



AUSTRALIAN
DISPUTES
CENTRE
INTERNATIONAL

Cambodian Land Dispute
Independent Mediation

Mediation Evaluation Report

PREPARED FOR:
MEKONG REGION LAND
GOVERNANCE (MRLG) GROUP

BY:
AUSTRALIAN DISPUTES CENTRE
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Abbreviations

ADC	Australian Disputes Centre
ADHOC	The Cambodian Human Rights & Development Association
BIPA	The Bunong Indigenous People Association
CAO	Compliance Advisor Ombudsman
CLAIM	Cambodia land Dispute Independent Mediation (CLAIM) Project
ELCs	Economic Land Concessions
GIZ-LRP	GIZ-Land Rights Program
IFC	International Finance Corporation
IMG	Independent Mediation Group
IPCs	Indigenous People Communities
MRLG	The Mekong Region Land Governance
RGC	Royal Government of Cambodia
SDC	Swiss Agency for Development and Cooperation
SE Asia	South East Asia
UNOHCHR	United Nations Office of the High Commissioner for Human Rights

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Photo credits: Deborah Lockhart, Chhaykea Son.

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Executive Summary

This report documents the evaluation of the Cambodian Land Dispute Independent Mediation (**CLAIM**) (**Evaluation**), an independent mediation between Socfin-KCD Co., Ltd.¹ and Coviphama Co., Ltd., known as Socfin Cambodia (**Socfin** or **Company**) and five Bunong villages from Busra Commune, Mondulkiri Province, Cambodia (**Community**) (**Parties**). The CLAIM Evaluation was undertaken by the Australian Disputes Centre (**ADC**) in 2022.

CLAIM sought to resolve a long-standing and previously intractable conflict over land use, following the Royal Cambodian Government (**RCG**) granting three Economic Land Concessions (**ELCs**) acquired by Socfin Cambodia (2009-2013). The land was traditionally occupied by the Community for cultivation and cultural amenity. The conflict lasted over a decade. The CLAIM process managed five mediations over five years, beginning preliminary work in late 2016, and ending with final settlement agreements signed in September 2021.

Based on the OECD DAC evaluation criteria, CLAIM was found to be relevant, coherent, effective, impactful and sustainable. In the challenging context of five simultaneous multi-party mediations, a parallel court case and multiple external road-blocks encountered, the Parties, Mediator, and supporting Stakeholders remained committed to the mediation process and satisfactorily resolving the long-standing conflict.

The preliminary mediation stage was assessed as being effective in:

- Building trust in the process and the Mediator
- Mapping the disputed land, the conflict and its actors
- Empowering the Community with the knowledge and skills to negotiate with the Company
- Identifying and engaging a multi-tier and multi-functional Stakeholder group that supported the Parties and purpose of CLAIM
- Securing commitment to Ground Rules and a Confidentiality Protocol that effectively provided a governing framework for negotiations

Based on this world-class preliminary work, the Parties and Stakeholders held trust in the Mediator, and he was praised for his facilitative and impartial approach throughout the process. This in turn engendered confidence in the Parties that the mediation progressed in a fair manner.

During mediation negotiations there were lessons learned regarding efficiency, and the Parties faced multiple challenges. These included villagers disputing the same parcels of land, uncertainty in CLAIM's funding, external actors and the COVID-19 pandemic. All challenges were ultimately overcome and remedial actions taken, demonstrating a dynamic mediation process.

The Parties were pragmatic and collaborative in negotiating settlement agreements that met their needs. The Evaluator found them fair, equitable, doable and durable solutions to the conflict. One key learning for future mediations was allocating more time for reality testing final proposals and drafting the Settlement Agreements. Further detail would have helped ameliorate some residual concerns, and negotiations needed, by the Parties in implementing those agreements.

The mediation was assessed as having a positive impact for the Bunong villagers across multiple domains, including:

- Financially, the villagers are better off than before
- Legally, they can now register their land for the benefit of current and future community members
- Practically, their local infrastructure is improved
- Culturally, the villagers have comfort that they can conduct their spiritual practices in perpetuity
- Community confidence has grown in their ability to negotiate and resolve conflict
- Skills development in interest-based negotiation, communicating for persuasion, and collaborative decision-making have equipped the community with life-skills they can apply in a range of settings
- Community-cohesion has strengthened, with villagers more focused on their collective interests
- Emotions of relief, gratitude and optimism have superseded a decade of conflict, anger and resentment over the impact of Socfin's agri-business on the ELCs
- The Community-Company trust developed over the five-year mediation process auguring well for future communication and negotiations

The Evaluation found CLAIM an example of an effective, multi-party mediation process that can be replicated to resolve future land claim disputes in Cambodia and across South-East Asia.

