

**DRAFT LEGAL MEMORANDUM
ECONOMIC LAND CONCESSION IN BOUSRA COMMUNE,
MONDULKIRI PROVINCE**

EXECUTIVE SUMMARY

In the opinion of the legal advisors of the Community Legal Education Center, the Economic Land Concessions (ELC) granted to Khaou Chuly Development (KCD) for the joint venture, Socfin-KCD, in Bousra Commune, Mondulkiri Province, are likely in violation of both Cambodian law and international laws and standards.

The concessions likely infringe upon the following legal instruments:

- Cambodian Land Law 2001;
- Sub-decree No. 146 on Economic Land Concessions;
- Instructive Circular No. 05 IC on Provision of Economic Land Concessions for Investment Projects;
- International Covenant on Economic, Social, and Cultural Rights; and
- International Convention on the Elimination of Racial Discrimination.

The ELCs also appear to violate:

- United Nations Declaration on the Rights of Indigenous Peoples;
- Internal performance standards relevant to Socfinal, the joint venture partner of KCD; and
- Internal performance standards of L'Agence Française de Développement (AFD), the development finance institution of the French government that is allegedly considering funding a component of the Socfin-KCD project.

This analysis is made in draft form at this time due to lack of access to the relevant ELC documentation. Requests for documentation were made by NGO Forum in Cambodia to relevant government Ministries. To date, no responses have been obtained. This, in itself, appears contrary to Cambodian law.¹

Notwithstanding the unavailability of these documents, the residents of Bousra Commune in Mondulkiri have strong legal claims to the land in question.

¹ Article 16, 1996 Law on Environment Protection and Natural Resource Management (“The Ministry of Environment shall, following proposals of the public, provide information on its activities, and shall encourage participation of the public in the environmental protection and natural resource management.”); Article 4, Law on Forestry (“Consistent with the Cambodian code of forest management and the Environmental Protection and Natural Resources Law, an Environmental and Social Impact Assessment shall be prepared for any major forest ecosystem related activity that may cause adverse impact on society and environment. Documents of the Environmental and Social Impact Assessment shall be made available for public comment.”).

I. INTRODUCTION

Bousra Commune is in Mondulhiri Province on the eastern border between Cambodia and Vietnam. Mondulhiri Province is the largest, but least populated, Cambodian province, with a population of approximately 60,000 inhabitants (or 4.3 persons per square km) according to the 2008 General Population Census of Cambodia.² Ninety-four percent of the province is forestland and Bousra Commune itself is rich in natural resources.³ Bousra Commune consists of seven villages closely arranged along the road between Sen Monorom and the (now closed) Vietnamese border crossing. According to 2007 Commune records, Bousra has a total population of 3,741 people in 800 family households.⁴

The residents of Bousra Commune are largely members of the Bunong, an indigenous people of Cambodia.⁵ Article 23 of the 2001 Cambodian Land Law defines an indigenous community as a “group of people . . . whose members manifest ethnic, social, cultural and economic unity and who practice a traditional lifestyle, and who cultivate the lands in their possession according to customary rules of collective use.” The Bunong practice traditional slash-and-burn agriculture under a collective system of land management and follow a religious belief system that promotes sustainable resource management and the protection of “spirit forests.” The Bunong communities in Busra are therefore very likely to fulfill the requirements of an “indigenous community” under the Land Law.

However, apart from three pilot villages, the lack of clear implementing regulations means that it is still not possible to properly register indigenous communities in Cambodia. Community registration is required by law before indigenous community land can be registered.⁶ The Bunong communities have therefore not registered their community or land, however under article 23 of the Land Law they are entitled to manage their lands in accordance with traditional custom until that registration process takes place.

The Bousra community has received conflicting information on the date of signing, size, and number of ELCs granted to KCD regarding the land that contains their traditional farms, forests and burial grounds, and the actual clearing of land by Socfin-KCD has not always corresponded to this information. Based on other sources of information, however, it is understood that three ELCs have been or are in the process of being officially granted to KCD. The first ELC has already been enacted but it is unclear whether the two other ELCs have been officially signed.

It is understood that the management rights for the KCD rubber plantation were subsequently transferred to Socfin-KCD, whose parent company, Socfinal, is a Luxembourg-registered corporation. The business of the Socfinal group includes rubber cultivation in

² General Population Census of Cambodia 2008 - Provisional population totals, National Institute of Statistics, Ministry of Planning, released 3rd September 2008.

³ World Wildlife Fund (2009). “Livelihoods Sustainability Analysis in Mondulhiri Province.” Online at http://www.panda.org/about_our_earth/all_publications/?165283/Livelihoods-sustainability-analysis-in-Mondulhiri-province.

⁴ Department of Planning Mondulhiri Statistics (2008) [Unofficial].

⁵ 94% Bunong, 6% Khmer. Department of Planning Mondulhiri Statistics (2008) [Unofficial].

⁶ Sub Decree On Procedures Of Registration Of Land Of Indigenous Communities, Article 3.

different parts of the world. It is also understood that Socfin-KCD is currently in negotiations with AFD to obtain financial assistance for the “social aspects” of the plantation, with a view to develop small family rubber plantations around the concession for interested members of the Bousra community.

After outlining these and other facts, this memorandum questions the legality of the transfer of indigenous people’s land to KCD economic land concession and the likely breaches of the internal safeguards promoted by Socfinal and AFD.

II. FACTS/CHRONOLOGY

In early April of 2008, an area of land in Mondulkiri was granted for rubber plantation purposes in an agreement between KCD and the Minister of Agriculture, Forests and Fisheries (MAFF), Chan Sarun.⁷ In that same month, KCD began clearing land in the Bousra Commune.⁸ This clearing of land was conducted before the demarcation process was finalized and agreed to by the villagers.⁹ It is understood that the actual ELC contract was not signed until October of 2008.

