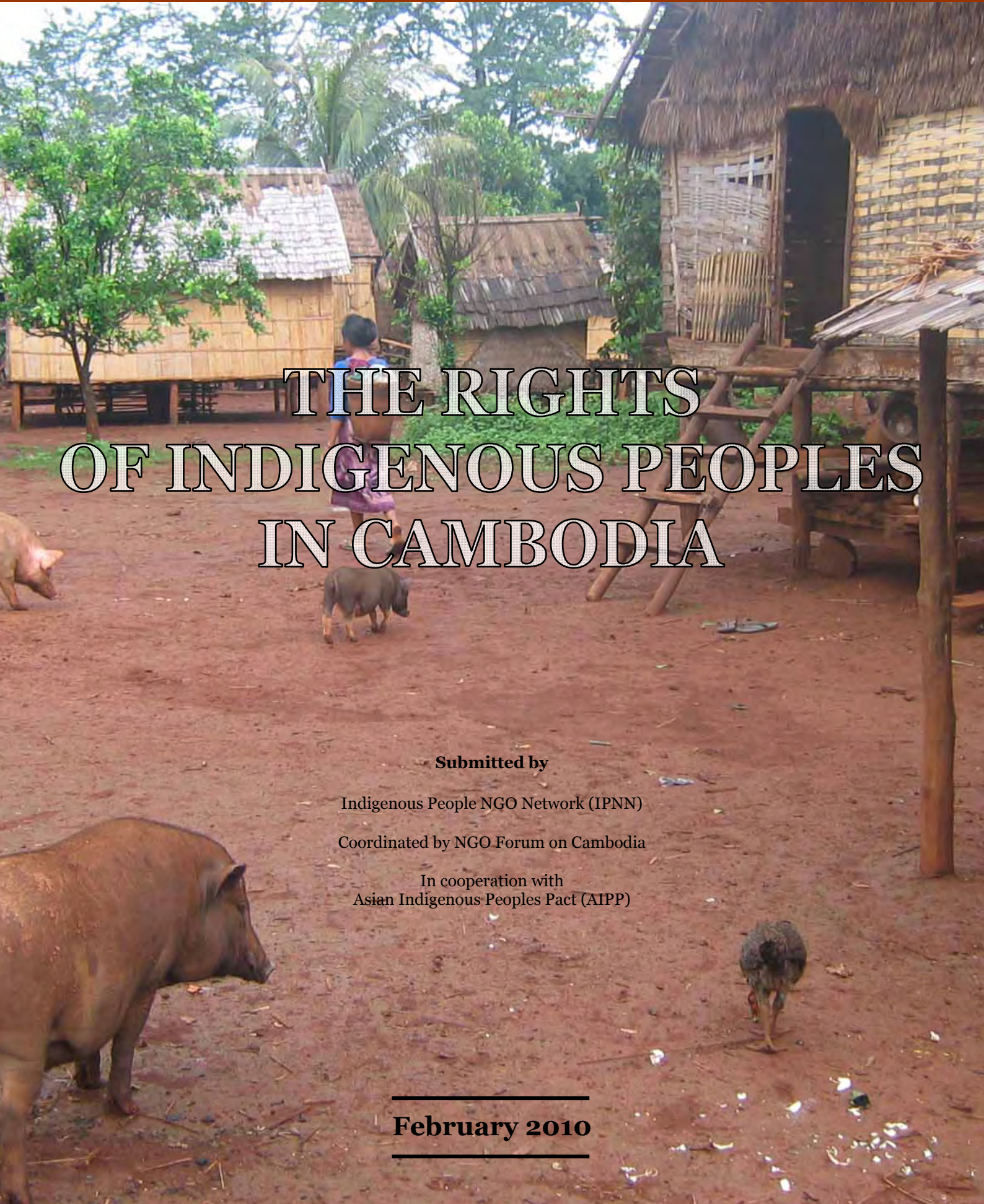


UNITED NATIONS COMMITTEE ON THE ELIMINATION OF RACIAL
DISCRIMINATION

(76TH SESSION 2010)



THE RIGHTS
OF INDIGENOUS PEOPLES
IN CAMBODIA

Submitted by

Indigenous People NGO Network (IPNN)

Coordinated by NGO Forum on Cambodia

In cooperation with
Asian Indigenous Peoples Pact (AIPP)