¹ A joint venture formed in 2007 between European company Socfinasia and Cambodian construction company Khaou Chuly Group (Socfin-KCD).

Evaluation Objectives and Scope

The 2022 CLAIM Evaluation (Evaluation) aims to provide an independent assessment of the process, results, and impact of CLAIM.

Guided by, and assessed against the *OECD DAC Network on Development Evaluation* criteria and specific research questions, the Evaluation focuses on three key aspects of the CLAIM project:

- The mediation process (methodology, engagement, inclusivity, challenges and learnings)
- The results of the mediation (clarity, satisfaction, fairness and equity)
- The impacts and implementation of the mediation agreements (progress, satisfaction, roadblocks, socio-economic development, community cohesion, Community and Company relationship, business improvement and replicability)

The Evaluation assesses the sustainability, efficacy and durability of CLAIM's outcomes, and how the benefits of mediation might influence public policy development for the resolution of other land conflicts in SE Asia.

Methodology

The Evaluation is based on:

- An initial desktop review of key project documents and references, including Conflict Analysis, Ground Rules, Confidentiality Agreement, Interim Evaluation (2018) et al [May - June 2022]
- Focus group discussions with village representatives, Socfin, the Mediator and other officials from the Busra Commune, District Authority and Provincial Authority [n = 30] (Primary Stakeholders) [June-Sept 2022]
- Online and in-person interviews with other stakeholders including: the Mekong Region Land Governance Project (**MRLG**), LAC, former UNOHCHR staff and the Swiss Agency for Development and Cooperation (**SDC**). [n = 10] (Secondary Stakeholders), [May - August 2022]
- A validation meeting to discuss the preliminary Evaluation results following the field trip to Busra commune [June 2022]



Busra Falls, Mondulkiri Province. Photo by Deborah Lockhart.

The Evaluation employed a mixed-methods approach, collecting both quantitative and qualitative data using three methods:

- Semi-structured interviews with Stakeholders as key individuals involved in supporting the mediation process
- Semi-structured interviews with members of the villages and the Company
- Quantitative surveys of members of the villages

The interviewees and surveys were selected using non-probability sampling. This allowed ADC to choose specific key figures who could provide and explore information that was relevant and valuable to the Evaluation Report.

Interview questions were structured around specific objectives and were presented to village representatives in five focus groups (**Focus Groups**). A 5-point Likert scale survey was taken by four of these five groups. This allowed the results of the interviews and surveys, both quantitative and qualitative, to be interpreted within the framework of the Evaluation's objectives and incorporated into the Evaluation Report.



Pu Raing Evaluation Focus Group Meeting. Photo by Chhaykea Son.

Background

The enactment of its 2001 Land Law, saw the Royal Government of Cambodia (RGC) give legal status to Economic Land Concessions (ELCs). This formalised the provision of long-term leases to allow a concessionaire to clear land and develop industrial-scale agriculture. A Sub-Decree in 2005 enabled the granting of ELCs to foreign and local investors.²

Socfin-KCD Co., Ltd., a local subsidiary of the international agro-business, Socfin Group, acquired two ELCs in Pech Chreada district, Monduliri Province to establish rubber plantations. These ELCs were approved in 2009 and 2010. In 2013 Socfin acquired Coviphama Co., Ltd., adding a third ELC to its holdings (granted to Coviphama in 2008). The ELCs overlapped with the land of six Bunong Indigenous People Communities³ (IPCs) in Busra commune. In the RGC's granting of approximately 302 Cambodian and foreign owned ELCs⁴, there was consistent neglect to consult the affected communities on their views and the anticipated impact on their cultural practices and livelihood. The IPCs in Busra were no exception.

The six impacted villages are highly vulnerable communities. Historically known as elephant keepers

and the custodians of the Monduliri forests, the IPCs relied on the forest for their food and cultural practices and the rich, red soil of their lands for the cultivation of rice and other crops. This same fertile soil attracted large agri-business to Monduliri.

