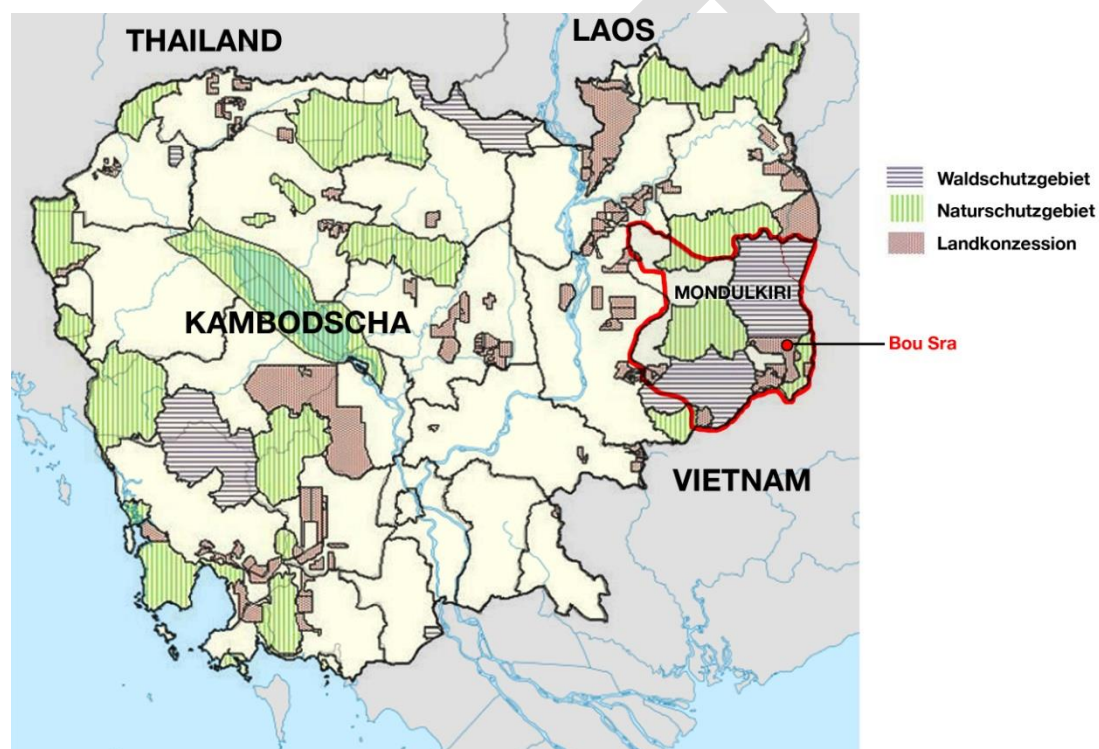


# Indigenous People's collective land titling process in Bu Sra commune

Dr. Esther Leemann, 25.10.2015

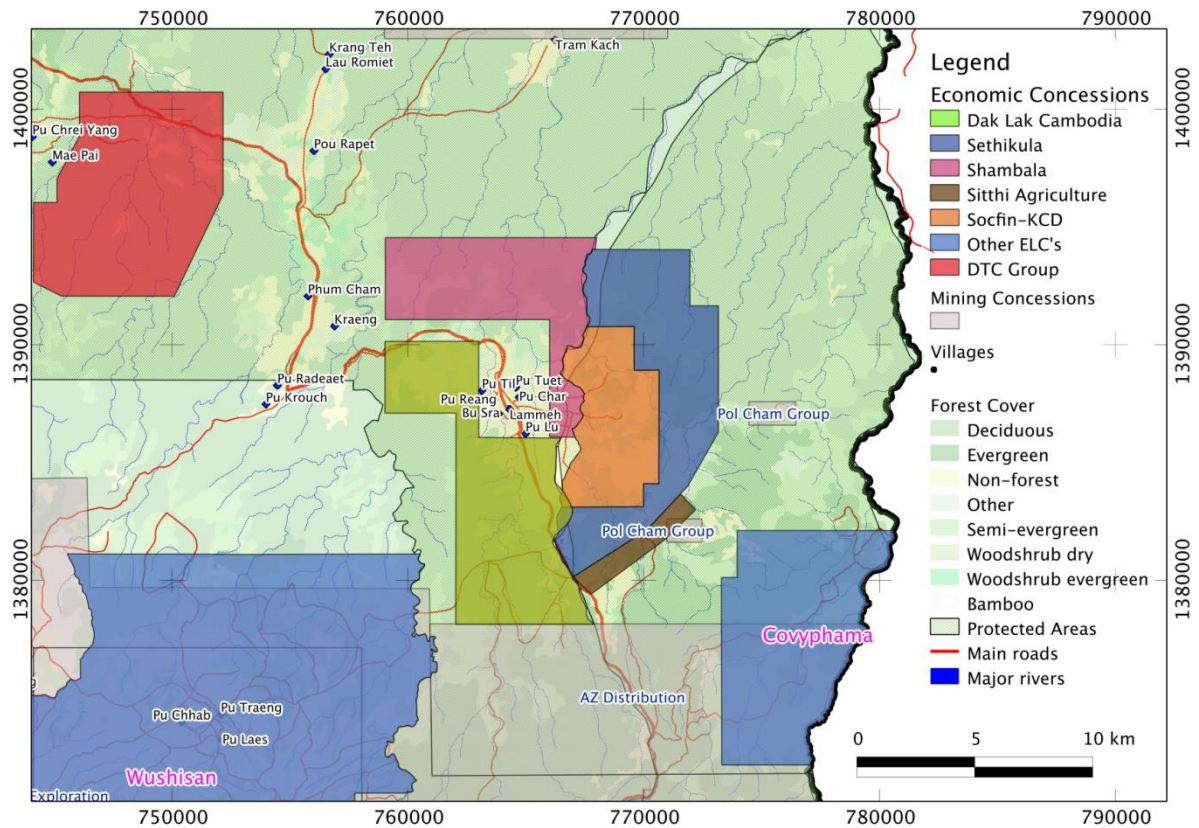
## 1. Introduction / Context

The indigenous Bunong (also referred to as Phnong) are currently confronted with the rapid expansion of rubber plantations, mining and logging activities and intrusion of settlers on their customary land. In Bu Sra commune, Mondulakiri province, various economic land concessions for agro-industrial plantations have been granted to Cambodian and Vietnamese companies and one joint venture involving principals from Luxembourg, Vietnam and Cambodia (see maps 1 and 2).



Map 1 *Bu Sra commune: surrounded by land classified either as Economic Land Concessions (red), Forest Protected Areas (blue) or Wildlife Sanctuaries (green) (Source: LICHADO 2012, own compilation).*

Over 850 Bunong families already lost or are threatened with losing their agricultural land (swidden sites), cattle grounds and forest resources. Their traditional livelihood strategies are severely impaired, leaving this vulnerable population even more prone to the risks of poverty. Furthermore, several Bunong communities have witnessed the destruction of sacred places, such as burial grounds and spirit groves.



Map 2 Economic and Mining Concessions affecting Bunong's customary land (Source: Courtesy of Pyrou Chong, Oxfam 2012)

### Importance of land

Land forms the basis for the **livelihoods** of the Bunong as swidden cultivators. Swidden agriculture is not only essential to farmers' subsistence, but to the entire **way of life** of farming communities. It is one of the Bunong's strongest identity markers. The agricultural cycle sets the pace for the swidden community, is marked by ceremonies and entails social responsibilities. Bunong associate an elementary sense of **freedom**, contentment and peace with the practice of swidden agriculture and generally with their forest-based livelihoods.