On May 2, 2008, more than 100 community representatives protested at the Provincial Governors Office. As a result, representatives of the National Authority for Land Dispute Resolution (NARLD) promised on May 4, 2008, that the affected farmland of Bousra Commune would be returned to the community. The demarcation was unsatisfactory because it did not include “reserved land necessary for shifting cultivation or reserved land for rotational agriculture or swidden farm land” which “refers to land used previously by an indigenous community as a rice field or farm for traditional shifting cultivation”.¹⁰ Community members submitted complaints to other national institutions as a result.¹¹

In June of 2008, KCD representatives, community members, and the Mondulkiri Deputy Governor, H.E. Nharang Chan, confirmed that Bousra families had been farming the land in question since the 1970s and residing there since 1953. At the end of the meeting, KCD agreed to respect the peoples’ claims and pay compensation to the affected communities if proven true by provincial authorities.¹²

On June 3, 2008, an official document was sent by MAFF to the Director of KCD, approving in principle, on behalf of MAFF, that KCD will conduct “landscaping for rubber plantation” on a 562 ha plot of land in “sub-region 1.” We understand the approval came

⁷ Shay, C. and Strangio, S. “Plantation highlights struggle of development and preservation,” *The Phnom Penh Post*, May 25, 2009.

⁸ Kurczy, S. and Soenthirith, S. “Large-Scale Farms, Hilltribes Compete for Land,” *The Cambodia Daily*, 13 June 2008.

⁹ Cambodian Human Rights Action Committee (CHRAC), Human Rights Vigilance of Cambodia, and Cambodian Human Rights and Development Association (ADHOC). *Investigation Subcommittee of the Treatment Committee’s Brief Report on Conflict over a Land Area of 2,705 hectares between approximately 300 Households in Bousra Commune, Pich Chreada District, Mondulkiri Province and the Khov Chouly Company*, January 27, 2009 (henceforth known as “CHRAC Report”) [unofficial translation].

¹⁰ Sub Decree On Procedures Of Registration Of Land Of Indigenous Communities, Article 4; see also Land Law (2001), Article 25.

¹¹ CHRAC Report.

¹² Kurczy, S. and Soenthirith, S. “Large-Scale Farms, Hilltribes Compete for Land,” *The Cambodia Daily*, 13 June 2008.

after the visit of an inter-ministerial working group coordinated by MAFF to demarcate that particular land and on an understanding that whilst the official contract was not signed, the company could benefit from the harvest season and clear land.

In October, 2008, community representatives filed complaints about the ELC with the Council of Ministers, the Prime Minister's Office, MAFF, Ministry of Interior and Ministry of Land Management Urban Planning and Construction as part of a national community led coordinated complaint process. There was however no formal response to this complaint.

On December 19, 2008, a commission, chaired by newly appointed Deputy Governor, H.E. Yim Lux, is convened to demarcate the land and resolve the conflict. But the community disagreed with the methodology used in the demarcation because the commission only demarcated 3-5 meters of *chamkar* (farmland) in which there were small trees. The community ended the collaboration and refused to participate in any further demarcation process. Authorities requested a renegotiation of the situation, but neither the Commune Chief nor Provincial Authorities attended and the 130 community participants walked out.¹³

On December 20, 2008, 400 Bunong met to protest KCD actions because the company was clearing land before a compensation package could be agreed upon. The protesters met at the Commune Office, walked to the Company Nursery, and destroyed 43 rubber seedlings, burned three earth excavators and damaged a fourth using axes and machetes. Villagers claimed that the 1,030 Bunong families have legal rights to the 2,705ha of the property, but Yim Lux disagreed, stating that only 136 of the 825 families in Bousra were actually affected.¹⁴ Socfin-KCD said that resolving the dispute was the responsibility of the Royal Cambodian Government (RCG), not Socfin-KCD.¹⁵

On December 23, 2008, a meeting was held at the Pich Chreada District office between 200 Bousra representatives, Provincial Authorities, Socfin-KCD representatives and NGO staff. Yim Lux again presented the community with three options: (1) sell the land to the company at a fixed price¹⁶; (2) relocate to new land, but grow rubber for the company (50% split between company and farmer); or (3) return the "real" farmland affected areas to the community (not including currently fallow *chamkar* areas). The community rejected all three options and demanded all their land back (including both currently cultivated and fallow land). They denied Socfin-KCD's claims that the land belonged to the State and promised to continue protesting unless the company complied with their demands.¹⁷

On December 25, 2008, H.E. Pol Lim, Secretary of State for the Ministry of Interior, traveled to Sre Ambom village to hold a meeting, but only six community representatives from Bousra attended, because others refused to discuss the case outside the Commune.¹⁸

¹³ CHRAC Report.

¹⁴ Naren, K. "Authorities use GPS To Measure Disputed Land," *The Cambodia Daily*, January 8, 2009.

¹⁵ Nelson, K. and Naren, K. "Mondolkiri Land Dispute Turns Violent," *The Cambodia Daily*, December 22, 2008.

¹⁶ Contrary to the interim protections for indigenous community land under Chapter 3 of the Cambodian Land Law 2001.

¹⁷ CHRAC Report.

¹⁸ Ibid.

On January 2, 2009, provincial authorities from various departments, such as the forestry administration, environment, MAFF, and the provincial office, under the leadership of Yim Lux, begin demarcating 2,000 ha of disputed land using GPS. By January 8, 2009, only households with ID cards and family books are included in the demarcation. Yim Lux stated that it was not yet determined whether reserved lands fields would be included in the demarcation.¹⁹

On January 12, 2009, the Provincial Court summoned six community representatives on charges of robbery, arson and destruction of property. Three representatives were taken to the Provincial Police Head Quarters but were released later the same day. No charges were made against them, but they were told that they would be arrested and imprisoned if they spoke to the media or human rights groups.²⁰

On January 28, 2009, Yim Lux met with village representatives and local NGOs in a forum facilitated by ADHOC. Villagers raised continuing concerns about the demarcating process of their land. Yim Lux promised to demarcate additional land if families were to come to him with specific complaints. Yim Lux also stated that reserved lands would be included in the demarcation. He said the inter-ministerial working group at the provincial level (made up of Forestry Administration, Ministry of Environment, MAFF, and the Provincial Office – chaired by Yim Lux) had processed the measurement of the villagers' land affected by the concession. As a result, the actual farmland of 136 families and shifting cultivation of 226 families had already been measured. Yim Lux said he thought that the processing of measurement should have ended already as no one from the community was coming forward to join the working group.

