



Mekong Region Land Governance

Case Study

Land conflicts between Economic Land Concessions and smallholder farmers in Bousra commune (Cambodia):
What Are the Policy Implications?

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This Case Study results from a collaboration between Forest Trends and the Centre for Policy Studies, with whom the four authors are affiliated. It has been written in the context of an innovation fund project led and managed by Forest Trends and funded by the Mekong Region Land Governance project.

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List of abbreviations

CLT	Communal Land Title
CPS	Centre for Policy Studies
ELC	Economic Land Concessions
FOB	Free on Board
IMG	Independent Mediation Group
IPC	Indigenous Peoples Communities
KCD	Khaou Chuly Development
NSSF	National Social Security Fund

The development of Economic Land Concessions

In Cambodia, the mechanisms of Economic Land Concessions (ELC) have allowed the government to lease State land to domestic and foreign companies for agro-industrial development. ELCs often overlap with land used by local communities including residential land, cultivated and fallow agricultural land as well as a wide variety of natural resources (forest, pasture and water bodies) that are managed under customary tenure. This is a source of numerous land conflicts further worsened by a generalized failure to follow legal guidelines and regulations, in particular the obligation for the company to demarcate their land and exclude areas used by local communities. ELCs are developed mostly in peripheral forested areas with lower population density, and land conflicts are especially acute in regions inhabited by ethnic minorities.

The Cambodian government initiated a reform process in 2012 – the so-called Order 01 – to alleviate these conflicts. The reform placed a moratorium on new concessions and aimed to revoke the ELCs that were not complying with their contractual responsibilities. It also mobilized resources to title land and provide tenure security for people living in disputed areas within ELCs. However, many conflicts persist because the reform did not provide a systematic resolution mechanism to address the issues to their full extent. The complexity of the conflicts and issues on the ground inherited from the poor management of ELC investments is often difficult to understand, and the implementation of current policies to resolve these conflicts has been ineffective. Nevertheless, it is important to examine the consequences of the ELCs on the local communities and consider how policies could better protect them and reduce or mitigate conflicts.

Objective and scope of the study

This study has been designed by the Centre for Policy Studies (CPS) and Forest Trends in order to identify some of the consequences of ELCs, how they have affected local smallholder farmers, and what opportunities have been generated or missed by specific models of investment.

After considering various ELCs and potential study sites across the country, the examples of two ELCs in Mondul Kiri seemed particularly interesting in terms of the way in which these concessions had been developed and in how relationships with the local Bunong communities had been managed. Socfin-KCD Co., Ltd. and Dak Lak Mondul Kiri Aphivath are the two rubber companies that were granted ELCs in Bousra commune, Mondul Kiri province.

Through a comparative approach, the study examines the impact of these rubber concessions on local land tenure systems and investigates the implications of various compensatory measures, land deals and opportunities offered by the companies to the local people. It examines how each company took into consideration the land claims of affected people and communities, and the effectiveness of the conflict resolution approach. The study also investigates to what extent the companies have contributed to job creation and labour opportunities for local people.

The intention is to provide recommendations to enhance ELC management, particularly in respect of the place of smallholder farmers and role they play in relation to concession investments.

Methodology

A comparative approach has proved to be insightful as the companies share similar features: same business model (ELC), same commodity (rubber), their locations are close by, and they affect the same communities (Bousra). They have the same agro-ecological environment (red soil), they started at roughly the same time (2007-2008), and both have had interactions with land titling under Order 01. However, they are distinct in size, in the origin of the investment (respectively Vietnamese and European) and, more specifically, in the way they have approached conflict resolution as we shall see below.

In order to embrace and triangulate a wide range of information, the study collected data through a three-pronged approach: i) individual interviews with key informants (n= 12); ii) group discussions with different groups within the population: traditional leaders, farmers who work in contractual arrangements with Socfin-KCD and Dak Lak, farmers who later sold their contract farms, farmers who accepted cash compensation from the companies, general farmers who grow crops of their own choice, ELC labourers, and youths who were not employed by the companies (n= 40); and iii) a household survey (n=159). The household survey was conducted with households selected to represent different land conflicts and land deals agreed upon with companies^a. Field work was conducted between February and December 2016 with a team of three researchers and four enumerators supported by Bunong translators.

^a 1. Keep the farmland as it is within the ELC ("leopard skin strategy"); 2. Farmland relocation (land swap); 3. Contract farming ("family rubber plantations") and 4. Cash compensation

The transformation of Bunong livelihood and land tenure systems^b

Bousra is a commune of Pechrada district in Mondulkiri province and is adjacent to the Vietnamese border (Map 1). The commune comprises seven villages and is home to the Bunong ethnic minority.

For most of the twentieth century, the Bunong people practised swidden agriculture usually within the territorial limits of Bunong-defined villages. Swidden agriculture provided rice, vegetables, corn, plants for dyeing, and textiles such as cotton. After two or three years, the swidden plots were left fallow allowing time for the vegetation and soils to regenerate. The Bunong also entered the forest to hunt and gather the wax of wild bees, tubers and non-timber forest products (NTFPs) like rattan wood or wood oil: the collection of liquid resin and other NTFPs has been a valuable source of income, and Bunong communities are not autarkic as they have been connected to some form of market for a very long time. This is reflected in a popular saying in this place: **“Land is life, forest is market”**.

In Bunong communities, land and forests are traditionally held as communal property. Land is not sold or transferred, but is rather seen as a resource held in trust by the community for future generations. According to customary

law, families have use-rights over the land that they currently cultivate and over produce from fallowed land. This socio-territorial organization generally prevailed in Bousra until the end of the last millennium.

The nineties saw the intensification of timber logging activities that resulted in the loss of forest-based livelihoods and induced villagers to rely increasingly on permanent cultivation. The turning point came in 2005-2006 when cassava was introduced in the district to become a very profitable land use option. The integration of local livelihoods into the cassava value chain has attracted Khmer ethnic migrants from across the country. The demographic structure of the Bousra population has considerably changed as a result. The population figure increased three-fold between 2002 and 2016 when it reached 6,316 people. But migration has also changed the ethnic balance of the population. From 2002 to 2016, the share of the Khmer population out of the total commune population moved from 3 to 33 percent (Commune statistics, 2016).

The development of boom crops and in-migration has had a considerable effect on livelihood systems: it has fostered a process of accumulation and concentration of assets and the rise of a land market, and has resulted in a process of rapid socio-economic differentiation among the local population.