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February 2010

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Rubber plantation

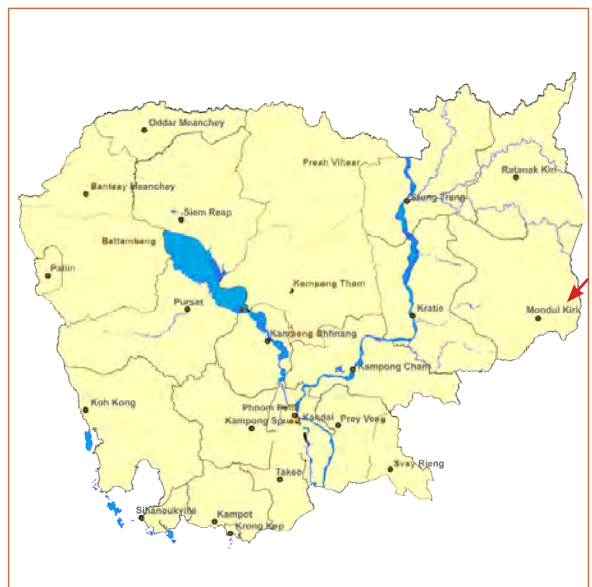
Mondolkiri



In April 2008 land clearing started in Bousra commune. The joint venture between a Luxembourg-registered company and a Cambodian company was granted concessions over the lands and forests of indigenous Bunong people.

The Case: Bousra Commune, Mondolkiri

- Concession: Land Concession/lease for a rubber plantation, granted by the government for 70 years.
- Size: around 10,000ha, in three concessions, the first one issued October 2008 by the Ministry of Agriculture, Forestry and Fisheries.
- Company: Joint venture between Luxembourg-registered company, Socfinal and Cambodian company, Khaou Chuly Development (KCD), named “Socfin-KCD”.
- Development Plan: Rubber plantation with a request to AFD to support family rubber plantation adjacent.
- Area: Bousra commune. Red soil highland areas to the eastern side of Mondolkiri, near the Vietnamese border.
- Communities affected: on land occupied by indigenous Bunong people. Some 300 families (7 villages) affected.



The battle of David against Goliath

The Bunong of Bousra commune were catapulted into the media limelight on 22 December 2008, after 400 demonstrators had set fire to tractors and excavators belonging to Socfin-KCD company. The joint venture was set up between an important group of planters operating among others in Africa and Indonesia – and which parent company, *Socfinal*, is registered in tax haven Luxembourg – and Cambodian company Khaou Chuly Development (KCD). It was granted an economic land concession by the Cambodian government to start a rubber plantation in Mondolkiri that partly overlaps with the land of the Bunong indigenous community of Bousra (see information below re legality of the concession). "Socfin [whose director is French] provides the funding, experts and equipment," the commune chief summarized. "As for Khaou Chuly, they are the coordinators. Both work together. Khaou Chuly cooperates with high-placed people in the government."

The December incident was the result of accumulated incomprehension, humiliation and anger. Eight months earlier, in April 2008, Khaou Chuly bulldozers started clearing land without the villagers being notified first, neither by the company or the local authorities. The provincial governor was called for help by the Bunong, who have been living on the land for generations. A few weeks away from national elections, the authorities

sought to appease the villagers. The National Authority for Land Dispute Resolution promised that some of the land would be returned, but the promise was left unkept.



Timeline

- 2006: Study by Khaou Chuly Development (KCD) to determine the suitability of the concession site for a rubber plantation.
- April 2008: Socfin-KCD company starts clearing land in Mondolkiri, near Bousra commune (7 villages).
- May 2008: Demonstration at the office of the provincial governor. Two days later, officials of the National Authority for Land Dispute Resolution promise that the land will be returned to the community.
- June 2008: Socfin-KCD agrees to pay compensation to those recognized by the authorities. But villagers talk about threats.
- October 2008: First concession contract signed.
- December 2008: Demonstration of Bousra villagers. They break and set fire to tractors.
- January 2009: Three demonstrators are arrested. Following pressure, the three are released a few hours later. Charges are still pending but not activated.
- February 2009: A sacred forest is razed. Operational management is transferred from Khaou Chuly Development to its partner Socfin.
- May-September 2009: Planting of rubber trees on the first part of the concession. Clearing continues. Village residents request legal advice from NGOs.
- November 2009: NGOs provided a memo to community and to company assessing legality of the concession under national and international law.
- December 2009: Socfin halt land clearing and request a company-government-community committee to negotiate.

