

Note : This is the translated version of the original letter, in French, that was sent to Socfin on the 21st of November 2011

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Paris 21st of November 2011

M. Fabri,

The present is in reference to a letter from Socfin dated 10th of November 2011 whereby Socfin questions the objectivity and the credibility of FIDH's report : « Land Cleared for Rubber, Rights Bulldozed : The impact of rubber plantations by Socfin-KCD on indigenous communities in Bousra, Mondulkiri », published on the 6th of October 2011. In this letter, Socfin requires an immediate right of reply and threatens to sue FIDH for libel. FIDH immediately granted Socfin's right of reply by publishing its letter on our website on the 15th of November.¹

The elements subsequently brought forward, both on the methodology used and on the alleged facts reported in the publication, serve to demonstrate FIDH's rigour, objectivity, the accuracy of the analysis made in the report as well as FIDH's good faith.

FIDH's investigation methodology

Founded in 1922, FIDH possesses a long and recognized experience in documenting human rights abuses, strong from having conducted over 1600 international fact-finding missions around the world over the past 25 years.

As per FIDH' statutes, our organisation is mandated to coordinate and support the action of its members and to act, throughout the world, when notified of a human rights abuse,² wherever the abuse may be and regardless of its authors. By responding to a demand formulated by its member organisation in Cambodia, FIDH acted in conformity with its mission.

1 The right of reply is accessible at the following address: <http://www.fidh.org/Droit-de-reponse-de-Socfin-au>

2 Please refer in particular to articles 1 and 3 of FIDH' statutes, available online : www.fidh.org

Furthermore and as mentioned in the report, FIDH recognizes the presence of other business enterprises operating in the same sector and region.³ While the investigation focused on the impacts related to the concessions operated by Socfin-KCD (see below), FIDH did attempt, during the mission, to meet with representatives of the Vietnamese company Dak Lak Mondolkiri Aphivath Caoutchouc Co.Ltd. FIDH regrets that the company did not follow up on FIDH's request.⁴ Our report also acknowledges that the recommendations of the report are also relevant for other companies operating in the sector.

During FIDH's mission in December 2010, our mission members had the opportunity to meet twice with representatives of Socfin-KCD, as well as with representatives of 6 out of the 7 villages of Bousra affected by the concessions operated by Socfin-KCD. FIDH also met with representatives of the Cambodian authorities pertaining to different ministries at the local, provincial and national levels including high level representatives such as the Minister of Environment. Throughout the investigation process and during the drafting of the report, FIDH also exchanged with diverse representatives of the United Nations and the International Labour Organisation, with a view to corroborating the information obtained. The list of people met can be found in appendix in the report.⁵ FIDH also used additional serious publications.

Consultation and transmission of the report Socfin-KCD prior to its publication

It is worth mentioning that, upon request by Socfin-KCD, FIDH exceptionally accepted to transmit the terms of reference of its December 2010 mission. As indicated in the terms of reference, the objective of the mission was to « Bring support to our member organisations and local NGOs efforts' to assist the Bunong indigenous community affected by the activities of Socfin-KCD in Bousra with the objective of addressing recommendations and strengthening the dialogue process. ».⁶ It is therefore surprising that your company seems not to have been aware of the focus of the report when the latter had been confirmed to your company on different occasions, by way of telephone as well as during FIDH's mission in Cambodia in December 2010 (respectively on December 15th and 21st).

As opposed to what you state in your letter and abiding by our usual working methods, FIDH has given Socfin-KCD the opportunity to comment a draft of the report prior to its publication. In fact, a copy of the findings of the report, without the conclusions and the recommendations was transmitted to Socfin on September 20th 2011. This serves to demonstrate that FIDH wanted obtain Socfin-KCD's observations prior to finalizing the analysis and recommendations of the report, in the framework of a constructive approach.

FIDH therefore regrets that Socfin-KCD did not wish to comment the report prior to its publication.

As well, in order to obtain additional information on certain points, FIDH also sent you, on August 16th 2011, a list of questions, in particular regarding compensation measures implemented by the company. **FIDH deplores having received only partial, short and incomplete responses from your representatives.** ⁷ Faced with such a situation and wishing to obtain additional information

3 See « Selection of the case », p.10.

4 See in the report footnote no.8, p.10.

5 Appendix 1, « List of people met », p.56.

6 Terms of reference - Fact-finding mission in Cambodia Rubber plantations in Mondulkiri province: Socfin KCD, Transmitted to Socfin-KCD, 11 November 2010.