Conflict Impact on the Community

During Focus Group interviews, village representatives spoke about the negative impacts of Socfin's agri-business activities in the decade leading up to the mediation. Their experiences of dislocation, loss of livelihood and an inability to fulfil their cultural practices as a result of the ELCs were consistent themes:

- The Company came and took over. They brought bulldozers and cleared the land
- We lost our livelihood. We used to get resin from trees, collect vegetables from the forest, grow rice in our fields, and graze our cattle. All gone
- We do not see wildlife anymore. We used to see elephants and tigers
- We used to find and use medicinal herbs for diarrhoea, fever and after child-birth. Now there are no more herbal bushes
- It used to take us an hour to walk to our fields, but after the Company took over the land we had to walk

2 LICADHO, 'Cambodia's Concessions', Web Page, 17 December 2021. Estimated to be 302 ELC's granted, of which approximately 175 are foreign owned, https://www.licadho-cambodia.org/land_concessions/

3 Pu Tuet, Pu Raing, Busra, Pu Char, Pu Lu, Putil and Lameh.

4 LICADHO, Ibid.

30-40 km (almost a day's walk) to get to our new fields

- Before, our rice harvest was enough for one year and if we were sick we could still survive. After the Company arrived, there were many days our families were not able to eat
- We felt the emotional impact of losing farms that had taken years of hard work to establish

By 2008, the impact of Socfin's agri-business on the IPCs' cultural lives and swidden (slash-and-burn) agricultural practices had catalysed into a longstanding and complex dispute. In 2009, the conflict turned violent. There were various protests and violent riots during which Socfin Cambodia's property was damaged. Villagers barricaded the roads in order to force the Company to negotiate.

The villagers wanted to find a solution to their problems, but said they struggled finding help during the long years of conflict; *'Many NGOs came along to peacefully solve the problem, but when we asked how do we resolve it(?), the NGO's all disappeared'*.

Seeking Conflict Solutions

In December 2008, tripartite meetings began between Socfin Cambodia, IPC representatives and local authorities (**Tripartite Committee**) to try and resolve the conflict. Socfin also established an internal department, the Bunong Administration, staffed by members of the Indigenous community to liaise with, and assist villagers.

From 2009 to 2012 Socfin undertook a compensation program. Sacred and cemetery communal lands were identified within the ELC's and villagers compensated in traditional ways. Socfin offered four other types of compensation:

Table 1 - Compensation Program 2009 -2012

Compensation Type
1. Keep farmland within the ELC (leopard skin strategy)
2. Relocate farmland (land swap)
3. Establish contract farming (family rubber plantations)
4. Provide cash compensation

COMMON THEME:

***Land is central to the Bunong IPC's livelihoods and well-being.
"Land is life!"***

Regulatory Hurdles

In May 2012, the RGC introduced Order 01BB, *'Measures for Strengthening and Increasing the Effectiveness of the Management of Economic Land Concessions'* (**Order 01BB**). The government stopped issuing land concessions and required contract compliance by ELC concessionaires, or they risked losing their concession(s). To implement Order 01BB, the RGC mobilised hundreds of volunteer university students to go into the countryside to measure and title land. Of Socfin ELCs, 570 hectares received land title for the community, but mostly in environmental areas. This was contrary to the intention of Order 01BB and caused further difficulties. To comply with the order, the Company was required to report any illegal activity. It filed multiple complaints about land clearing with the authorities that further infuriated the villagers. Socfin Cambodia was challenged by the complex working environment engendered by the further regulatory hurdles and the IPCs acting individually rather than collectively as village groups.

Ultimately, Socfin's Compensation Program failed to quell villagers' discontent. In September 2015, the Tripartite Committee was reconvened with Bunong representatives, Socfin Cambodia and the District Authorities, with approval from the Chief of Busra Commune. Building on this tripartite model, UNOHCHR established 'multi-stakeholder' meetings in December 2015. These meetings included local community representatives, local authorities, Socfin Cambodia, several pepper and rubber agribusiness companies, NGOs and other stakeholders who worked in the Busra commune.⁵ Despite these ongoing efforts to resolve the conflict, the dialogue failed to achieve a lasting resolution.

⁵ Mediating the Land Conflicts in Busra: Conflict Analysis and Mediation Strategy. Independent Mediation Group, January 2018 https://www.fidh.org/IMG/pdf/report_cambodia_socfin-kcd_low_def.pdf

Introducing Mediation

"Not needing to pay for the mediation and legal support made the solution accessible for the Community." – District Authority

In mid-2016, in response to a 'Call for Proposal for the Innovation Fund', Sophorn Poch, founder and Director of the Independent Mediation Group (IMG), proposed mediation to the Mekong Region Land Governance Project (MRLG). MRLG's aims include improving the land tenure security of smallholder farmers in the Mekong Region. The CLAIM project was approved by the MRLG Project Steering Committee after a competitive selection process. By November 2016, MRLG had agreed to fund CLAIM, mediated by Sophorn Poch and IMG.