¹ Names were changed to protect the identity of the persons requesting anonymity

Aggressive methods

In Bousra, anxiety was growing. “If you don’t sell now, the company will take your land anyway,” several villagers reported being told. With the support of armed forces who maintained pressure, Khaou Chuly quickly earned a reputation for violence and unscrupulousness. “Khaou Chuly took our land, which is 1h30 walk from here,” said Mrs Lon¹. “They didn’t give us any financial compensation. They threatened to send us to prison if someone protested.” She added contemptuously: “Do you know what Khaou Chuly offers for compensation? 50, 100 dollars... I don’t even want to talk with these thieves!”

Early 2009, when Socfin moved aside its partner for form’s sake to handle the problems in Bousra itself, the name of Khaou Chuly disappeared from the official discussions. The amount of compensation varied then between 200 and 300 dollars per hectare. “That is not enough,” a villager said. Another explained one hectare of land in Bousra itself, near the planter’s office, sold for 1,000 dollars in May 2009.

Many families took the financial compensation. It was not the only solution offered by Socfin, but the trust was broken. The two other options were to obtain plots of land of equivalent size elsewhere, either to cultivate crops as people used to, or to cultivate rubber, as part of a project of family rubber plantations. They were not understood notably because many meetings took place in the Khmer language and not in the Bunong language, which meant the discussions were out of reach for most villagers. Bousra residents worried about being moved to the land of other Bunong villages or unknown owners with whom they did not want any trouble. They also had no guarantee as to when exactly they would receive new plots of land, so they declined to be resettled and preferred financial compensation.

Conflicts over land measurement

Whether it was for financial compensation or relocation to another plot, land measurement prompted heavy disagreements: all the fallow land kept in reserve for future rotational farming was not taken into account despite the fact that the Bunong practice rotational farming over a longer period of time and various laws say they have the right to do so². Only fruit trees in a field were compensated for, but not resin trees for example, despite the great value they have for the Bunong³.

What land and which family are included in the demarcation process is crucial. Tensions resulted from the process. For Pal, that was the last straw in December 2008 when Khaou Chuly was clearing land: “They would cut down our old land and measure only around the (fruit) trees, instead of taking the whole area into account.” “The local authorities first claimed that my land was not mine,” Lin recalled. “Then, when we went to measure it a few days later with the police and the company, they only measured the land around the banana trees and other fruit trees. I was very, very angry.” Pal fiercely protested: “We went to protest to local authorities of our own accord! No one told us to do it.”

As a result of the revolt, the vice-governor came in person to explain the options offered by Socfin and the importance of the development the company was going to bring to the commune, the district and the province.



To the Bunong, grave sites are integral to their connection to the land. A number were cleared by the company.

² Including the Cambodian Land Law 2001 and Forestry law 2002

³ A number of different trees produce a resin that can be collected and sold. Resin collection is an important income for Bunong people and has been practiced for centuries.

The Long Wait

For those who chose to receive land, it was a long wait. “Talk about development...”, Pal commented. “It is development for the company, not for the villagers since they no longer have any land...” Pal said he had no problem with Socfin since the company gave him a paper guaranteeing that he would receive a new plot of land. And yet... “I have been waiting for almost a year. I have only a tiny rice field left.” There would be a shortage of rice if he were unable to resume farming while he has over ten people to feed in his household. “I ask Socfin not to take any more land.” Around him, his neighbors and family approved. “I used to have 2.5 ha of land. I signed to be resettled by planting rubber trees, but I am still waiting to find out where the new land will be,” Kob explained. The company proceeded with part of the resettlement to the locality of O’Ret, but that did not meet the needs of all those deprived of their land.

“People are asked to wait for a very long time,” Van added. “But with no land, we don’t have anything to eat. Not to mention that Socfin has destroyed crops while rice was growing. It is unfair. If they want to develop the village, they should take the old land and give new ones immediately! If they want to call it development, they should ask people if they agree or not to change land.”

“Now, there is a lot of money, motos, medicine, big houses. People use machines and sell their cattle. Money is important and development for Bousra is good. But what will become of us if we have no land?”, wondered Lon, who was still waiting to be resettled.