Yim Lux also intimated privately that former government authorities made mistakes with regard to the ELCs' environmental and social assessments and consultations with people. Yim Lux explained that the concession area had been part of a protected area under Ministry of Environment (a royal decree delineated an area of 2,705 ha). He said the concession was transferred from the Nam Lyr mountain protected area to private state land and investments for KCD. Yim Lux did not clarify how that process had taken place and whether it had been recorded officially. Yim Lux seemed to imply that because the land was previously managed by the Ministry of Environment, there was no need for an EIA as a result. However, all economic land concessions require such assessment under Cambodian law.²¹

On June 16, 2009, the Bousra villagers held a traditional ceremony to appease ancestral spirits disturbed by the clearing of their land, and curse Socfin-KCD for these actions in Bousra.²²

At a meeting with NGOs last May, Philippe Monnin mentioned that work on the second concession was about to start. It appears a second economic land concession for 2,705 hectares was signed around this time 2009.²³ It is understood work has commenced on the

¹⁹ Naren, K. "Authorities use GPS to Measure Disputed Land," *The Cambodia Daily*, January 8, 2009.

²⁰ CHRAC Report.

²¹ Sub decree on economic land concessions

²² Rith, S. and Strangio, S. "Villagers curse M'kiri plantation: Ethnic Phnong community resorts to tradition in dispute with Franco-Cambodian rubber venture," *The Phnom Penh Post*, June 18, 2009.

²³ Sophal, C. "Joint Rubber Deal Signed", *The Phnom Penh Post*, June 1, 2009

second concession. Yim Lux states that a government committee is working to resolve the dispute.²⁴

On September 10, 2009, community representatives participated in the publication of the report “Losing Ground” which documents the loss of community land to private developments in Cambodia. The community representatives made a presentation about the problems they are facing at this event.

III. LEGAL ANALYSIS

The current Cambodian Land Law was adopted on August 31, 2001. Under the Land Law, the ELC granted to KCD is likely to be invalid in two ways. First, the Land Law contains provisions that prevent the sale of indigenous community land to individuals outside the community before it is registered. Second, the Land Law does not allow state *public* land to be the subject of an ELC.

3.1: The ELC likely violates the Land Law 2001 provisions protecting the rights of indigenous communities to manage their land in accordance with traditional customs

The Land Law classifies all Cambodian land into one of five categories: State Public Property; State Private Property; Private Individual Property; Monastery Property; and Collective Indigenous Community Property. The land of Bousra Commune is very likely to be eligible for registration as Collective Indigenous Community Property. Here, there is no individual ownership: the land is managed collectively according to traditional custom, which does not include the sale of land.²⁵

Article 23 of the Land Law states, “An indigenous community is a group of people that resides in the territory of the Kingdom of Cambodia whose members manifest ethnic, social, cultural and economic unity and who practice a traditional lifestyle, and who cultivate the lands in their possession according to customary rules of collective use.” The Bunong, who practice collective decision making, collective ownership, and many of the other traditional agricultural and spiritual practices of an indigenous community clearly satisfy the requirements of this classification. While indigenous communities may not wear traditional clothes and may use cell phones for communication and motorbikes for transportation, this does not revoke their status as an indigenous community. In addition, self-identification by the community is an important criterion under international human rights law: as long as the

²⁴ Rith, S. “M’kiri villagers reporting no word concerning land compensation”, *The Phnom Penh Post*, July 23, 2009.

²⁵ Indigenous Community Consultation, Kompong Speu, 2004. This interpretation was supported by Mr. Seak Vanna, Deputy Director in Ministry of Land Management, Urban Planning and Construction in a 2005 workshop and the GTZ publication *Legal Issues Related to Registration of Indigenous Communities in Cambodia* dated 2005. Under Article 6.3 of RCG’s Circular No. 02 on Illegal Possession of State Land Property dated 26 February 2007, government appropriation of indigenous land shall be delayed until it is registered as State land. The legal argument also appears to have been upheld in the decision of the Court of Appeal Civil Case File No.: 426 of June 20, 2001. See indigenous community consultation findings from Kompong Speu (9-12 September 2004) and Kompong Thom (18 November 2004).

community identifies itself as indigenous, even while adopting new practices, the community can be classified as indigenous.

Article 25 of the Land Law states, in paragraph 1: “The lands of indigenous communities are those lands where the said communities have established their residences and where they carry out traditional agriculture.” Paragraph 2 of the same Article emphasizes that, “The lands of indigenous communities include not only lands actually cultivated but also includes reserved land necessary for the shifting of cultivation which is required by the agricultural methods they currently practice and which are recognized by the administrative authorities.” The Bunong people practice slash-and-burn agriculture and one of the major concerns is that these fallow fields are not being included in any survey of land for compensation.

Furthermore, Article 6 of the Sub-decree on Procedures of Registration of Land of Indigenous Communities states that land to be registered as collective title for indigenous people does not just include land for residence and farming, but also land reserved as part of shifting agricultural practices and lands considered to be “spirit forests” or burial grounds. These lands are considered part and parcel of the indigenous tradition and shall be included in the definition of land of an indigenous community.

As far as actual titles are concerned, there is currently no land registered as Collective Indigenous Community Property in Cambodia. The laws required to implement procedures for registering indigenous communities are still pending. Under the Sub-decree on the Procedures of Registration of Indigenous Land, the community must register their people as a legal entity with the Ministry of Interior before being able to register indigenous community land.²⁶ There is currently no public draft of the Sub-decree for community registration available, and until these implementing laws to register as indigenous communities are put into place, communities cannot register their land. However at least three pilot villages have been registered by the Ministry of Interior, but will be subject to the new sub decree on registering communities once it is adopted. As the process for registration is lengthy and complicated, the Bunong people cannot properly register their land without assistance from a specialized organization or help from the Ministry of Interior itself. At present, no such organization is available to the community.

However, the Land Law does provide immediate protection of the rights of an indigenous community even before registration of the indigenous community occurs. Article 23 states that “prior to their legal status being determined under a law on communities, the groups actually existing at present shall continue to manage their community and immovable property according to their traditional customs and shall be subject to the provisions of this law.”²⁷ Therefore, even though the Bunong communities have not yet legally registered as a community, each community should have the right to manage their communal land in accordance with traditional custom in the interim.