Rubber Plantation. Credit: Chan Sopha

^b Hak, S. et al. (2015). Prosperity and poverty: Livelihood transitions emerging from land use change in two Mondulkiri communes, in Diepart, J.-C. (ed.) Learning for resilience: Insights from Cambodia's rural communities. Phnom Penh: The Learning Institute, pp. 103-146.

The Economic Land Concessions in Bousra commune

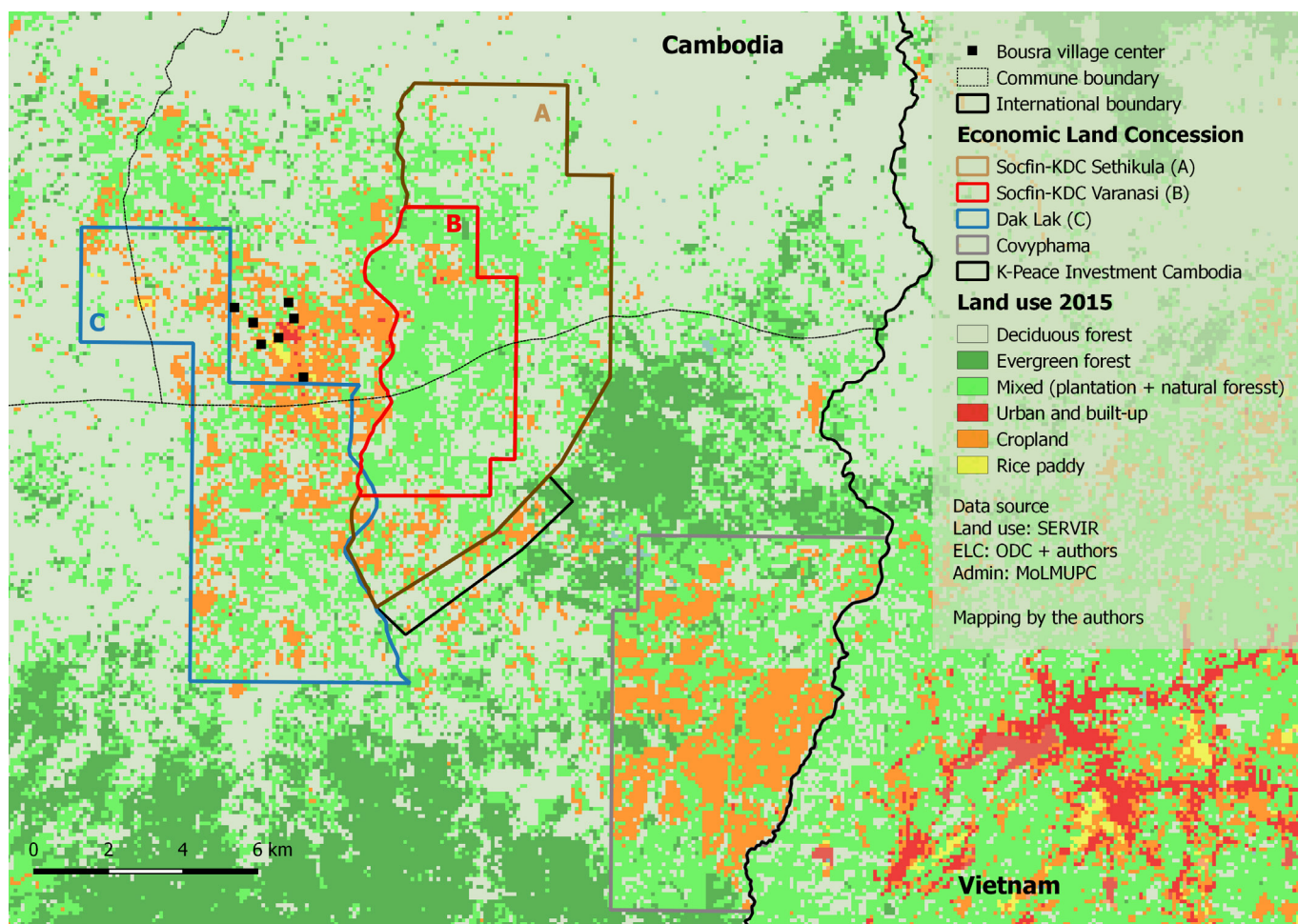
From 2007-2008, Bousra and neighbouring communes witnessed the development of ELCs for rubber production, a perennial crop that is not part of the agrarian history of Bousra community. Map 1 shows the location of the most prominent ELCs and how they articulate spatially with the village:

- Socfin-KCD, Sethikula [4,273 ha]
- Socfin-KCD, Varanasi [2,705 ha]
- Dak Lak Mondulkiri Aphivath [4,162 ha]
- Socfin, Covyphama [5,559 ha]
- K Peace Investment Cambodia Co., Ltd. [472 ha]

Among these, the study focuses on Socfin-KCD and Dak Lak rubber plantations. Socfin-KCD is a joint-venture between Socfinasia and its local partner, Khaou Chuly Development (KCD). Socfinasia is part of the Socfin Group, a European company managing large rubber plantations

in Africa and in other parts of Asia. Socfin-KCD acquired two ELCs for 70 years to develop rubber: Sethikula (4,273 hectares in 2010); and Varanasi (2,705 hectares in 2009). In 2016, the development of the rubber plantation had been completed on a total area of 4,000 hectares, representing 57 percent of the concession. As of 2015, a total area of 456 hectares was producing latex while another 1,500 hectares was expected to be in production in 2016.

Dak Lak Mondulkiri Aphivath is a Vietnamese State-owned company, with headquarters in Dak Lak province, on the border with Cambodia. Dak Lak is one of the subsidiaries of Dakruco, whose main business includes the production of rubber, hotels and restaurants, and which manages more than 24,000 hectares of rubber in Vietnam, Cambodia, and Laos. Dak Lak was granted an ELC in Bousra in 2008 on a total area of 4,162 hectares for 70 years. After resolving land conflicts with the local communities and farmers, out of that original ELC area of 4,162 hectares, 1,420 were developed as rubber plantation and 80 were allocated as preserved forest areas.