Impact on livelihoods

Land loss affected a number of the families in Bousra, but the forest clearing concerned more people. It was encroached upon a little more everyday. Company men bulldozed the forest, moving towards Nam Lear mountain, for a monthly salary of 200 dollars. “We need this forest,” Pal insisted. “Myself, I continue to go to the jungle to look for vegetables, plants and resin. No one in my house is working for the company. If I don’t have that [the forest], I am doomed to poverty.” On her side, Reng does not see the forest anymore but instead sees the company which cleared it and took the place. “There is no forest so it isn’t possible to get resin which was an important part of our livelihood. Now we live like a bird without a nest.”

Ny’s husband refused to work for the company. “Those who work for Socfin get up at 5am. They go to the plantation where they work until 5pm, with a break for lunch. They are paid five dollars a day. My husband goes to collect resin, which he sells for 10 to 15 dollars and he brings back vegetables and fruit we can eat. We save the money he has earned. If he worked for the company, we would have to buy everything: rice, vegetables... We would have nothing left.”

As for her, San found life a little easier with her monthly salary of 150 dollars. She was the leader of a group of workers who cut grass on the plantation. She had enough to buy food every month, not more. Nevertheless she missed her land. “I am waiting for Socfin to resettle me. I would like to get my land back and grow rice.”



Photo: Arantxa Cedillo

Betrayed by the local authorities

For a large number of people in Bousra, the future is inconceivable without land. Yet, in their struggle to preserve their land, they are very much alone. Since it arrived, Socfin-KCD company chose to rely on the local authorities. In particular, it delegated to the latter the survey of land occupiers, perhaps knowing it could be incomplete or rigged.

Testimonies abound on the complicity of village and commune chiefs. Lon sought to submit to the village chief the list of the plots of land for which she wanted resettlement, following Socfin's instructions. "You have already taken the company's money. You won't receive anything more!", the village and commune chiefs responded.

The unpleasant episode reminded her of the first information meetings organized by the local authorities on Socfin's project: "At the first meeting, people disagreed with the project. At the second, people still disagreed. At the third, they were told that if they persisted in their disagreement, the company would take their land because the government had given it as a concession."

"... if they persisted in their disagreement, the company would take their land because the government had given it as concession."

"When Socfin would ask the village chief to inform a family they were going to go and measure their land, the village chief would call someone else, a relative, and sell the land to the company and get the money," related a resident. Phan, a tired woman in her fifties, experienced it herself. Speaking only Bunong, she cowered like a scared animal. "My land was sold by other people. I complained to the commune chief, but he told me that it was not my land. 'If you need your land, watch out that someone doesn't kill you.'" Since then, she has never protested.

Various stories circulated on how villagers were pressured to sign papers they did not know or understand the contents of. In June 2008, an incensed Bunong woman related: "They played a trick with us. They made people sign a blank paper, which was then turned into a sale contract. The authorities also offered us an agreement for one hectare per family, but we refused. That is not enough. You can't make a living with one hectare. There is a lot of land further away. Why didn't they take that land? We know that the commune is involved and so is the district. We don't want to blame them because we



"Indigenous Peoples' Land – Impacting prohibited". Requests for protection of Indigenous Peoples' Land and sacred sites have been repeatedly ignored.

know they have received pressure from the top, the company, the powerful people, and they don't dare to talk. But we have no alternative, so we will struggle until we die for our land, our future and our children!"

Bousra turns into Socfin City

The woman did not suspect then that in less than a year, the motto "divide and conquer" would yield results. Socfin-KCD rallied those it saved from the extortion or scams by the local authorities, those it employed at unbeatable salaries and it took advantage of dissensions that existed before it arrived in Bousra.

A village chief acknowledged that relations were tense and complicated but stressed that scams went both ways. Some sought to sell their land to the company several times, which other villagers confirmed. "Given the amount of the compensation, that is fair enough," commented some, amused. However, the realization prompted the company to create files including fingerprints and identity pictures for the Bunong who came and claim their due. Similarly, Socfin-KCD only hired people with identity papers. "Before control was by local authorities, now everything is controlled by the company" insisted Dooit. Ngell has her own experience to confirm this point of view: "My farm tools have been confiscated by the company. You can only work on the company land."

In the last six months of 2009, Socfin's image has noticeably improved with the local population. Bunong staff facilitate the contact with the villagers, meetings are now held in the Bunong language, the company consults the elders. It pays for the teachers at the two schools in Bousra commune so they remain at their post instead of working at the plantation. It renovates school buildings, works on a hospital project, supports the dance and music group and some local NGOs. All the debates on the legality of the concession, on the rights of ethnic minorities protected by many domestic and international laws, and on the protection of their land, have fallen through the cracks.