While the Land Law protects the Bunong in theory, much of their land is already being cleared. In January 2009, it is understood all 2,386 ha of the first concession, known as the “Varanasi” concession, were cleared. Almost all the families have already been forced to

²⁶ Article 3, Sub-Decree on Procedures of Registration of Land of Indigenous Communities (2009).

²⁷ Article 23, Land Law 2001.

choose one of the three options outlined above with only 14 families holding out. It is understood clearing for the second concession may have begun in June 2009.

In the implementation of the Land Law, the RCG and other authorities also made policy decisions on the protection of indigenous community land. Under the government's strategic framework on land policy dated September 6, 2002, protection of the indigenous community's rights is secured. "According to the Government's policy, the indigenous communities have rights to possession of land as community property...The principles of local land use plan and expansion of partners between indigenous communities and NGOs and the Government in management of the community lands and in the vicinity of the community lands will help guide the implementation of titling the community land (sic)."

The RCG has since reaffirmed its commitment to indigenous peoples' rights at paragraph 6.3 of Circular No. 02 on Illegal Possession of State Land Property dated February 26, 2007: "In relation to the indigenous minorities, their traditional authority affirmed that the parcel of land or part of the parcel of land, that is the subject of State claim, is under collective use in compliance with their custom and tradition. The land claim shall be postponed until the land is registered as State land." That is, until there is official registration of land titles, the indigenous Bunong community maintains the right to management of its land in accordance with traditional custom. Similarly, until that time, no lease or sale of the land can take place.

Under clause 5-4 of the National Policy on Minority Development adopted in April 2009; "Land use planning shall be done with participation by the community to ensure effectiveness of land uses". It appears that in Bousra, the communities were not given an opportunity to participate in land use planning, and have simply been forced to choose one of three options. Furthermore, clause 5-4 of this Policy states; "All laws and legal instruments on protections of collective properties and executions of land use planning shall be disseminated in a way which are easily understood by the minority community." This has also not been carried out in the Bousra communities as there is still widespread uncertainty about both their legal rights and Socfin's land use planning.

We note that clause 3-5 of the RGC's Statement on Land Policy No. 27 on 1 July 2009 states that the government will take care to register the lands of indigenous communities.

3.2: The ELC is likely to violate the Land Law 2001 provision that state public land can never be sold

Article 16 of the Land law 2001 states that land owned by the nation state that has public utility is deemed "State Public Property." This includes land of natural origin (e.g. forests, rivers and lakes); land that has a general public use, service or interest (i.e. roads and gardens, public schools and hospitals); or land that constitutes a natural reserve protected by the law. These areas cannot be owned by any party except the State.²⁸ Any attempt to gain private possession of state public property will be subject to a fine of up to 50 million Riel and/or imprisonment for up to five years.²⁹ Thus, if parts of the Socfin-KCD rubber plantations are

²⁸ Article 43, Land Law 2001.

²⁹ Articles 19 and 259, Land Law 2001.

on state public property, the companies will be liable for a fine and/or imprisonment, and must vacate these sections of the plantation immediately without an entitlement to indemnity for works or improvements made on the property during the creation of the rubber plantations.³⁰ The Sub-Decree on state land management from 2005 regulates, among other things, reclassification of state public land to state private land, in accordance with Article 16 of the Land Law.³¹

As of yet there appears to be only very limited identification, mapping, or registration of State Land in Cambodia. In many cases, there is little distinguishing between public and private state land. It appears that the Sub-Decree on state land management has not been thoroughly or consistently implemented so far throughout the country. More specifically, there has been no clear registration of the Bousra land as “state public land” or state private land and we have been unable to find any record of any transfer from state public to state private land.³²

However, according to the language of the Land Law 2001, sections of the land of Bousra Commune should be considered State Public Property. The Bunong use parts of their forest for protection, spiritual and burial purposes, and these should be considered forest and therefore state public land.

Furthermore, parts of the concession include land appear to be part of the Nam Lyr Wildlife Sanctuary. Nam Lyr is a protected wildlife sanctuary rated by the International Union for Conservation of Nature as Category IV.³³ Nam Lyr is also defined as a wildlife reserve and protected under Article 2 of the Preah Reach Kret (Royal Decree) on the Protection of Natural Areas.³⁴

According to provincial authorities, an area of 2,705 ha was indeed transferred from the Nam Lyr sanctuary to state private land, for the purpose of being granted as an ELC to KCD.³⁵ A document signed by the Council of Ministers and addressed to the Minister of the Environment appears to confirm the transfer from state public to state private land, although it does not precisely specify which area around the Nam Lyr Mountain was transferred. If, however, state public land *was* transferred to state private property by the RCG, this transfer will only be effective if the property was first inventoried as state public

³⁰ Article 259, Land Law 2001.

³¹ Articles 14 & 15, Sub-Decree on State Land Management 2005.

³² Information obtained from Weekly Law Updates on transfers to state private land dating back to December of 2004. Updates are produced in English by DFDL (Cambodia) Co. Ltd. and are taken from the “Official Gazette of the Kingdom of Cambodia” produced by the Office of the Council of Ministers. It appears that no official notice of a transfer of the land in question from State public to private land has occurred to date. However, Between 2006-2009, the following are not publicly available from the weekly DFDL newsletters: January 17, 2006 to August 8, 2006 (with the exception of the update from March 28, 2006); Sept. 5, 2006 to November 28, 2006; January 16 & 23, 2007; February 6, 2007 to March 6, 2007; March 27, 2007 to April 17, 2007; May 1, 2007; May 15, 2007; June 12 & 19, 2007; July 3, 2007; August 7 & 14, 2007; Sept. 11, 2007; Oct. 9 & 30, 2007; Nov. 27, 2007; Dec. 11, 2007 to Dec. 25, 2007; Feb. 5 & 12, 2008; April 15, 2008; May 13, 2008; June 10, 2008 to June 24, 2008; Aug. 12 & 19, 2008; Sept. 30, 2008; Oct. 28, 2008; Nov. 11, 2008; Dec. 9, 2008; Dec. 23 & 30, 2008; March 10, 2009 to March 30, 2009; April 14, 2009; May 5 & 12, 2009; May 26, 2009; June 16 & 23, 2009; July 7, 2009 to present. DFDL has been contacted to verify the existence of these missing updates but had not yet responded at the time of writing.