Land is referred to as mother (*me neh*) – a perception of land as the protector and caretaker of the people. Each Bunong decent group is rotating its fields on an area identified as **ancestral land** (*bri taem*), and the Bunong consider themselves strongly **rooted** in this land. Their land is an intensely **meaningful place** invested with social, cultural and religious activities and imaginings. It is the key to the Bunong definition of themselves as a group. The very loss of their familiar place, which has been transformed by rubber monocultures into vast unrecognizable deserts left the Bunong with a perception of emptiness and disorientation (see Leemann and Nikles, forthcoming)

## 2. Efforts to protect Bunong's customary land

Cambodian Land Laws from 2001 provide a legal framework to protect indigenous peoples' rights to collective ownership, thereby allowing the Bunong to formally secure the rights to their land. However, the procedure for obtaining collective land titles is both intricate and costly, and the political will of the authorities to protect the land of the Bunong is minuscule. Even though the titling process in Bu Sra started already in 2009, the efforts have yielded neither effective collective titles nor interim protection measures yet (FIDH, 2011; Leemann, 2012).

### Intricate collective land titling process

The following three-step process is necessary to obtain a collective land title:

1. **Identification** of indigenous peoples and communities: The community first needs to identify itself and to produce the required documents (self-identification) and to make a formal request to the Ministry of Rural Development (MRD) where the Dept. of Ethnic Minorities Development (DEMD) has the authority to verify a community's 'indigeneity'. Once recognition is obtained
2. Registration of the community as a **legal entity** with the Ministry of Interior (Mol) follows. It requires different steps like drafting and approval of the by-laws of the community and the application for registration with the Mol. Once the community has been officially registered it is entitled to apply for
3. Registration of the collective land title with the Ministry of Land Management, Urban Planning and Construction (MLMUPC), involving the surveying, **demarcation** and titling procedure and the adoption of **internal rules** concerning land use management of the community. (Leemann 2012)

## 3. The seven Indigenous communities from Bu Sra commune

The Bunong social organization is based on separate female descent groups (matrilineages), which live close together, as the married couples are supposed to reside near the wives' parents. The descent group (*po*) therefore roughly conforms to a residential group or 'village' (*pu*).

Until the 1970es the various descent groups lived as swidden cultivators on their ancestral lands. The war forced the families to either escape to Vietnam or they were displaced by the Khmer Rouge to the Kao Neaek district. When the families from the various matrilineages returned in the 1980es, they were told to live close together in permanent villages for security reasons. From then on, these newly formed villages constituted the administrative units, through which the Cambodian state dealt with the Bunong population.

Bu Sra commune consist of seven administrative villages. Interestingly, the seven indigenous communities who attained registration as legal entities (step 2 of the collective land titling process) correspond to these administrative units, disregarding the Bunong social organization based on decent groups (see table 1). Hence, the land of some of these registered indigenous

communities turned out to be scattered over quite large distances, reflecting that before the war, the various matrilineages now lumped together as a registered community had lived a long way from each other on their customary land. For the sake of clear and logic boundaries between the seven registered communities, it was agreed internally, that some communities would register land in their name, which in fact belonged to a descent group of another community. It was thought that later on, when all IP land would be secured as communal land, the various descent groups would informally make an exchange among each other, reflecting the real land tenure based on their true social organization.

Community	Include other decent groups (matrilineages)	Correspond to administrative unit	No. families	Land conflict with
Pu Tuet	Pu Krong (joined already 1950s) Pu Murr (joined 1970s) Pu Nam (joined before the war) Pu Nduet (joined 1982)	village no. 1	195 (not yet confirmed)	Socfin (ELC) Private settlers Coviphama Road for a new company from Hun Sen family
Pu Raeng	Pu Nduet (joined 1982)	village no. 2	117 (not yet confirmed)	Socfin (ELC) Private settlers Dak Lak (ELC)
Bu Sra	Pu Toi (joined 1960s, separated during the war, the rejoined 1988) Char Ra Tonh	village no. 3	107 (not yet confirmed)	Socfin Dak Lak (ELC) Private settlers in the village Coviphama
Pu Tir	Pu Tam (joined 1986)	village no. 4	117(not yet confirmed)	Dak Lak (ELC) Private settlers, Sre Ampun village
Lammes	Lam Pö (joined 1986) Pu Proh (joined 1986) Tu Shuoai (joined 2000, before were together with Pu Toi)	village no. 5)	105 (not yet confirmed)	Dak Lak (ELC) Socfin Cham (SLC) K peace (ELC)
Pu Cha	Pu Cheng 1 & 2 (joined 1970es)	village no. 6	86 (not yet confirmed)	Dak Lak (ELC) Socfin Cham (SLC) K peace (ELC)
Pu Lu	Cao Glae (joined 1986) Pu Tam (joined 1986) Pu Ndrom (joined 1986) Tak Parr (joined 1986)	village no. 7	...	Dak Lak (ELC) Socfin Cham (SLC) Coviphama K peace (ELC)