The concession appears to infringe Cambodian law, international law and does not fulfill the international standards that are required by the company's status

Outlaw

Concerned villagers requested help. A draft legal memorandum, prepared by a group of legal rights NGOs, states that the concession appears to infringe Cambodian law, international law and does not fulfill the international standards that are required by the company's status and by its potential partners. Amongst others the Cambodian Land Law 2001 would have been violated and the International Covenant on Economic, Social and Cultural Rights and also the United Nations Declaration on the Rights of Indigenous Peoples. According to these laws and policies, the Bunong people should be considered as an indigenous community, with rights to cultivate and manage their land, in accordance with their traditional customs. But the government has appropriated this land supposedly protected by the law and has changed it into an economic land concession, which appears contrary to the laws.

One of the legal problems raised concerns the Environmental and Social Impact Assessment that needs to be completed for such a main project prior to granting of the economic land

"Corporate Responsibility?"

Human Rights responsibilities of companies

The Special Representative of the United Nations Secretary-General on Human Rights and Business, John Ruggie, developed a framework to regulate the activities of companies worldwide. The framework is strongly supported by government members of the UN Human Rights Council in Geneva and by leading companies, and reflects legal and societal expectations towards companies.

The framework notably recognizes corporate responsibility to respect human rights, which in essence means to act with due diligence to avoid infringing on the rights of others.

Acting with due diligence means considering human rights challenges in a specific country context; the human rights impacts of a company's operations; and whether companies might contribute to abuses through relationships with other stakeholders, such as authorities.

Should Socfin-KCD have known?

Should Socfin-KCD have checked to ensure that a concession received from the Cambodian government was in line with national and International law? Could they have known about the legality or otherwise of granting land concessions in Cambodia?

In June 2007 the UN Special Representative of the Secretary General for Human Rights in Cambodia published a report which stated: "Since 1996, successive Special Representatives of the Secretary-General for human rights in Cambodia have expressed concern about the impact of economic land concessions on the human rights and livelihoods of rural communities."

"At the root of these concerns is poor enforcement of and compliance with the requirements of the Land Law and Sub-Decree on Economic Land Concessions, which govern the grant and management of economic land concessions. Essential pre-conditions to the grant of concessions... have not been met."

concession. The Socfin manager stated that a study had been conducted before the ELC was granted. That, however, means very little. According to a Socfin official, instead of 200 pages of documents with maps, a short and cursory note could pass. With regard to the legality of this, the Socfin manager, says "Cambodia is an independent country, so if this zone is granted as an economic land concession, Socfin does not contest that."

However, in order to convince potential partners as the development agencies like Agence française de développement (AFD) to join and to support the rubber plantation project, an in-depth impact assessment is necessary. So Socfin financed a group of experts in charge of this impact study - but one year after the clearing of the land had started and when the first part of the concession (one third) was ready for planting. The company has been asked by Bunong village residents to stop clearing, without success. "We would have to fire 1,000 people to do this" answered the Socfin manager in a meeting in November 2009, "but then we would be accused of being outlaws."

This is an argument that Ding can not agree with. Too many

times she has seen how the law was not the same for everybody. "Why, when we go to the forest, the environmental officials say this is illegal, but when the company clears the land and catches animals this is legal? According to the Forestry Law, we have to protect the forest. Do the foreigners have such laws? We need to keep the land from O'Ret to Nam Lear mountain for the next generation. Will the next generation not know or see what is the forest?"

"Will the next generation not know or see what is the forest?"

In the absence of implementation of the law in a country, where it has so little credit, the Bunong are looking for a solution on their own. Khlœuk, the highly respected former commune chief and local CPP (Cambodian People's Party) chief, envisages retrieving land that used to belong to the community, those the Bunong from Bousra occupied before the Khmer Rouge arrived.

Until the next economic land concession...

United Nations Declaration on the Rights of Indigenous Peoples

Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 10

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 23

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development

Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

2. 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.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Article 29

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources.

Article 32

Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

“Maybe we are going to disappear”

In November, while crops were growing in the fields and the rice celebrations were in full swing, some of the Bunong were haunted by a fear. “We are going to lose our traditions because if we don’t have land, we won’t be able to have the rice celebrations as we are this year. Maybe next year, there won’t be a ceremony...”