³³ From International Union for Conservation of Nature website (www.iucn.org).

³⁴ Article 2, sec. II, no. 16, Preah Reach Kret (Royal Decree) on the Protection of Natural Areas, November 1, 1993.

³⁵ Official RCG document from Senior Minister of the Council Ministers to Senior Minister of the Environment, Doc. No. 1459 Sor. Nor., dated on October 3, 2007.

property and deemed to no longer meet the public interest test. Nam Lyr continues to function as a protected area and thus has not lost its value to the public interest and cannot be legally granted as part of the ELC.³⁶

3.3: The ELC is likely to violate numerous additional explicit legal requirements for ELCs to be valid

Article 59 of the Land Law, states that only up to 10,000 hectares of land may be granted to one company. KCD has publicly stated it plans a total of 20,000 hectares of ELCs, which would be in direct violation of the Land Law 2001.³⁷

Additionally, Sub-decree No. 146 on Economic Land Concessions states that five specific conditions must be met for the grant of an ELC to be valid.³⁸ First, the land must already be classified and registered as State private land.³⁹ No clear evidence that the ELC land has been officially classified as state private land has been made publicly available. If clear evidence does not exist, the granting of an ELC appears contrary to Cambodian law. Again it is noted that government and company sources have not disclosed documentation to evidence the land is state private land.

Second, a land use plan must be adopted by the Provincial-Municipal State Land Management Committee and the proposed use of the land must be consistent with this plan.⁴⁰ The Bousra Community members are not aware of any land use plan having been developed or made public.

Third, an Environmental and Social Impact Assessment (ESIA) must have been completed prior to granting the ELC.⁴¹ Copies of these assessments have been requested by NGO from relevant Ministries, but have not been provided, and may not have been conducted prior to the granting of the ELC or the clearing of land. It is our understanding that Socfin-KCD will be undertaking its own ESIA, as part of a feasibility study required by AFD prior to finalizing funding arrangements with the company. As of yet, the community members have not been included in any social impact assessment, which indicates that the ESIA was not properly conducted.

³⁶ A sub-decree (#206) on “Cutting Land Areas from the Protected Forest Areas for Conservation of Plant and Wildlife Genetic Resources ‘Mondulkiri’” was passed on December 28, 2007. The sub-decree mandates that 56,467 hectares of protected forest areas be cut from protection and reallocated for use in economic and social land concessions, with the exception of the “jungle and semi-jungle” which are to remain in protection. The exact location and nature of the 56,467 hectares is not noted in the sub-decree and it is unclear whether this includes parts of the Bousra Commune in question. If Bousra Commune is affected by this sub-decree, the larger question is whether it is legal to transfer such state land in a sub-decree at all – an issue which requires further analysis (see: Sub-decree No. 146 on Economic Land Concessions). [Source: DFDL weekly update from February 19, 2008]

³⁷ Phnom Penh Post Profile on Khau Phallaboth in March 2009; Meeting between NGO Forum and AFD representatives on March 25, 2009.

³⁸ Sub-decree No. 146 on Economic Land Concessions 2005, Article 4.

³⁹ Sub-decree No. 146 on Economic Land Concessions 2005, Article 4(1)

⁴⁰ Sub-decree No. 146 on Economic Land Concessions 2005, Article 4(2)

⁴¹ Sub-decree No. 146 on Economic Land Concessions 2005, Article 4(3)

Fourth, the government is meant to ensure that there is no involuntary resettlement of lawful land holders and access to private land is respected.⁴² However we understand a number of families had their land cleared before any compensation was offered.

Fifth, there must be public consultations with the communities affected regarding the proposed project.⁴³ Socfin-KCD did not hold adequate consultations with the community members before being granted the ELC or before the clearing of the land began in January 2009. One of the village chiefs in Bousra told the Cambodia Human Rights Action Committee (CHRAC) that he was unable to dispute the ELC because the decisions had been made at higher levels and without prior consultation of the community.⁴⁴

Article 35 of the Sub-decree on Economic Land Concessions requires that the government receive community input on all proposed ELCs. The contracting authority must send a copy of a proposed ELC to each affected Commune Council within 28 working days of receipt and must also organize public consultations with representatives of the local communities whenever a proposal for an ELC is received. Community people report that these requirements were not met and that they not made aware of any ELC until after clearing of Bunong land had already commenced. Copies of the ELC documentation are not publicly available.

Furthermore, Instructive Circular No. 05 IC on Provision of Economic Land Concessions for Investment Projects provides that an ELC can only be granted when investors and the government strictly comply with several specific regulations, including the following: Residents of the investment project must receive proper benefits from the project including roads, schools, health centers and employment opportunities, and the concession contract plan must set out procedures to be followed where there is a land dispute with residents. Without access to the concession contract, any plans to adhere to these requirements cannot be verified. It is our understanding that these predetermined procedures have not been properly followed in the dispute with Bousra residents.

3.4: The ELC breaches international human rights law

Under Article 31 of the Constitution of the Kingdom of Cambodia, international human rights standards are also binding domestic law.⁴⁵ The Constitutional Council, in its decision No. 092/003/2007, further noted that international treaties are part of national law and courts should take treaty norms into account when interpreting laws and deciding cases.

The RCG, by granting the ELC to Socfin-KCD in the manner described above, is also falling short of its obligations under a number of international treaties, most notably the International Covenant on Economic, Social, and Cultural Rights (ICESCR), which the

⁴² Sub-decree No. 146 on Economic Land Concessions 2005, Article 4(4)

⁴³ Sub-decree No. 146 on Economic Land Concessions 2005, Article 4(5)

⁴⁴ CHRAC Report.

⁴⁵ Article 31, Constitution of the Kingdom of Cambodia (“The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women's and children's rights.”)