Map 1- Key ELC sites in Bousra commune

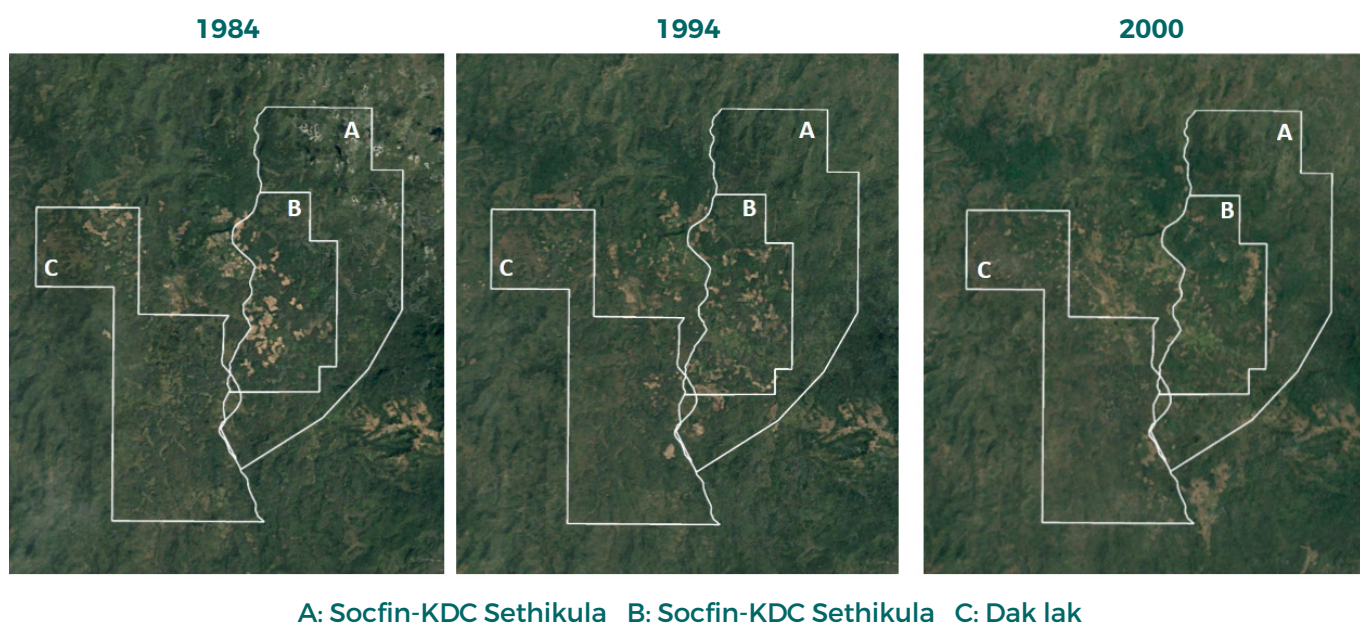
Land conflict transformation

The rubber plantations developed by both companies on the three sites have affected the population of all seven villages in Bousra commune and have ignited conflicts with local Bunong communities. However, both companies have adopted different approaches in dealing with the conflict and in addressing local land claims.

The nature and scale of the conflicts

Prior to the granting of the concessions, lands were accessed by the local people through customary and informal systems without any formal record and for different

purposes and durations. Therefore, it is not easy to measure the level of overlap between land granted to the companies and what is claimed by the local people. The time series satellite views (Map 2) reveal that the ELC land was used and cultivated long before the ELCs were established and continuously over a long period of time, at least for some parts of the concessions. Beyond land, the concessions have enclosed a wide range of natural resources that are essential elements of people’s lives and livelihoods (production and spiritual forest, pasture land, cemetery land and water resources). In fact, the ELCs have completely jeopardized the socio-territorial organization of the places they cover. So, it is hardly surprising that the companies were confronted by local social resistance by Bunong groups.



Map 2 – Satellite views of the ELC sites prior to the ELC contract dates

Source: Google earth, mapping by the authors

Because there is no precise data about land use prior to the concession development, we approximated the overall scale of the impact of each company between villages

through focus group discussions as well as key informant interviews (Table 1).

Table 1 – Scale of impact on various lands by Socfin-KCD and Dak Lak

Company	Puteut	Puraing	Bousra	Putil	Lameh	Puchar	Pulu
Socfin-KCD	●	●	●	⊘	●	●	●
Dak Lak	⊘	●	●	●	●	●	●

● Affected by Socfin-KCD/Dak Lak (circle size indicates the scale of impact, relative by row and column)
 ⊘ Not affected by Socfin-KCD or Dak Lak

Source: Interviews with key informants, December 2016

The impact of Socfin is more pronounced in Puteut and Puraing villages while Dak Lak exerted more impact on Lameh and Puchar villages. Bousra and Pulu were affected by both companies on a roughly similar scale. Putil is actually the least affected village because it is remote and distant from the ELC sites. The village has had only one conflict with Dak Lak – relating to cemetery land. Socfin-KCD and Dak Lak affected all types of lands with the exception of residential land. Lowland farms appear to have been less affected compared with other land types. The types of land most affected are the upland farms including cultivated and fallowed plots. Sacred forestlands, cemetery areas, and reserved lands are all significantly affected as well.

The companies have followed different approaches to mitigate the conflicts and to address people's claims.

Socfin-KCD: “eat first, pay later”

When the local partner of Socfin-KCD conducted land clearance for the development of the current Varanasi ELC site, it encountered protests from local people. The protests later led to an eruption of violence in late 2008, resulting in the burning of some of the company's property, such as tractors. Subsequently, to address this conflict, Socfin-KCD agreed to negotiate and offered four options to the people who were affected: i) keeping the farmland as it was within the ELC (“leopard skin strategy”); ii) relocating farmland (land swap); iii) establishing contract farming (“family rubber plantations”); and iv) providing cash compensation. The company strongly discouraged farmers from keeping their farmland within the concession. Only a few intractable farmers chose this option. People considered the land-swap deal unattractive because the land in the proposed relocation sites was in general too remote and less fertile. In the contract farming option, called “family rubber plantation”, the family rents a piece of land from the company for 60 years and all costs incurred to establish the plantation are financed by the company through a 15-year credit scheme (interest rate: 5 percent per annum for the first seven years and 8 percent per annum for the remaining eight years). People were hesitant to engage in this option for a number of reasons: the small size of the plot; the low fertility and remoteness of the land allocated; the lack of long-term tenure security; and the fear of not being able to pay back the loan to the company. In the end, even if people judged the value of the compensation offered to be too low or inappropriate (USD 150-200 per hectare according to location and soil quality), the majority resigned themselves to accepting cash compensation because they felt the company's other options were more unfavourable.

The overall discontentment felt by the communities who were affected is captured in the popular saying “eat first, pay later”: this reflects the company's strategy to take hold of the people's land and to compensate them later. The way cash compensations were handled by the company

also provoked new forms of conflict as the process attracted opportunistic farmers who claimed land for themselves and received the cash compensation before another claimant who was more entitled.