MRLG recognised mediation as an innovative approach to conflict resolution and transformation. MRLG had two main objectives in funding the mediation:

- **Objective 1:** Land tenure security of Indigenous People communities affected by large scale investment is improved through a neutral mediation where parties have reached an agreement in at least one case
- **Objective 2:** Neutral mediation by Cambodian mediators as an approach for land conflict transformation is institutionalised and officially recognised in Cambodia

In addition to the MRLG funding, UNOHCHR agreed to provide gap-funding and financial support for Legal Aid of Cambodia (LAC) to provide legal training and advice to the Bunong villagers.

The Parties and Stakeholders recognised the importance of the funding model, noting that *it made the solution accessible,⁶ as normally you expect parties to pay for their own mediation, but that is not possible in Cambodia.⁷*

Phase 1 & 2 CLAIM Funding - Overview

Phase 1 of CLAIM commenced in November 2016 and concluded around October 2018.⁸ Activities that occurred over this period included land mapping, conflict analysis and initial community consultation to garner the IPCs interest in and commitment to a mediation process. This was followed by a capacity building program that included pre-mediation training for the five village groups that agreed to mediate (Community).⁹

Phase 1 of the CLAIM negotiations between the Community and Socfin Cambodia commenced in November 2016. It concluded with the settlement of the communal land claims made by the Community in October 2018 (Pu Raing) and other community claims settled in early 2019,¹⁰ covering issues such as cemetery forest land, sacred/spiritual forest land, and reserved land.

At the conclusion of Phase 1, three categories of the Community's claims remained unresolved: (i) accessing environmentally protected land that had been cleared for cultivation along the streams; (ii) contract negotiations for family rubber production; and (iii) land related compensation. Following an evaluation of the project carried out by MRLG in October 2018, funding of Phase 2 of CLAIM was approved in May 2019.¹¹ UNOHCHR also agreed to extend its funding to the LAC for ongoing legal support to the Community.

On 20 and 21 September 2021 the mediation concluded with the signing of the remaining Settlement Agreements¹² by the Parties, resolving all four categories of claims in the dispute.

6 Deputy District Governor, Pech Chreada.

7 Swiss Agency for Development and Cooperation (SDC).

8 Poch, Sophorn, 'Mediating the Land Conflicts in Busra Conflict Analysis and Mediation Strategy', 2018, p. 9.

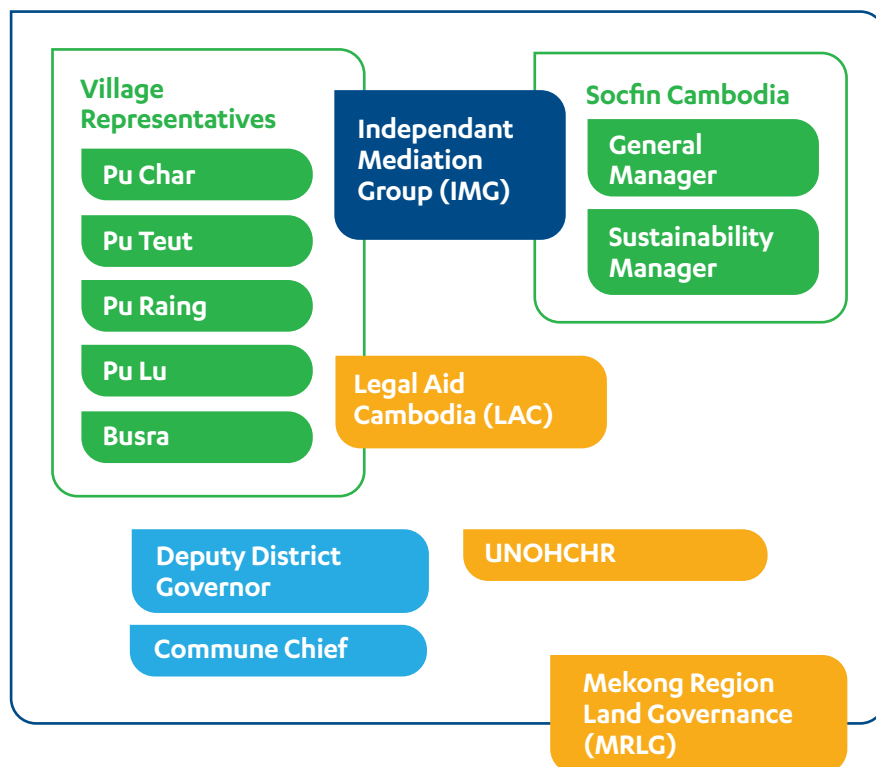
9 Bousra - Village 3; Pu Tut - Village 1, Pu Raing - Village 2, Pu Char - Village 6 and Pu Lu - Village 7.