RCG ratified in 1992 and on which it recently reported,⁴⁶ the International Convention on the Elimination of Racial Discrimination (ICERD), ratified in 1983, and the International Covenant on Civil and Political Rights (ICCPR), acceded in 1992.

Article 1 of ICESCR states: “(1) All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. (2) All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.” Article 1 has been interpreted by the Committee on Economic, Social and Cultural Rights (CESCR) as acknowledging the right for indigenous peoples to choose their own development, including the use and management of their land and natural resources.

Article 11 of the ICESCR enshrines the right to adequate standards of living, including adequate housing, which is to be interpreted broadly as “the right to live somewhere in security, peace, and dignity.” Any seizure of land must be in the public interest and must be preceded by fair and just compensation.⁴⁷ Like the Bunong of Bousra, those without official indigenous land title should still be protected by the RCG’s obligation to respect citizens’ right to adequate housing and to forbid the destruction of land necessary for subsistence by any party.

In its Concluding Observations to the RCG in May 2009,⁴⁸ the CESCR Committee expressed its concerns over the impact of economic land concessions on indigenous rights and the need to protect indigenous land. It noted:

“The Committee is also concerned about the reports that the rapid increase in economic land concessions in the last several years even within the protected zones, is the major factor for the degradation of natural resources, adversely affecting the ecology and biodiversity, resulting in the displacement of indigenous peoples from their lands without just compensation and resettlement, and in the loss of livelihood for rural communities who depend on land and forest resources for their survival. (Art. 1)”

The Committee urges the State party to implement the 2001 Land Law without further delay and to ensure that its policies on registration of communal lands do not contravene the spirit of this law. The Committee emphasizes the need for carrying out environmental and social impact assessments and consultations with affected communities with regard to economic activities including mining and oil explorations, with a view to ensuring that these activities do not deprive the indigenous peoples to the full enjoyment of their rights to their ancestral lands and natural resources.

The Committee urges the State party to implement a moratorium on all evictions until the proper legal framework is in place and the process of land titling is completed, in order to ensure the protection of human rights of all Cambodians, including indigenous peoples.”

⁴⁶ See U.N. doc E/C.12/KHM/1.

⁴⁷ Article 11, CESCR General Comments 4(1991) and 7 (1997).

⁴⁸ See U.N. doc E/C.12/KHM/CO/1.

Furthermore, Article 5 of the International Convention on the Elimination of Racial Discrimination recognizes that no group or individual can be discriminated against in its enjoyment of property: “In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (...) (v) The right to own property alone as well as in association with others.”

In this regard, in its General Recommendation 23 on the rights of indigenous peoples and selected Concluding Observations, the Committee on Elimination of Racial Discrimination (CERD) prescribes detailed measures that States should take to respect and protect indigenous peoples’ rights to land and natural resources, remedy any damage, and regulate and adjudicate acts by corporations operating on indigenous lands or exploiting natural resources:

- States should recognize and protect the rights of indigenous peoples to *own, develop, control and use their communal lands, territories and resources*. This includes measures to guarantee land ownership and titles, legal acknowledgement and demarcation of their lands, the effective implementation of the national land register law so indigenous lands can be identified and demarcated, and protection against land deprivation and aggression.
- States must *seek the free and informed consent of indigenous communities* prior to granting any license to exploit the land or resources of indigenous peoples to a corporation.
- States are responsible for *providing remedies, including compensation*, to indigenous peoples in case lands or resources are granted to corporations. Where deprivation of land or resources does occur, States should “take steps to return those lands and territories”.⁴⁹
- States should set up an independent body to conduct *environmental impact surveys or assessments* before any operating licenses are issued.⁵⁰

The RCG has recently submitted its report to the CERD Committee, which will examine and comment on it and on the progress made by the RCG in achieving the Convention’s objectives some time in 2010. It is likely that on this occasion the Committee will discuss the impact of economic land concessions on indigenous peoples’ land and resources.

Finally, Article 27 of the International Covenant on Civil and Political Rights gives special protection to national minorities, including indigenous peoples: “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not

⁴⁹ CERD general recommendation 23, para. 5.

⁵⁰ Concluding Observations on Suriname, CERD/C/64/CO/9 (2004), paragraph 15. See generally, Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, *Mapping the human rights obligations for corporate acts: Report No.1: The International Convention on the Elimination of Racial Discrimination (ICERD)*, December 2006; and Special Representative of the Secretary-General, Addendum 1, *State responsibilities to regulate and adjudicate corporate activities under the United Nations core human rights treaties: an overview of treaty body commentaries (A/HRC/4/35/Add.1)*.

be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”

The human rights treaties, as interpreted by their respective treaty bodies, require States not only to respect human rights but also to play a key role in effectively regulating and adjudicating corporate activities as part of the State duty to protect. Commentaries from the CESCR and CERD Committees demonstrate that obligation. The Human Rights Committee monitoring the implementation of the ICCPR further stresses that States Parties should act with “due diligence” to take appropriate steps to prevent, punish, investigate and redress harm by private entities.⁵¹ Therefore, should the ELC and its impacts on the Bunong community in Bousra be examined by a treaty body, the RCG would have to demonstrate that it took all appropriate steps to assess, mitigate and redress any negative impact on indigenous rights resulting from the ELC and acts of Socfin-KCD.

Cambodia has also voted for and approved the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). While the UNDRIP is not a treaty and does not have legally binding effect as such, it is generally agreed that the Declaration reflects the current state of international law pertaining to indigenous rights. UNDRIP states that “control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs.”⁵² More specifically, Article 8, section 2 of the UNDRIP protects indigenous peoples from “any action which has the aim or effect of dispossessing them of their lands, territories or resources.”

Article 10 of UNDRIP states that “Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.”

Article 25 of UNDRIP applies to the spirit forests and burial grounds of the Bunong, stating that “Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.”

More directly, Article 26 of UNDRIP states that “Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired...Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired...States shall give legal recognition and protection to these lands, territories and resources...with due

⁵¹ Human Rights Committee, General Comment 31, the nature of the general legal obligation imposed on states parties to the Covenant (2004). Under Article 2(1) of the International Covenant on Civil and Political Rights (ICCPR), a State Party undertakes to “respect and ensure” all of the Covenant rights to “all individuals within its territory and subject to its jurisdiction.”