The communication between Socfin-KCD and the local communities has also been a critical element in the difficult relationship between both parties. People were confused about the ELC boundaries and consistently complained that the conditions and terms of the different options offered to them lacked clarity. They could not figure out the “formula” for estimating the value of the compensation and argued that the situation was addressed on a case-by-case basis without any logical and consistent rules. For Socfin-KCD however, the view was that the contract agreements signed to seal the cash compensations were very clear.

Order 01: ELC assessment and land titling

Order 01 is a policy measure enacted by the national government in May 2012 with the aim to reinforce and improve the effectiveness of the ELC management. The order consists of a moratorium on the granting of new ELCs and an evaluation of ELC performance and compliance with the “Leopard Skin Policy”: this envisages that the land rights of people living inside ELCs are to be recognized and separated from the concession area granted to the company. To realize this aim, the government launched a land titling campaign, carried out by youth volunteers, to measure lands and issue land certificates to smallholder farmers or residents of houses and/or farms in conflict with ELC companies. In practice, new lands were also ceded in favour of local claims, causing many ELCs to be reduced significantly in size. Subsequent measurement and re-registration of ELCs by the authorities who were responsible then followed.

To a certain extent the Order 01 was a turning point in land relations in the Cambodian uplands. When cooperation between the titling team, the company and the smallholder farmers was possible, the process was instrumental in addressing land conflict. However, the titling was conducted over a very short period, which left important areas where there was conflict, untitled. These continue to be considered as State land.

Only 26 percent of all 614 land plots covered by this Case Study (the 159 households) were titled or registered by the government. The large majority have remained untitled. More residential land has been titled (43 percent) compared with upland and lowland farmland (20 percent and 18 percent, respectively). Additionally, Khmer migrants have benefited relatively more than the Bunong ethnic minority as 71 percent of their land plots were registered against 20 percent for the Bunong people.



Pepper and rubber plantation. Credit: Chan Sophal

Conflict seemed to have been lessened by 2011, and the land titling campaign that was part of Order 01 had signalled renewed hope for local farmers. Even so, people found that their claims to land, based on previous negotiations, encountered problems and that conflicts had been only partially addressed. The villagers reported that Socfin-KCD did not agree with their demands, arguing that the ELC was granted to them by the government and that the land claims of farmers inside the concession were simply not legitimate. As a result, the titling team could not register the lands requested by the villagers. So, after Order 01, conflict remained.

Meanwhile, a court case was initiated against the Bolloré Group (a major shareholder of Socfinasia) in France, and that, too, is ongoing. The group is being sued on the grounds that their investment has jeopardized the land rights and livelihoods of Bunong communities who were chased away from their land and offered inadequate compensation in exchange.

In order to transform confrontational contestation into a peaceful negotiation process, a so-called “tripartite committee”, comprised of representatives of the communities, the company (Socfin-KCD) and local authorities, was established in 2009 and reactivated in 2015. This mechanism aimed to create a space for dialogue to enable farmers and their communities to voice their concerns and for the company to respond more effectively and to implement programmes that were socially responsible. However, this did not gain the trust of the people because they perceived the committee to be prioritizing the company’s interests over those of the people.

The company did not trust the tripartite committee either because people were very vocal about their grievances while sitting in the tripartite committee.

The complainants and Socfin-KCD then sought a different approach to try to resolve the conflict. The Independent Mediation Group (IMG)^c stepped in as a mediator between the contesting parties. The Group documented the various remaining claims and mapped the disputed lands to serve as evidence and a base for mediation. This process of mediation is ongoing and the parties have reached some agreements relating to communal lands.

Dak Lak: a more people-focused approach

As reported by both the company and the villagers, the Dak Lak company took a softer approach in dealing with local people. Although Dak Lak did not inform the villagers prior to clearing their land, it quickly acknowledged the land claims made by the Bunong communities. The company envisaged four options (also adopted by Socfin-KCD) in their discussion with farmers: remain-in-place (“leopard skin strategy”); farmland relocation (land swap); contract farming; and cash compensation^d.

Initially, Dak Lak did not offer cash compensation as it was concerned that people would use up the money and then seek to clear new forest land. But later, some protesters strongly advocated for cash compensation and the company eventually offered this option, which just a few farmers opted for. According to the Dak Lak company, many villagers chose to keep their land within the ELC (the “leopard skin” approach, the second most popular option

^c IMG is a registered Cambodian company providing independent mediation services to parties of conflicts in Cambodia.

^d The company did not offer the option from the outset. The option was only offered to a few families who strongly lobbied for it.

after contract farming), particularly those who could directly communicate in the Vietnamese language with the Dak Lak representatives. In the land swap option, the company assumed that the land claimed by people was still partly forested. In exchange for clearing the land, the farmers received land that was half the size of the original area in a new location at the edge of the ELC and closer to the village. Not many chose this option and those who did attributed their choice to a lack of awareness about the option to remain in place, given the barriers in communicating with Dak Lak personnel in Vietnamese. The contract farming option is a variant of the land relocation option. On the 50 percent of relocated agricultural land, the company agreed to develop a rubber plantation, so-called "cooperation plantation". The company offered a 20-year credit scheme to finance the upfront investment to establish the plantation and the maintenance costs (at no interest rate during a nine-year grace period and at 5 percent per year for the remaining 11 years). They also provided free training for farmers on maintenance techniques. The company agreed to buy the rubber latex from farmers at 80 percent of the Bangkok FOB price^e. They also allowed people to perform intercropping cultivation inside the company's plantation. Unlike Socfin-KCD, Dak Lak encouraged farmers to become the rightful owners of their land. This contract was by far the preferred option because the deal provided farmers with more security in the long run. Furthermore, the new location was on fertile soil and closer to their homes. It offered proper road access, and the credit scheme proposed by the company was affordable and not too risky.

Although Dak Lak had already addressed the various claims of the local people, the implementation of Order 01 encouraged them to claim more lands. In response, Dak Lak cooperated with the titling team and allowed them to measure and register people's lands. In total, Dak Lak cut more than 2,000 hectares from its initial ELC size (4,162 hectares) for the benefit of the local people and for preserved lands. Dak Lak has maintained an area of only 1,500 hectares (1,420 hectares of rubber). Since then the company's situation has been mostly stable.

Impacts on land tenure and land use systems

The Economic Land Concessions have had a significant impact on local farming systems. Agricultural landholding size has been particularly affected, but, more widely, ELCs have also had an important influence on land tenure regimes and in particular on the management of customary tenure.