*Table 1: Communities and decent groups of Bu Sra commune (Source: Esther Leemann and Neth Prak, 2013)*

### 3.1. Challenges to address

Unfortunately, the communal land titling process progresses very slow and not all seven communities are equally determined to continue the struggle for a communal land title for years. Yet, if not all communities will successfully go through the whole process and receive a communal title, the plan to internally

exchange land to be secured in the name of another community will fail and the land of descent groups, who were dedicated in their struggle for a communal land title may nevertheless be lost. Moreover, informal land sales, private land registration under the scheme of Directive no. 1 and the companies' reallocation of land to individual households for contract farming add to the difficulties of a fair internal exchange of land.

The internal conflict resolution capacity of the Bunong may yet be overestimated for another reason: the different decent groups lumped together in a registered community have not been and will not be equally affected by the various land conflicts each community has to deal with. Yet, decent groups, which have been strongly affected by loss of land, are supposed to rely entirely on the solidarity of other decent groups who have not (yet?) lost much of their ancestral land. It would be naïve to assume that this goes without internal conflicts. Hence, the internal rules thus need to be devised very carefully and reflect the internal complexity of the communities. Besides, the communal land maps have to be drawn very carefully to really include all ancestral land of all the decent groups lumped together in a community; namely those areas that have already been 'lost' need to be indicated in the maps. Still another problem needs to be dealt with: As up to 5 decent groups are lumped together in a community, the areas for ancestral graveyards and sacred places will by far exceed the limit of 7 ha for such areas set by the law. It is of utmost importance that all ancestral graves and sacred places of all decent groups are equally protected.

#### **Bunong customary land rights**

A **female descent group** (matriline) claims a specific area as its land (*bri taem*). The land is conceived as **collective property** of the group. The **right to use** the group's customary land is passed from a mother down to her daughters. Families can claim **exclusive private rights** to cultivated land as well as to plots that have been recently fallowed. However, as soon as a fallowed swidden field becomes strongly overgrown with forest vegetation, it falls back into common property. Consequently, that piece of land can be cleared again by any member of the female descent group. The **tenure system** is thus **highly flexible** allowing both for reallocation of forest land and protection of exclusive private rights to cultivated fields.

In order to **avoid conflict**, a family has to clarify the tenurial rights of the land before opening a new field for cultivation. If two families aim for the same plot, solutions are sought by involving elders and traditional conflict-resolution mechanisms (Backstrom et al, 2007). If the land belongs to another descent group, permission must be sought from that community (see Leemann and Nikles, forthcoming)

Currently, the people of Bousra face losing their land due to various concessions - two granted Economic Land Concessions and one Social Land Concession as well as alienation of indigenous peoples land to migrants from



the lowlands. The Communities made various attempts to local authorities to help protecting their lands. Up to date, those efforts have had little effect.