⁵² UN Declaration on the Rights of Indigenous Peoples. Adopted by UN General Assembly Resolution 61/295, September 13, 2007.

respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.” Article 28 requires the “free, prior, and informed consent” of indigenous communities in any matter affecting their livelihood.

By ratifying human rights treaties and signing the UNDRIP, Cambodia has agreed to implement a number of commitments with regards to the rights of indigenous peoples and communities, such as those of the Bunong community in Bousra Commune. While the government is primarily responsible for ensuring respect for the standards highlighted above and is accountable to the international community for any violation, the direct application of those standards in national law nonetheless has implications for KCD, Socfin-KCD, and Socfinal, as well as AFD, should it provide financial support to the rubber plantation endeavor.

3.5: The ELC likely violates both international and internal Socfinal and AFD performance standards and falls short of existing standards and expectations that international businesses should follow with regard to human rights

Internal standards and commitments

The ELC is also likely to violate internal performance standards set up by AFD and Socfinal.⁵³ According to its website, Socfinal, the parent company for Socfin-KCD, is committed to sustainable development, including “doing business in a socially aware and responsible manner, helping to create and share wealth, invest in local economies, develop people’s skills and spread expertise across borders.”⁵⁴ Socfinal is also a founding member of the Roundtable on Sustainable Palm Oil and has thus committed itself to several principles and criteria, including a commitment to transparency, compliance with applicable laws and regulations, environmental responsibility and conservation of natural resources and biodiversity, and the responsible consideration of employees and individuals and communities affected by growers and mills, among others. While there is no similar roundtable or agreement regarding the rubber industry as of yet, it is in keeping with Socfinal Group’s overall commitment to sustainability that such principles should apply to its rubber plantation enterprises in Bousra Commune. By entering into a joint venture with KCD in an ELC that is likely to violate national and international law on several grounds, Socfin-KCD is at risk of violating the Socfinal Group’s performance standards.

With regard to transparency during the transaction, documents regarding the contract and the ELC itself have been repeatedly requested but have been withheld. The Bunong community has been largely excluded from information and discussions regarding the destruction of their communal land. As outlined in the legal arguments above, the ELC between KCD and the RCG is likely to be illegal. By working with KCD, Socfin-KCD is likely supporting the violation of the Cambodian Land Law 2001 and international human rights conventions. As conceded by Yim Lux, the ELC also includes portions of protected wildlife sanctuary; it also affects other natural resources being used and maintained by the Bunong community. The destruction of such property is not in keeping with the standard of

⁵³ Note that this section focuses on AFD and Socfinal, as neither Socfin-KCD nor KCD appear to have any performance standards publicly available.

⁵⁴ <http://www.socfinal.lu/Public/> (“Sustainability” page).

“environmental responsibility and conservation of natural resources and biodiversity.” Finally, by refusing to adequately communicate and discuss the situation with the community members themselves and clearing the land before proper documentation had been procured and shared with the community, KCD and Socfin-KCD failed to give “responsible consideration of...individuals and communities affected.” The community states they no longer trust either the company or the government and these damaged relationships deepen the problematic nature of this economic venture.

The French development organization, AFD, also has its own internal policies regarding the use of French taxpayers’ money. AFD finalized its Charter of Professional Ethics of the AFD Group in 2004. Among the “fundamental principles of professional ethics” espoused in the Charter is “concern for the environmental and social impact of [AFD’s] actions.”⁵⁵ AFD has also committed itself to a fight against corruption as a corollary of its core value of integrity.⁵⁶ If AFD were to fund the ‘social aspects’ of the Socfin-KCD concession and plantation, its partnership with Socfin-KCD in that endeavour could be seen as supporting an ELC that is likely to be illegal under national and international human rights law. AFD could thus be seen as supporting the concession’s alleged illegality and its detrimental consequences on the Bunong’s land, natural resources and socio-economic rights.

Furthermore, AFD’s Policy for Social and Environmental Responsibility advocates the reduction of poverty and inequality and mandates a responsibility on French citizens “to ensure the effective and transparent use of public funds entrusted to it by implementing performance measures to monitor the quality of its results.”⁵⁷ The ELC was not developed in consultation with the local community and appears to have illegally deprived an indigenous community of their land.

AFD is also a signatory of the UN Global Compact, which requires it to “respect the universal principles and values of the international treaties and conventions that establish the conditions required to realize sustainable and equitable development.”⁵⁸ This includes the Universal Declaration of Human Rights and the core international human rights treaties. The Global Compact contains two principles on human rights, namely: Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and Principle 2: Business should make sure that they are not complicit in human rights abuses.⁵⁹

If AFD grants funding to the social aspects associated with the Socfin-KCD ELCs, AFD may breach international standards pertaining to human rights, sustainability and equitable development.

Business responsibility to respect human rights

⁵⁵ Charter of Professional Ethics of the AFD Group (2004), p.2, online at http://www.afd.fr/jahia/Jahia/lang/en/home/engagements_ethique.

⁵⁶ Ibid, p.12.

⁵⁷ AFD Policy for Social and Environmental Responsibility (Jan. 2007), p.1, online at http://www.afd.fr/jahia/Jahia/lang/en/home/DemarcheRSE_AFD/PolitiqueRSE.

⁵⁸ Ibid, p.6.

⁵⁹ SRSG on human rights and business Report, *Protect, Respect and Remedy: a Framework for Business and Human Rights*, A/HRC/8/5.

There is an increasing recognition that businesses must, at a minimum, respect human rights, whether national law provides for it or not.⁶⁰ This is what the Special Representative of the Secretary-General (SRSG) on human rights and business called businesses' 'baseline responsibility'. The SRSG stated; "failure to meet this responsibility can subject companies to the courts of public opinion - comprising employees, communities, consumers, civil society, as well as investors - and occasionally to charges in actual courts. Whereas governments define the scope of legal compliance, the broader scope of the responsibility to respect is defined by social expectations - as part of what is sometimes called a company's social license to operate."⁶¹ To discharge businesses' social responsibility requires due diligence, i.e. the steps a company must take to become aware of, prevent and address adverse human rights impacts. An examination of KCD, Socfin-KCD, Socfinal and AFD's actions with respect to the land concession's potential impacts on human rights, from the exploratory phase until now, reveal some serious gaps in implementing such due diligence measures.