Change in agricultural landholding size

Agricultural lands, especially upland farms and fallows, are those that have been most widely affected by the investment of Socfin-KCD and Dak Lak. All households own both lowland and upland areas, but the upland areas are much larger than the lowland ones. The Khmer migrants also own lowland plots for paddy cultivation, but to a relatively lower extent than the Bunong people.

To evaluate the impact on agricultural landholding, we measured the average number of plots owned by households in 2008 (just before the allocation of the ELCs) and in 2016 (by the time this Case Study survey took place). The results are presented below for the different groups of households identified, based on their involvement in the land conflicts and the land deal agreed with the company (Figure 1). All types of households saw a decrease in their number of farmland plots between 2008 and 2016^f, except those of Khmer migrants. The group that accepted the cash compensation had the highest number of farmland plots before 2008, but they are those who lost the most (nearly half of their farm plots). Families who engaged in contract farming with Socfin-KCD or Dak Lak have also lost, but to a relatively lower extent than the families who opted for cash compensation.

As Figure 1 shows, the presence of ELCs has deprived local farmers of land. The findings also suggest that the landholding change in the communities is also explained by a dynamic land market that has been incentivized by the development of commercial agriculture and the arrival



Bousra waterfall. Credit: Antoine Delign

^e Free on Board price, is the price including the cost of delivering goods to the nearest port before shipping.

^f New plots of land were acquired during 2008-2016. The number of plots in 2016 also includes all these newly acquired lands. Therefore, the real impact must have been more serious: the number of plots in 2016 would be lower if the number of lands newly acquired during 2008 and 2016 is deducted.

of in-migrants with an appetite for land and relatively strong purchasing power. The survey shows that the number of plots of households having no conflict with the companies also decreased, but to a lesser extent, during this period. In

turn, the Khmer migrants have seen the number of their farm plots double over the same period, usually resulting from land purchases.

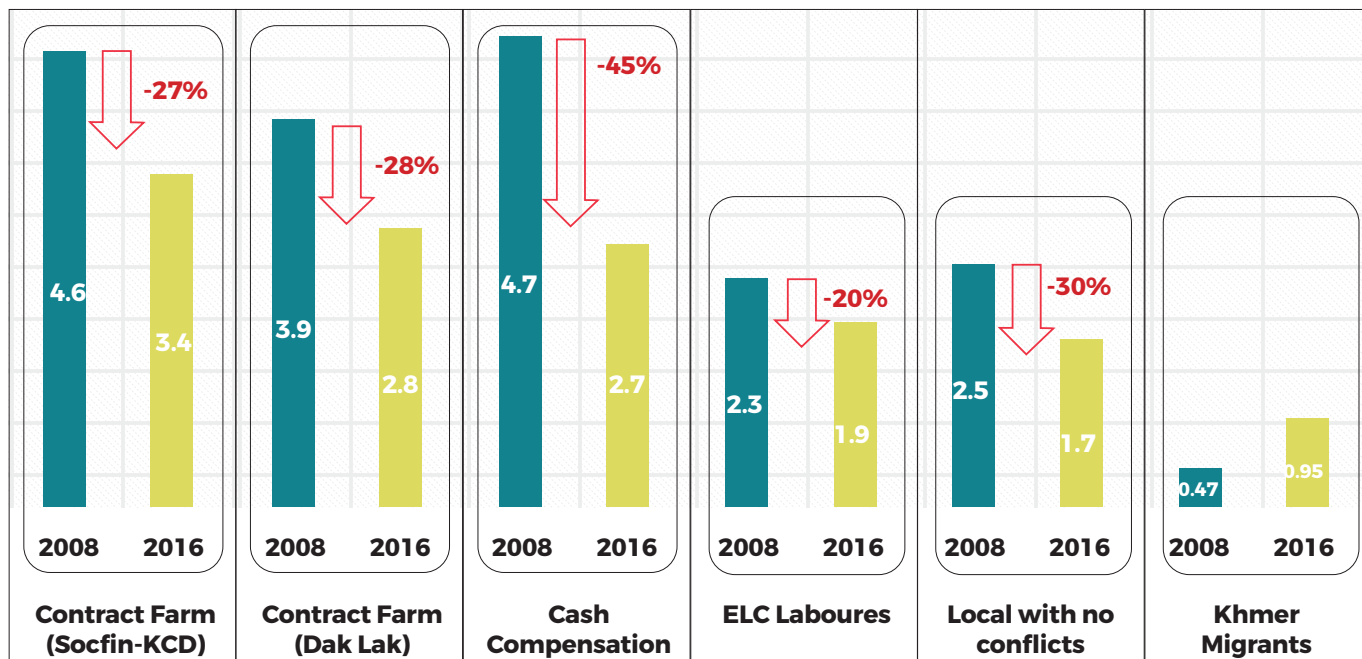


Figure 1 - Average number of upland farms/fallow plots held by group [#plots/household]

Source: Field survey by CPS (2016)

Land use displacement

People did, however, take responsive action after losing their lands to the companies. To maintain their livelihoods, they searched for new land to cultivate, sometimes in faraway places. Figure 2 presents the land acquisition mode for the upland farm/fallow for 347 plots (out of the 614 surveyed). The finding is striking. Approximately 50 percent of these upland farm plots were acquired by clearing forest land, predominantly after 2008. Acquiring new farm land through clearance was particularly important for the group who received cash compensation from the ELC companies. It is also significant for other groups with the exception of Khmer migrants, who acquired their land mainly by purchase.

Transformation of agricultural practices

Since the arrival of the ELC companies in Bousra, the traditional practice of shifting agriculture has changed significantly (Table 2). It has almost disappeared in the three villages that are particularly affected by Socfin (Puteut, Puraing and Bousra). In the villages predominantly affected by Dak Lak (Lameh, Puchar and Pulu), the practice of shifting agriculture has also declined but, nevertheless, remains more prevalent (Table 2) as the company showed more respect for the local land tenure allowing this farming practice to persist.