#### I. Chronology of events<sup>1</sup>:

##### **February 2008:**

In early June of 2007, an area of 5440 ha (or 5345 ha) in Mondulkiri Province, Pechreada District, was granted as an **Economic Land Concession** to **Coviphama** and the contract was signed on 17 February 2008 with the Ministry of Agriculture, Forestry, and Fisheries (MAFF)<sup>2</sup>. Coviphama was reportedly owned by a former army chief, Mr. SOR KHEANG, who is now head of the Ministry of Interiors. However, ODC3 reports that the directors are Mr. Nuth Ying, Mr. Sok Ying. In early 2008, Coviphama started to clear the forested land and affected the ancestral land of Tak Parr, and then Pu Murr and Pu Nam, Cao Glä (belonging to the communities village no.1, 3 and 7). No compensation was paid to the villagers, as in the view of Coviphama only forested land was concerned. Coviphama even bulldozed a graveyard of Tak Parr (belonging to IP community village no. 7). Tak Parr complained about the desecration to the commune chief in 2010, but there was no reaction. Since 2013, Coviphama apparently belongs to **Socfin**, but still no compensation has been paid and people did not file a complaint.

##### **April 2008:**

In early April of 2008, an area of land in Mondulkiri was granted as an **Economic Land Concession** for rubber plantation purposes in an agreement between **KCD** and the Minister of Agriculture, Forests and Fishers (MAFF), Chan Sarun.<sup>2</sup> In that same month, KCD began clearing land in the Bousra Commune.<sup>3</sup> This clearing of land was conducted before the demarcation process was finalized and agreed to by the villagers.<sup>4</sup> It is understood that the actual ELC contract was not signed until October of 2008. For some local farmers whose individual parts of the communal land farmlands are overlapped by the concession, the company engaged on a model of 'Cooperation farm' or 'Family Plantation'.

In 2007, the European company Socfinasia entered into a joint venture with KCD (**Socfin-KCD**), of which it now owns 80% and ensures its operational management. Registered in Luxembourg, Socfinasia is owned mainly by the French industrial group Bolloré and Belgian families Fabri and de Ribes.

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<sup>1</sup> For more information on the events, especially on the Concession granted to Socfin/KCD, please see the attached draft legal memo.

<sup>2</sup> Shay, C. and Strangio, S. "Plantation highlights struggle of development and preservation," *The Phnom Penh Post*, May 25, 2009.

<sup>3</sup> Kurczy, S. and Soenthrith, S. "Large-Scale Farms, Hilltribes Compete for Land," *The Cambodia Daily*, 13 June 2008.

<sup>4</sup> 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].

Socfin-KCD now manages two concessions in the village of Bousra, in Mondulakiri province, (Varanasi and Setikhula) for a total of more than 7000 ha. The concessions affect over 850 families living in Bousra Commune.<sup>5</sup> Socfin – KCD engaged in contract farming with villagers.

### **July 2008:**

An **Economic Land Concession** with the size of 4,162 hectares in Bousra was granted for 70 years to the Vietnamese Company **Dak Lak**. The Concession primarily overlaps local people's lands in two villages (Pouchar and Poutil), but households in other three villages (Bousra, Lameh, and Poulu) are also affected. For some local farmers whose individual parts of the communal land farmlands are overlapped by the concession, the company engaged on a model of 'Cooperation farm" or "Family Plantation" This model requires farmers to give up half of their land to the company (without compensation) while the remaining half will be developed as cooperation farm that are possessed by the farmers. The company then developed the cooperation farm into rubber plantation. Nowadays there are 63 families of the original 96 families who still are in the family plantation program (rubber families). Dak Lak company currently operates around 3600 ha out of the 4162 ha.

### **2008:**

The planning to establish a **Social Land Concession** inside the Communal Land began. The original request for the SLC was from Kampong Cham district officials made to the (former) Mondulakiri Provincial Governor, and he then filed a formal official request to the Prime Minister in 2009. The Social Land Concession was approved the Provincial Governor of Mondulakiri only in December 2012. The SLC affects land of villages number 5,6,7 which are: Lammes, Pou Char and Pou Lu. Note that the SLC was established **after** the boundary map of IP land was done by the communities.