The UN Special Rapporteur on indigenous people⁶² also noted that in view of their impacts on the activities and daily life of indigenous peoples, local and transnational business enterprises also have an important responsibility to respect and promote the rights and principles of the UN Declaration on Indigenous Peoples. This is particularly relevant in relation to the guarantees set forth in article 32 of the Declaration regarding development or resource extraction projects affecting indigenous territories. The Permanent Forum on Indigenous Issues has called upon transnational corporations to respect the standards affirmed in the Declaration.⁶³

3.6: The association of Agence Française de Développement with the ELC - and actions by Socfinal, respectively may trigger both France's and Luxembourg's international human rights obligations

The French government may be or seen to be accountable to some extent for the actions of AFD, should AFD financially support Socfin-KCD operations. It is safe to assume that AFD qualifies as a State organ, given the French government's oversight of AFD.⁶⁴ France, as a State Party to the International Covenant on Economic, Social and Cultural Rights⁶⁵ and through AFD, must adhere to its obligations pertaining to international cooperation (as per Article 2(1) of the Covenant). Indeed, the CESCR Committee maintains that "in accordance with Articles 55 and 56 of the Charter of the United Nations, with well-established principles of international law, and with the provisions of the Covenant itself, international cooperation

⁶⁰ SRSG on human rights and business Report, *Protect, Respect and Remedy: a Framework for Business and Human Rights*, A/HRC/8/5

⁶¹ Ibid.

⁶² Special Rapporteur on Indigenous Peoples, Report to the Human Rights Council, A/HRC/9/9

⁶³ E/2008/43-E/C.19/2008/13, para. 26

⁶⁴ AFD's capital is owned by the French government. AFD is under the oversight of the Ministry of Foreign Affairs, Ministry of Economy and Finances, and the Ministry for Immigration, Integration, National Identity and Solidarity Development. See at: www.afd.fr. Under international human rights law, all branches of government and other public or governmental authorities are in a position to engage the responsibility of the State party. See e.g. Human Rights Committee, General Comment 31.

⁶⁵ France acceded to the International Covenant on Economic, Social and Cultural Rights in 1980. France also acceded to the International Convention on the Elimination of All Forms of Racial Discrimination in 1971.

for development and thus for the realization of economic, social and cultural rights is an obligation of all States. It is particularly incumbent upon those States which are in a position to assist others in this regard.”⁶⁶

As part of that obligation of international cooperation, France must respect the enjoyment of economic, social and cultural rights in other countries. The responsibility to avoid violating human rights in other countries is fundamental to the international human rights framework. The Committee on Economic, Social and Cultural Rights reiterated the importance of this principle in several commentaries.⁶⁷ In General Comment 15 for instance, the Committee notes that international cooperation requires State parties to refrain from actions that interfere, directly or indirectly, with the enjoyment of the right to water in other countries. Any activities undertaken within the State party’s jurisdiction should not deprive another country of the ability to realize the right to water for persons in its jurisdiction.

Should AFD qualify as a company rather than State organ, France might nonetheless bear some responsibility. Indeed, the Committee on Economic, Social and Cultural Rights, in pronouncements made about international cooperation with respect to the rights to water, health and food, makes it clear that it expects States Parties to take some action to “prevent” their “own citizens and companies” from abusing rights abroad.⁶⁸ As part of France’s obligation regarding international cooperation, it is expected to take all due diligence measures to ensure French companies do not abuse rights, even unwittingly or indirectly.

In a similar vein the State of Luxembourg⁶⁹ might face similar questions before the CESCR Committee, the Committee on Racial Discrimination and the Human Rights Committee as to its responsibilities to prevent Socfinal, as a Luxembourg-registered company, from abusing the rights of the Bunong communities in Cambodia. The same conclusions would apply to the State of Belgium should the legal relationship between Socfinal and Belgium be considered stronger than that with Luxembourg.

IV. CONCLUSION

In conclusion, the following can be drawn from the above arguments.

- The Bunong people of Bousra Commune can be easily defined as members of indigenous communities under Cambodian law.
- The lands of the Bunong indigenous community are likely to be eligible for collective ownership registration under the 2001 Land Law and relevant sub decrees.
- Prior to registration, the Bunong indigenous community are entitled to manage their lands and community according to traditional practices and customs, including the collective management of land and a tradition of no permanent transfer of land to individuals outside the community.

⁶⁶ Committee on Economic, Social, and Cultural Rights, General Comment 3 on Art. 2 of the International Covenant on Economic, Social, and Cultural Rights (Paragraph 14, Fifth session, 1990).

⁶⁷ See e.g. General Comments 8 (sanctions), 14 (right to health), 15 (right to water).

⁶⁸ SRSG on human rights and business, *State Responsibilities to Regulate and Adjudicate Corporate Activities under the United Nations’ core Human Rights Treaties*, Report No.2 on ICESCR.

⁶⁹ Luxembourg ratified ICESCR in 1983, ICERD in 1978 and ICCPR in 1983.

- The Bunong lands include areas that are state public property and which cannot be the subject of an Economic Land Concession unless mapped first as state public land and subsequently transferred to state private land through relevant legal procedures. It is unlikely that this process has been followed and information about any such process has not been provided by the government or company. It should also be noted that State Public Land can be included in indigenous communal title and, if the land is illegible for collective ownership, cannot be legally transferred to state private property without indigenous community land claims first being resolved.
- The ELCs are likely to breach international laws and standards regarding human rights, with the RCG primarily responsible for those breaches.
- Socfinal and AFD, if the latter provides financial support to the social aspects of the ELCs, are likely to have violated their own internal safeguard measures and ethical performance standards, and breached international standards of corporate social responsibility.
- France and Luxembourg (or Belgium instead) may bear some responsibility for any breaches of international human rights law by AFD and Socfinal, respectively.

Thus, the RCG's purported grant of ELCs to KCD is very likely to be invalid under Cambodian laws and procedures and breach of international laws and standards. The ELCs also appear to breach the internal safeguard policies of both Socfinal and AFD.