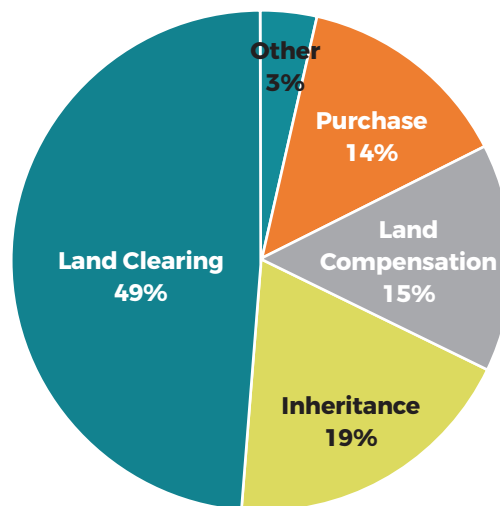


Figure 2 - Pattern of upland farm/fallow acquisition after 2008 (% of total plots, 347)

Source: Field survey by CPS (2016)

Table 2 - Transformation of shifting agriculture practice

	Puteut	Puraing	Bousra	Putil	Lameh	Puchar	Pulu
Pre-2008	●	●	●	N/A	●	●	●
By 2016	○	○	○	N/A	◉	◉	◉

● Presence of shifting agriculture ◉ Decline of shifting agriculture ○ Absence of shifting agriculture

Source: Interviews with key informants, 2016

Although they have played a significant role, Socfin-KCD and Dak Lak are not exclusively responsible for the decline of shifting cultivation. Other contributing factors include the presence of other ELC projects and the modernization of agriculture fuelled by significant waves of in-migrants.

The climate of land insecurity that prevails in their communities has induced the relevant Bunong people to adapt their farming techniques and to opt for permanent agriculture rather than leaving their lands fallow and at the mercy of land grabs. Many farmers have converted their farmlands to both annual and perennial cash crops such as cassava, cashew, rubber, avocado, coffee and pepper. This process is reinforced by market demand and by relatively simple agricultural techniques that are accompanying the modernization of agriculture prompted by these boom crops.

Communal lands

The enclosure of resources triggered by Sokfin-KCD and Dak Lak has not only affected lands that are appropriated by individual families, but has also had an impact on a large variety of communal lands. These include sacred forestland, cemetery areas, reserved land, pastoral lands, lakes, ponds and forest areas for the traditional harvest of timber and non-timber forest products (Table 3).

The two companies addressed the claims differently. In general, Dak Lak has shown more respect for local land rights than has been the case with Socfin-KCD (Table 3).

Table 3 - Companies' deals for communal lands

	Socfin-KCD	Dak Lak
Sacred forestland	◉	○
Cemetery land	○	○
Reserved land	●	●
Areas for traditional TFP/NTFP	●	●
Pasture land	●	●
Lakes/ponds	●	●

● all taken by company ◉ partially taken by company ○ all kept for the community

Source: Interviews with key informants, 2016

All cemetery areas received full attention from both companies and were removed from the ELCs. Sacred forestland was also considered. Dak Lak maintained all sacred forestlands claimed by the people. In cases where sacred forest had already been cleared before people complained, the company agreed to organize a traditional offering to apologize to the spirits, and then returned the sacred forest to the community. In Socfin-KCD case, there are contrasting accounts. The company claimed that 35 places of sacred forests and cemeteries on 185 hectares were preserved inside the plantations. However, the villagers reported that Socfin-KCD took hold of and cleared many sacred forests (200-300 hectares) and only 20-30 hectares remained when people complained. The company organized a traditional offering to apologize to the spirits, but the land that had already been cleared was not returned to the community. These different accounts have been the subject of their conflicts over time. All other communal lands were not taken into consideration by the companies.

Impact on the communal land titling process

Despite the dynamic inflow of migrants to the area, the Bunong indigenous ethnic group still forms the majority of Bousra population. Bunong ethnic families have organized themselves into seven Indigenous Peoples Communities (IPC), one IPC per village, with the aim to have their lands registered under a Communal Land Title (CLT) which would provide collective ownership. Ongoing land conflicts with ELCs and the loss of individual and communal lands have prolonged the communal land titling process without putting an end to it.

The ethnic identity of all seven villages was recognized by the Ministry of Rural Development in 2011 and they were registered as legal entities with the Ministry of Interior in 2011 and 2012. They are all in the process of establishing a resource map, which is a prerequisite for the application for a Communal Land Title (CLT) at the Ministry of Land Management, Urban Planning and Construction.

The CLT process was slowed down and complicated by the implementation of the Order 01. While the CLT supposes that people register all their lands together under a single title, a significant number of households from Bousra had opted for individual titles under Order 01. First of all, they tried to grasp the opportunity offered by the titling campaign to quickly obtain land tenure security. This has to be understood in a context of widespread land tenure insecurity and a very long CLT process which proffered only uncertain outcomes. Additionally, the title adds value to a piece of land, leaving room for easy and potentially lucrative transaction in the future. Titles are more preferred as collateral to obtain more favourable credit that is much needed to invest in high value crops or for other purposes. Another aspect is that many Bunong families have become Christian. Their ties to tradition have become weaker and the limited access to forestland as sacred place is more accepted.

Working for the company? The new labour opportunities

One of the key assumptions underlying the development of ELCs is that agro-industrial plantations would offer new labour opportunities for the local population. The insights gained from this Case Study show, however, that Socfin-KCD and Dak Lak are not delivering on this promise.

Labour opportunities and working conditions at the plantations

Socfin-KCD and Dak Lak companies need skilled and unskilled labourers to work in administration, medical care, construction, electric maintenance, the garage and plantations. Both companies have offered jobs in Bousra commune and employed both local Bunong people and migrants.

Based on an interview with the company, in 2016 Socfin-KCD employed about 500 workers on both the Sethikula and Varanasi plantations. Dak Lak reported the employment of 82 workers on its fully developed rubber plantation. The job opportunities are expected to increase as more trees reach tapping age. Based on an average of one tapper for every three hectares of plantation, Socfin-KCD hopes to employ an estimated 2,000 workers by 2022 while Dak Lak's employment tally may increase to around 500 workers.

Socfin-KCD offers contract-based full-time jobs with a monthly salary in compliance with the labour law of Cambodia. The company is aware that a full-time salaried job is not the usual way of living in Bousra, but considers that the people need to adapt to this. Considering the constant and regular need to maintain and tap the plantation trees, the company does not favour the provision of short-term, part time or non-contract based employment.

Similarly, Dak Lak does not offer part-time jobs. Socfin-KCD faces a problem of absenteeism from the workplace and, to address it, the company imposes a penalty in respect of each absence that has not been agreed in advance. If a worker earns USD 7 a day, then the penalty is USD 10 per absence. In order to improve the relationships between the local Bunong and the company on matters related to employment, Socfin-KCD has established a department, called "Bunong Administration".