These celebrations present the chance to share the famous jars of wine and the meat offering to the rice spirits, but they also represent a time to listen to each other during which many of the community’s problems are discussed and resolved. The land, which these men and women have a visceral attachment to, was at the heart of all the conversations. So was the forest.

Cemetery profanation

“With such a long concession, they are going to destroy the forest! For us, the forest is the place to hunt animals, collect rattan, resin, wood for cooking, gather koreh [a edible plant], teak tchott [honey], phlae polong [fruits]. But today, we have to go further and further and with their engines, they are going to scare away the animals,” Phon lamented, thinking about everyday life. As for him, Gno suspected that “without the forest, there will be no more rain. It will be very bad for our crops.”

“The company has cut down sacred forests,” recalled the former commune chief. “I am worried that we don’t have a place any longer to bury our dead, even if I’m very happy

with the development of the village.” Others were more bitter and remained shocked that the company delivered animals to be sacrificed during a ceremony to apologize to the spirits, without bothering to send a representative to show respect to the Bunong and their dead. Their words spoke volumes on the violence of the insult: “You wonder how the plantation’s director would react if we went and dug up his mother’s corpse...” Neither can they forgive the fact that this “mistake” by Socfin was repeated several times.

“You wonder how the plantation’s director would react if we went and dug up his mother’s corpse...”

Discrimination

The lack of respect for the Bunong, the ignorance about their culture, the determination expressed by the director of Socfin to “bring civilization” to them – as reported by several interviewees in Sen Monorom – translated initially into a preferential recruitment which many villagers reported. “They hire Khmer people coming from other provinces. There isn’t work for everybody,” noted the former commune chief and local CPP representative. “With no work and no land, it



is difficult to live.” “There is not work for everybody at Socfin. Before, with our land, we used to have a lot of rice and we could barter it,” remembered Pal.

Socfin-KCD’s first steps came along with stigmatization against some of the employees. “You do not have land because you are Bunong.” Those were the words spoken by some of Socfin’s staff to villagers. “When I demanded the financial compensation for my land to the company, the people told me: ‘It is Prime Minister, Hun Sen’s land.’” Months later, Mrs So still has not digested that dismissal. Later, while the company cleared and prepared the land for the plantation, some Khmer workers told their colleagues: “You are Bunong. You can work more than us.”

The salary scams used by some group leaders did not contribute to pacifying the mood. Recently, the company, Socfin-KCD, had to establish two recruitment lines in front of its office: one for the Khmer, another for the Bunong. Even though the company has stopped recruiting only Khmer people specifically, the attractive pay (five dollars a day for day laborers) has turned Bousra into a land of in-migration.

An overwhelming change

There is no shortage of texts protecting the rights of ethnic minorities or indigenous communities, in particular their right to use the land they occupy: Cambodian circulars, sub-decrees, the Land Law, international conventions... That did not prevent the Ministry of Agriculture and the Cambodian government from granting the 10,000 ha economic land concession. It also did not prevent the joint venture from continuing its business. The boss of Khaou Chuly Group has even told the Phnom Penh Post newspaper on April 8, 2009 he was aiming for 20,000 ha.

Under the pretense of development, roads, access to health, education, employment have come. Some Bunong of Bousra fear it may be at the expense of part of their identity. “I don’t know what tomorrow will bring. If we stay a long time with the company, maybe we are going to disappear. Maybe we are going to lose our habits, our traditions, our beliefs...”, despaired Po. Not everyone paints a black picture. Owning a wooden house or a mobile phone is not incompatible with being Bunong. However, without being adequately consulted, the options were not really a choice for them. They were part of the economic model imposed by Socfin-KCD.

Under Socfin-KCD’s impulse, the farming methods of the Bunong might change. They might switch from a farming mode with core principle to meet the needs of their families

to one based on the notions of productivity, profitability and international markets. The company that uses the same methods as in the industrial revolution era will become the centre of their world. Those who will grow rubber trees will sell their rubber to the company without knowing anything about much of the exploitation’s juicy profits, which will disappear into the tax haven of Luxembourg.

How will the Bunong make their way through such a reconfiguration of their daily lives? In the future how will their language, their words, which are so deeply rooted in the land, the forest, the rice, reflect such an overwhelming change?

“When I demanded the financial compensation for my land to the company, the people told me: ‘It is Prime Minister, Hun Sen’s land.’”