### **2009- 2013:**

IPs completed the 1<sup>st</sup> and 2<sup>nd</sup> step of Communal Land Registration. The communities applied to receive the Communal Land Title at the provincial cadastral office of the MLMUPC. Up to now, no interim protection measure has been granted by the provincial authorities.

### **2011:**

**Sitthi Agriculture Plantation Co., Ltd** was granted an **Economic Land concession** with the size of 522 ha in early February 2011 for a duration of 80 years. In 10.08.2011, the concession was **transferred to K PEACE**<sup>6</sup> and

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<sup>5</sup> FIDH, Cambodia: Land Cleared for Rubber. Rights bulldozed. The impact of rubber plantations by Socfin-KCD on indigenous communities in Bousra, Mondulakiri, 2011, Pg. 6, with further information.

<sup>6</sup> According to UN Report of the Special Rapporteur on the situation of human rights in Cambodia, Surya P. Subedi Addendum "A human rights analysis of economic and other land concessions in Cambodia", Pg. 106 the ELC was

the company was assigned to start to clear land in 03.10.2011. Affected by this concession is the ancestral land of Pu Murr and swidden fields of village no. 7 (Pu Ndrön), 5 (Lam Pö) and 6 (Pu Cheng). People did not make an official complaint. Some people individually received some compensation money, other people did not accept any compensation money and continue to cultivate their swidden fields.

## **2012:**

New settlers - about 150 families mainly from Kampong Cham - moved to the site of the Social Land Concession. While the process of communal land titling in Bousra is still going on, they occupy the ancestral lands of the Indigenous communities Pu Lu, Lammes and Puchar and cutting down the forest.

## **2013:**

In April and May 2013, the new settlers accelerated their clearing of the forest and by then had cut down around 100 hectares of forest. The forest they are clearing is on the ancestral land of the above mentioned Bunong communities and include even sacred places and graves yards.

IP Communities organize Forest Patrols to stop the settlers from clearing the land. Communities seize chainsaws and other items from the settlers. Local authorities are not responsive to support the IPs.

Authorities demand the seized items to be returned. Villagers fear that they will be used for illegal logging again.

In October 2013, representatives from the IP community village no. 3 complained that apparently, a new company will soon get operational on community land, a road is being built already. The name of the company is not known yet, some people heard, the company is called 'Yum Chaily'. There are rumours spreading that the company belongs to relatives of PM Hun Sen, while according to other rumours the company belongs to Socfin. Representatives from the community village no. 3 are concerned that people will hesitate to fight because of two reasons: first, the disputed area in fact forms part of the ancestral land of Pu Murr and Pu Nam, and these two decent groups now officially belong to village no. 1. People both from villages no. 3 and no. 1 now hesitate to fight against this new company; second, community members of village no. 3 are not united in their fight for a communal land title, only 23 families are still committed to struggle, while many are indecisive if it is really worth the trouble to fight for community land.

In October 2013, the communities Pu Lu, Lammes and Pu Cha, which are affected by the SLC filed a formal complaint against the Cham representative, Mr Sroch Malan, who requested the SLC with the Mondulkiri provincial

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granted in a wildlife sanctuary which land been reclassified. Sub-Decree 13, dated 20 January 2012 to designate the land as a sustainable use zone within Phnom Namlear wildlife sanctuary, and to grant it to the company; -Sub-decree 28, dated 20 February 2012, referring to the above sub-decree to reclassify the land as state private land.



Governor, with the Provincial Court. Another complaint was filed by Pu Cha against the illegal logging from K PEACE company on its customary land.

Families engaged in contract farming with Socfin want to terminate the contract with Socfin due to contract irregularities and Socfin's failure to perform the contract. 76 farmers remain to request their land back from Socfin to be included in the IP CLT.

**2014:**

In January, Socfin - who had bought the COVIPHAMA concession in September 2013 - cleared fields of Volyoung/Cao Glae families (village No. 7), close to the Vietnamese Border, and bulldozed the graveyard of 6 subvillages (among them Volyoung/Cao Glae and Pu Dam (all from the community village No. 7)). Socfin first denied to be involved in COVIPHAMA concession at all. Finally, after firm resistance of the six subvillages affected by the destruction of the burial ground, and the concerted action of supporting NGOs could finally stop the clearing. In May 2015, Socfin agreed to pay a compensation for the destruction of the burial ground of US\$ 10'000 to the six subvillages.