In 2016, an individual tapper working in Socfin-KCD plantations earned an average monthly salary ranging from USD 150 to 180, which was increased to USD 170 to USD 220 in 2017. In addition, the company offers bonuses based on attendance, and on the quantity and quality of the latex delivered. The company also provides free services for housing, electricity, water, schooling and health care, as well as work accident insurance with the National Social Security Fund (NSSF). Socfin-KCD provides a health clinic and two schools for families of workers. When all of these

fringe benefits are accounted for, as of 2016, a tapper could earn approximately USD 13 to USD 15 per day.

The labour modalities offered by Dak Lak represent a combination of basic monthly salary and a reward based on output performance. Thus, the workers' earnings at Dak Lak are more variable and range from USD 150 to USD 200 per month. Similar to Socfin-KCD, Dak Lak also provides free services for housing, electricity, water, schooling, and a health clinic. However, these tend to be of poor quality.

Lack of interest in plantation jobs

Despite their efforts to employ local people and the apparently appealing jobs on offer, the companies attract only a small proportion of local Bunong people to work with them. Out of its current labour force of 500 workers, Socfin-KCD estimates that 10-15 percent are from Bousra commune, and only half of them (6-7 percent) are ethnic Bunong. Out of the 82 workers at Dak Lak, only a few are Bunong people. Therefore, the plantation work is carried out mainly by migrants rather than locals. The companies recognize this situation and emphasize that even when local people accept a job, it is usually only for a short period and they eventually quit the job.

Local people, including those who were or are currently employed by Socfin-KCD, suggest that only the villagers who are old, in acute need of, or without other earning options would be willing to work on the plantation. So what is behind this lack of interest?

First of all, it is not difficult to imagine that working as wage labourers for a company directly implicated in grabbing their land and resources is profoundly humiliating for the people, an experience that not many are ready to accept. They justify this with the local saying: **“they steal our houses and now they ask us to become their cooks!”**.

Second, in a context of generalized land tenure insecurity and the enclosure of common pool resources, land is becoming scarce and is highly coveted. Local people are concerned about their children's future, so the protection of their remaining resources and a secured access to land

is vital to them. A key strategy is thus to make continuous and permanent use of every piece of land and of all of the resources in their possession. Working in the plantation would keep them away from their land and resources and would expose them to the risks of resource grabbing.

Third, people find the working conditions to be difficult. The schedules are very tight and, due to the associated long journeys, people have to dedicate the whole day to their work in the plantation - from early morning to late afternoon - leaving no time for the family and their own farm. People add that the working environment is stressful: they work straight through without much interaction with fellow workers and under the close monitoring of supervisors. Altogether, the salary is not low, but is not so good either given the time dedicated to earning it, the level of effort required and the working conditions. The pay is basically sufficient but only to meet the daily consumption needs of the family. People do not generally like these types of jobs and consider that **“working for the company is just like being a slave of the company”**. People value their independence and autonomy in managing their livelihood activities.

Fourth, the preference of people for freedom and flexibility is not out of vanity. A core underlying issue here is the question of labour diversification which is a central element of local farming systems. Labour allocation is managed at household level and is closely articulated to farming activities and social relations. Local livelihoods are rooted in land. Farming goes beyond production and nutrition; it is a central element of life cycle reproduction strategy. During lean seasons, or when farm work is less needed, people allocate their labour to other activities in a flexible manner. In a diversified environment, this form of reasoning is also economically sound as a family remains in a position to grasp opportunities offered by labour markets and by other activities, licit or illicit⁹. The key element of this strategy is multi-functionality rather than a deliberate move away from agriculture. The survey has revealed that non-farm activities represent an important share in the total income for all household groups (Figure 3). In fact, the hybrid nature of farm and non-farm labour allocation is a core characteristic of the local livelihood system. And a permanent job in a plantation ruptures this dynamic way of life.



Rubber tree. Credit: Ken Doerr, Flickr

⁹ These may also include illegal logging and the trading of timber.

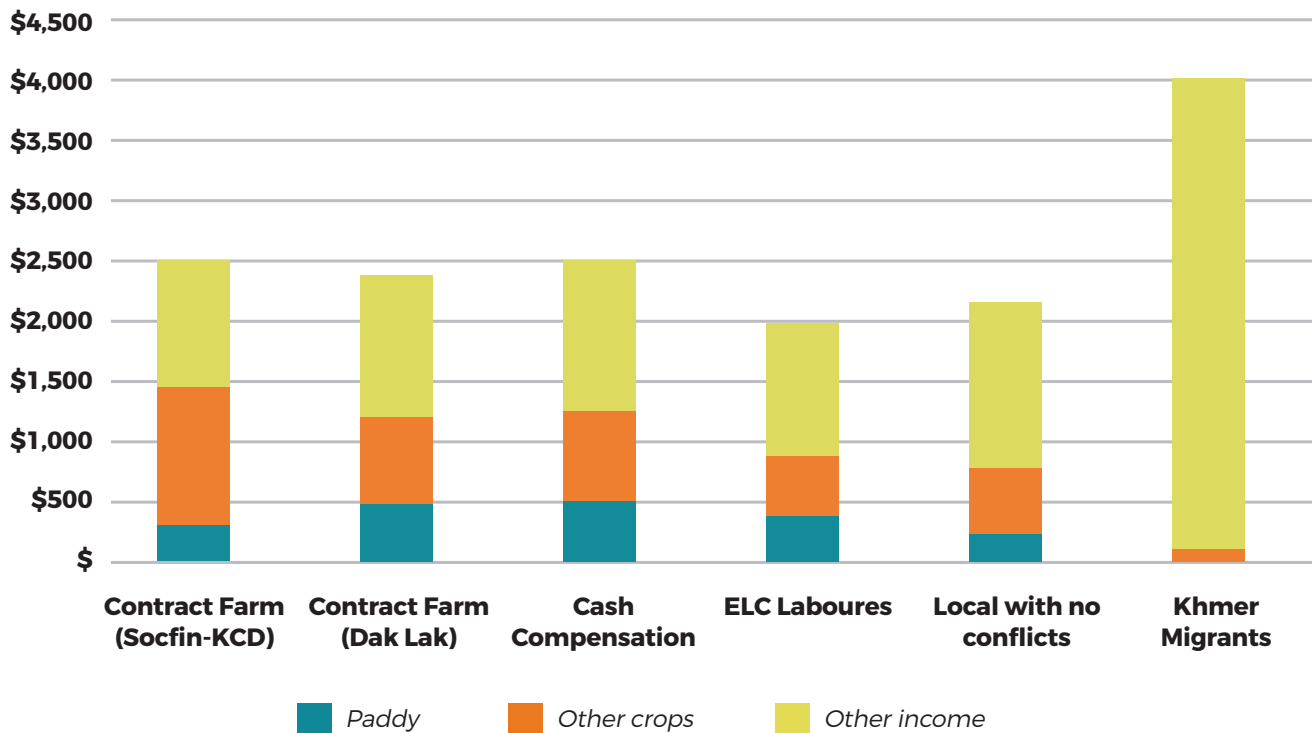


Figure 3 – Level of annual average income earned from different sources

Source: Field survey by CPS (2016)

Conclusion and policy implications

The examples of the Socfin-KCD and Dak Lak concessions examined in this Case Study tell a story of enclosure and conflicts that has spanned over a decade in a context of dynamic agricultural modernization driven by boom crop markets and fuelled by in-migration.