10 The communal land agreements for Pu Lu and Pu Char were signed in August 2020.

11 IMG, 'First Quarterly Progress Report', August, 2019.

12 Mekong Region Land Governance, 'The mediation between Bousra Indigenous Communities and Socfin Cambodia concludes with agreements to end long-standing land disputes', Web Page, 10 February 2022.

Actors in the Mediation



The Mediation

Parties to the Mediation Confirmed

In November 2016, IMG commenced a comprehensive engagement process with six IPCs: Pu Teut; Pu Raing; Busra; Pu Char; Pu Lu; and Lames.¹³ IMG's preparatory work included running information sessions about the mediation process and purpose. These sessions aided villagers in making informed decisions about whether to join the proposed mediation. The villagers' decisions were complicated by a court case that was commenced by approximately 90 Bunong villagers in France in 2015 (**Court Case**).¹⁴ The Court Case preceded the mediation proposal, creating a tension and the need for sensitivity, as IMG wanted the Community to make their own decision to mediate, without regret. This way, IMG foresaw more fulsome and unrestricted participation.

In November 2016, Socfin Cambodia and five villages - all members of the Pu Char, Pu Raing and Pu Teut villages, half of Pu Lu, and six families from Busra village¹⁵ signed an agreement to participate in CLAIM, mediated by IMG and funded by MRLG.

Later, approximately 10 Pu Teut and Pu Lu villagers

moved from the Court Case to the mediation, declaring their withdrawal from the litigation. It was agreed by the Parties that villagers could not join the two processes at the same time.

The Evaluation found no evidence of villagers being unhappy with their choice to mediate. Focus Groups spoke about their reasons for joining the mediation, including:

- We decided on the mediation process because we had been struggling for a long time with no good result. It cost us money during our struggle. We thought trying mediation would give us a better result
- Filing a complaint through court looked confrontational and mediation was not confrontational, so it was better to talk and find a solution
- If we sue, then we cannot be friends any more, we cannot smile at the Company, it means anger and retribution, and we believe that the Company can help us develop the Community.

¹³ Poch, Sophorn 'Alternative Land Conflict Transformation: A Cambodia Innovation' Conference paper, Annual World Bank Conference on Land and Poverty, March 19 - 23, 2018, p 9.

¹⁴ A B et al v BOLLORE Company, Compagnie du Cambodge Company, Case N° R.G. : 15/10981, Nanterre High Court, France. Case involving Bunong plaintiff's and Bolloré (shareholders of Socfin Cambodia) was decided in the Company's favour in 2021.

¹⁵ One village, Lames, did not join the mediation.

COMMON THEME:

Significant appreciation from the Community and Company for the pre-mediation support

The Preliminary or 'Pre-Mediation' Phase

'We felt 100% confident and ready to start the mediation negotiations with a good grasp of the relevant issues' - Village Representative

Pre-mediation includes a range of preparatory steps by a mediator and the disputing parties prior to the commencement of negotiations. It is best practice for a mediator to work with parties in a structured pre-mediation process consistent with the nature and complexity of the issues in dispute.¹⁶ ADC analysed the range, scope, relevance and impact of the activities¹⁷ undertaken by the Mediator and IMG team against best-practice mediation standards.¹⁸

CLAIM's preparatory work included:

A. Information gathering – land mapping (undertaken by GIZ-LRP until mid-2016), and conflict analysis to understand the conflict and help the Mediator in designing appropriate interventions before negotiations began

B. Identification and Engagement of secondary stakeholders – IMG carefully curated and engaged a Stakeholder list that ensured broad support for CLAIM's objectives and process, from inception to settlement. This support included the Commune, District and Provincial authorities, UNOHCHR and other NGO's

