and options, they have simply to be protected and enforced.**

Since the report claims «Indigenous land rights are being protected consistently with international instruments and norms, e.g. UNDRIP» (p. 29), we must counter: Indigenous land rights have been blatantly violated, not protected! And UNDRIP is not about rights in mediation (p. 28) after consolidated land grabs, but about rights prior to land grabs. It is both ridiculous and an abuse of UNDRIP to quote it in this way.

### A report with numerous shortcomings

When analysing the characteristics of the report, it turns out to be undifferentiated and generalising, inaccurate, euphemistic, and obviously biased in favour of the company and the authorities and against the villagers. The information provided is mostly qualitative rather than quantitative; it is mostly unsubstantiated and thus not verifiable. It resembles more an advertising and justification brochure than a scientific, objective, comprehensible report. Testimonies gathered over the past years in Bu Sra contradict numerous findings of the report.

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Concerning communal land, e.g., the report typically avoids any quantitative assessment. The evaluation does not disclose nor assess the amount of communal land that can undergo the long process for registration (p. 23). Concerning infrastructure projects: Nothing is said about the fact that only 100 m of road will be repaired annually according to the [Joint statement](#) of 27 September 2022. And this shall benefit «the Cambodian economy in a tangible way»? (p. 32) Also concerning the following points, nothing is said on the extent of the «benefits».

The report claims that the mediation «achieved settlement agreements on all issues in dispute» (p. 27) and has resolved «the conflict». This is simply not true, as the mediation a) has tackled conflicts only between the families involved and the company, and not between the whole village communities and the company, and b) even within the limited scope of involved families, it has not resolved the conflict about family rubber farmland, but only agreed to resolve it in the future (what the report partly admits, making itself contradictory) (p. 23).

So the report maintains and cultivates the false narrative that the mediation dealt with the «villages» and «communities» and did resolve their conflicts, although the Joint statement clearly refers only to «community members joining the process».

Concerning family rubber farmland, the report stays silent on the incredible debts of many rubber families with the company, one of the most pressing problems for them.

#### Conclusion

The legal perspective and the human rights perspective in particular prohibit to accept the highly likely illegal land concessions. But after the mediation process whitewashed the colonial land grab, the evaluation is now whitewashing the mediation process – a process that never should have happened on the premises as described.

If the donor States stick to a human rights approach, it is questionable whether they can support a mediation process that confirms these concessions and the eviction of the Bunong from their territory and its abuse by a European corporation. And it is **hard to imagine that the donor States' authorities, if they apply scientific and objective criteria, will be in a position to accept this report.**