Both companies have had a significant negative impact on local land tenure, customary tenure and labour patterns. Upland agricultural land has been most affected. The loss of land to the companies has induced land use displacement. Local people have lost access to resources that are central to their livelihoods. Altogether, the incursion of the companies in Bousra commune has created a rupture within the socio-territorial organization in Bunong communities.

The companies have used different approaches to conflict resolution. The core difference lies in their level of recognition of local land claims inside the ELC and their commitment to implement the government’s “leopard skin policy”. Socfin-KCD argues that the ELC was granted to them by the government; therefore, all land within the boundary of the ELC is State land, and local claims in this area are not legitimate. This position has been consistent throughout their management of the conflict. In contrast, Dak Lak acknowledged the “leopard skin strategy” from the start and also during the Order 01 land titling campaign.

As ELCs will continue to occupy a large space in the rural landscape and to be central in the life of a large number of smallholders, this Case Study suggests the following implications for policy consideration:

1) In order to avoid or mitigate conflict, the most convenient approach to concession development is to enforce the “leopard skin policy” excluding areas used by the local communities from the concession:

This is important in two ways. First, it helps to mitigate land conflicts with local people and thus enables more harmonious co-existence between local smallholders and investors. To be effective, it is important that the ELCs and local claims are all registered. Second, if this policy is not effective, as this Case Study shows, the people will seek to acquire new lands by clearing forests and that will, in turn, jeopardize State land management.

2) In some circumstances, land relocation is preferable to the “leopard skin policy”.

For example, sacred forests and cemetery areas should remain where they are. However, it would be awkward for both the concessionaires and villagers if the farmland plots are left scattered inside the ELCs. Moving all of these small farm plots into a consolidated area at the margin of the concession would sometimes be a far better option, as was done by Dak Lak. However, the relocation site must be appropriate and acceptable to the villagers in terms of distance, topography and fertility.



Rubber plantation. Credit: Razif Aziz Flickr

3) Cash compensation is complex and may create more conflicts if it is not systematically applied and collectively agreed.

At first sight this option seems easy. But there is a multiplicity of land rights under customary tenure - rights that are not always well defined or delineated between families and within families, and that are rarely recorded - as well as opportunistic behaviours. These make it challenging to identify all rights and to ensure that all of them are appropriately compensated. New claims will emerge along the compensation process and more problems arise. The local villagers felt Socfin-KCD made other options difficult so that people would accept the cash compensation. But that strategy generated further conflicts. The possibility to acquire cash compensation has incentivized some opportunistic behaviours such as clearing forest land before the company does it with the expectation of acquiring the associated compensation, or claiming land that was used by others. While cash compensation is attractive in the short term, it does not provide for a livelihood. In the long run, in order to access farmland, people need to perform further forest clearance.

4) With the appropriate level of incentive, the contract farming approach is favourable for both investors and local farmers.

Contract farming models, as implemented by Dak Lak and Socfin-KCD, are more attractive for smallholder farmers if the location of the parcel is suitable (in terms of, for instance, access and soil condition) and the contractual terms favourable (for example, the interest rate, the latex sale price, and so on) so that the farmer does not take excessive risks. There is an argument that Dak Lak could offer better credit terms because the company is subsidized by a low interest rate in respect of credit from the Vietnamese government. That financial support is probably not so high but could not be covered by the company. Such cooperation can be considered as an investment to ensure a secure and peaceful environment for the company's operation.

5) To be successful, the adoption by local farmers of a new perennial crop such as rubber, and proper agriculture practices, requires training and extension services. The contract farming model helps smallholder farmers to take advantage of new technologies and credit for the production of rubber, as well as providing

access to the market. However, in Bousra, many farmers were unable to look after the rubber trees and could not wait for them to start producing latex. They need short-term livelihood opportunities. The company must make proper provision for these livelihood activities, and, in the long-term, it is important to ensure the continued capacity development of the farmers and to maintain extension services for small-scale farmer plantations.

6) To open space for solutions agreeable to the local communities, it is important that the whole concession is not developed.

An important difference between Dak Lak and Socfin is evident in the percentage of the concession land that has been developed. While Socfin has planted most of theirs, except for land along the streams for environmental protection, Dak Lak has developed less than 50 percent of its ELC land, leaving large tracts in the hands of the communities. The Dak Lak approach has provided some room for manoeuvre to accommodate the claims of the communities. In line with the "leopard skin strategy", the government could incorporate a clause within concession contracts indicating a ceiling for the area that can be turned into a plantation within the overall borders of the concession.

In all cases, and whatever the options proposed by the investors to the local farmers and their communities, it is fundamental that the investment should be based on the appropriate level of dialogue, that it respects the decisions and preferences of the farmers, and that it aligns with the national and international legal frameworks. Of particular relevance, the principles of "Free, Prior, Informed Consent" should be respected.

The State and local authorities play a fundamental role in ensuring that investors comply with their agreements and the existing regulations. The absence of pressure from authorities over investors is often the underlying cause of a lack of genuine dialogue with the communities who have been affected and lies behind escalating conflicts. As the comparison between Dak Lak and Socfin-KCD ELCs shows, the local communities are not intractable in the face of economic development, and solutions that are acceptable to both parties can be found if the company first acknowledges their rights.

The Mekong Region Land Governance Project (MRLG) aims to improve land tenure security of smallholder farmers in the Mekong Region through contributing to the design and implementation of appropriate land policies and practices. It responds to national priorities in terms of reducing poverty, increasing economic development and supporting smallholder farmers, so that they can be secure and make good decisions on land use and land management. MRLG is operating in Cambodia, Laos, Myanmar and Viet Nam since April 2014.

For more information on MRLG, please visit

www.mrlg.org

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