**2015:**

In January, Socfin started to clear the land of Pu Cha village (village No. 6) within COVIPHAMA concession area, even though the company had agreed on the demarcation of villagers' community land. When villagers checked in March 2015, they realized that two very sacred places had been desecrated, and sacred forest and other forest land had been bulldozed. In April, the villagers complained about the destruction in a meeting with Socfin, in May, they asked for another meeting as they still had not received a response to their requests. End of May, the representative of village no. 6 addressed the problem in the district public assembly. 10<sup>th</sup> of June, the district and commune authorities together with the community representative went to check the destruction caused by Socfin. The authorities requested Socfin to solve the problem with the villagers and to wait with planting rubber in the meantime. Socfin asks the authorities to solve the problem with the villagers.

## II. Unresolved issues

### Demarcation and mapping process

IP customary land could be demarcated and some primary maps could be drawn (to be confirmed in the case of villages no. 1 and 2). However, IP ancestral land conflicting with the companies Socfin, Dak Lak and Coviphama was not demarcated. Note that for example Tak Parr (from village no. 7 / Pu Lu) has all its ancestral land inside Coviphama and thus none of its ancestral land has been demarcated and mapped. Tu Shuoai (from village no. 5 / Lammes) could not demarcate its land because the border police no. 8

prohibited the demarcation team to do so. Land conflicting with the Social Land Concession could be demarcated.

Interestingly, the primary maps that could be realized so far do not adequately reflect the village territories. They disregard the demarcations people agreed upon during the process of writing down their internal rules and making the sketch maps. The primary map of Pu Lu (village no. 7), for example, indicates the Social Land Concession instead of the Bunong villagers land claims! Most probably, this is also the case for the map of the other village affected by the Social Land Concession no. 5 / Lammes.

Another process of exclusion is simultaneously under way: the rapid alienation of small portions of land to migrants from the lowlands. This involves informal land sales but also the simple neglect of villagers' claims, the lowlanders just occupying Bunong land. All of this takes place in a climate of intimidation. Although in principle, indigenous land cannot be legally owned by non-indigenous people, lots of Khmer people could register Bunong ancestral land under the titling scheme of Directive No. 1. It is still an open question, how to deal with such Khmer individuals, who claim indigenous land in Bu Sra commune as theirs. However, this challenge did not receive much external attention yet.

#### **Urgent need for:**

- control the so called primary maps in a transparent, participatory process: the communities have to be involved to check, if the mapped data is correct
- that maps have to reflect the existing human rights framework on Indigenous Peoples
- putting more emphasis on enforcing existing legal framework, not just focus on communal land titling procedures without devising a consistent policy of how to enforce the titles and interim protection measures
- There is growing concern that also on part of the assisting organizations, the management of the administrative procedures has not so much been informed by a human rights perspective but rather by practical policy in order to speed up the land titling process. Furthermore, there was no emphasis on devising a policy of how to effectively enforce IP's land rights based on the national and international legal framework.
- ensure right based approach to address the land conflicts and not give a primacy to "Realpolitik"
- villagers are tired of educational workshops and meetings concerning their rights on paper while at the same time the rule of law is terribly weak and their rights are violated and there is no effective external support available to them to really enforce the law.
- to enhance the knowledge among involved actors (governmental and nongovernmental) on thematic and legal issues concerning communal land (e.g. on internal rules on the use of common pool resources and

privately used resources within the communal land (trees, grazing lands, swidden fields, fallow land); importance of swidden land and access to forest resources for IPs, meaning that IPs really need lots of reserve land in order to continue their culture)

- information on concessions granted in Dak Dam District as this affects community land of IP communities from Bu Sra.

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