7 For instance, when asked by FIDH if the company could provide us with data regarding the number of workers (both full time and day laborers 2010 and in 2011, including the proportion of Khmer and Bunong, the company responded the following : « 2010 total dt Phnongs – 2011 total dont xx Phnongs »

on the particulars of compensation measures undertaken by the company vis-à-vis affected families, FIDH once more sought to obtain the information on the 6th of September 2011. **FIDH regrets that Socfin-KCD did not respond to this second request for additional information.**

As far as measures adopted by Socfin-KCD in favour of the Bunong population and their environment are concerned, and which you refer to in your letter (point IV.), **it shall be noted that the majority of the 16 measures enumerated in your letter already appear in FIDH's report.**⁸

With regard to measures you mention and which are in FIDH's report, this can be explained mostly due to the fact that :

- the information has not been communicated to FIDH by your company (for example measure no.9 regarding security on site) or ;
- the measures concerned do not correspond with FIDH's analysis (for example measure no.12 where it is stated that the company has « rigorously followed the compensation measures described in the ESIA »⁹).

Finally and contrary to what is stated in your letter (measure no.11), **FIDH's report effectively mentions that Socfin-KCD grants 5 dollars per day to its day labourers**, in addition to highlighting, to your credit, that this amount is indeed higher than the Cambodian minimum wage, which is set at 2,50 USD.¹⁰

In sum and despite measures taken by Socfin-KCD *after the commission of the violations* and which are recognized in FIDH's report, FIDH simply fulfilled its role by evoking the limits and weakness of such measures in light of national and international law, including the failure of the Tripartite Committee to act as a true and efficient prevention and conflict resolution mechanism.

The report's conclusions are based on a thorough methodology and reveals facts which contravene Cambodian legislation and international law. In addition, many of the conclusions are in line with those of your own environmental and social impact assessment (ESIA) undertaken in September 2009 by a team of international experts and of which you have accepted to provide a copy to FIDH.

FIDH therefore maintains the findings, the analysis and the recommendations of its report.

The recommendations formulated in the report form part of a proactive and constructive approach and are corroborated with information obtained through your company with regard to reparation and prevention measures adopted. These recommendations are also grounded in an analysis based on companies' responsibility to act with due diligence. Such responsibility is now recognized by the international community, including France, after the adoption by the United Nations Human Rights Council of a framework and Guiding Principles on the issue of human rights and multinational enterprises. It is also recognized by numerous multi-stakeholder initiatives including the Global Compact to which one of your principal shareholders has adhered to.

We reiterate our availability to discuss the conclusions and recommendations of our report and our willingness to value companies' good practices, whenever these exist.

⁸ See pp..34, 37, 40, 43, 44 et 46 of the report.

⁹ Unofficial translation of « suivi rigoureusement les mesures de compensation décrites dans l'EIS »). In this regard, we refer you notably to p.250 of your environmental and social impact assessment, :Volume I : Etude de faisabilité. In this section, a series of recommendations are formulated regarding compensation measures, including compensation for the loss of food security. To our knowledge, such measures have not been implemented by Socfin-KCD.

¹⁰ « According to Socfin-KCD, workers earn 5\$ USD a day, the minimum set wage in Cambodia being approximately 2.5 USD ». Voir rapport p.45.

We hope that our request will meet with a favourable response, with a view to contributing to provide reparation to affected populations for the harm suffered as a result of your activities in Cambodia and hence, to act responsibly and truly in respect of human rights.

Please accept, M. Fabri, our sincere salutations.

Souhayr Belhassen
President of FIDH

CC : Cambodian Government (Primer Minister and Vice-President)
Ambassador, Cambodian Royal Embassy in Belgium (Belgium, Luxembourg, Netherlands)
President, Chamber of Representatives, Luxembourg
Minister of Economy, Luxembourg
MM. Henri Kox et Félix Brax, Members of Parliament
Luxembourg Stock Exchange
French Development Agency
Caisse des dépôts
Novethic