C. Election of village representatives for negotiations – In establishing a framework for cooperative decision-making, each village elected representatives for the different conflict groups as outlined in CLAIM's agreed Ground Rules. IMG requested that the elections be documented and certified by the Commune Chief. Elected representatives included women, and village elders as observers to negotiations

Table 2: Community Representatives

Village	Total Representatives	Families Represented
Busra	3	6
Pu Char	6	13
Pu Lu	5	95
Pu Raing	5	33
Pu Teut	7	63

D. Capability Building – IMG delivered a constructive skills-training program for the Community representatives to prepare for their negotiations. This included: IMG instructing them on the mediation process; LAC covering legal issues and land rights, and UNOHCHR training the Community representatives in negotiation skills, how to identify issues, how to develop options and how to problem-solve

E. Classification of the conflict - Distilling the conflict into categories was important in effectively managing the complex issues between the Parties. They agreed that the conflict mediation would focus on the following issues:

- Communal Land, reserved forest, protected forest, spiritual forest and burial forest land
- Riparian Land practically cultivated or farmed
- Affected Land that remains unsettled or not compensated
- Smallholder Rubber Plantations

Village representatives were consistent in their feedback that their pre-mediation support and training provided by the Mediator and Stakeholders (IMG, LAC, MRLG and the UNOHCHR), was effective in preparing them for negotiations:

- We knew the process. We knew our land rights. We knew how to approach the Company in a peaceful manner. All this was helpful
- We found it very helpful and useful. Each step was documented. IMG and LAC helped us prepare documents that meant we were prepared to negotiate with the Company

Socfin Cambodia did not need the same support provided to the villagers, but welcomed the capacity-

¹⁶ Australian Disputes Centre (ADC) Mediation Training Manual 2022, at p. 62.

¹⁷ Poch, Op. Cit., p. 9.

¹⁸ ADC Manual, Op. Cit., p. 29.



Rubber Trees on Socfin Plantation (Picture from Socfin Cambodia, 2019)

building provided to the IPCs, recognising its positive impact on CLAIM negotiations. It meant that all Parties were acquainted with the expectations of the mediation process including, significantly, a willingness to listen to others' views. Socfin also welcomed the Mediator's diligence in maintaining equity between the Parties, including always offering to visit the Company when he was visiting the villagers.

Before the formal mediation sessions, the Parties agreed on two documents that would govern the mediation process, the 'Ground Rules' and 'Confidentiality Agreement'. Both documents were (and are, in most mediations) critical to a successful process, namely to define the scope and set the standards for negotiations.

CLAIM's pre-mediation work was central to the mediation's success. ADC assessed its six process and capacity-building activities against 12 elements of best-practice mediation activity.¹⁹ The efficacy of preliminary work in developing trust and confidence in the Mediator was assessed against Boule and Field's framework of seven 'mediator functions' central to developing trust.²⁰

ADC found adequate time and resources were allocated to the preliminary phase in CLAIM. The work

undertaken by IMG and supporting Stakeholders effectively met the Parties' needs, built trust in the Mediator and the mediation process and prepared Parties for the complex negotiations ahead.

The Parties and Stakeholders noted the benefits of the pre-mediation work:

- Preliminary land mapping and capacity-building training was important to the mediation
- It empowered village representatives, helping to level the playing field with the Company
- A great success was splitting the issues into four types of disputes
- The Confidentiality Agreements were key to the process, helping the Parties discuss issues with the comfort that they would not be disclosed to third parties
- There was nothing we would want to do differently that we could not resolve along the way
- The significant preliminary work undertaken for CLAIM was methodical and meticulous

The Evaluation considers CLAIM's comprehensive preliminary activities provide a valuable template for other complex, multi-party land claim disputes.

¹⁹ ADC Manual, Op. Cit., p. 62. Refer Appendix A: Analysis of CLAIM pre-mediation activity against best-practice.

²⁰ Boule, Laurence and Field, Rachel, 'Mediation in Australia', LexisNexis, 2018. Refer Appendix B: Analysis of CLAIM's pre-mediation activity for efficacy in building trust

Practical Arrangements for Mediation Meetings

The Community and Company representatives expressed satisfaction with CLAIM's practical arrangements, including time and place (once meetings moved closer to the villages).

The initial full-day meetings were held in the Provincial town. It was a neutral space but inconvenient for the Community. Their reliance on motorbikes meant difficulty of access when driving in heavy rain, and safety concerns when travelling in the dark. To improve access, the Mediator arranged with the District Governor to move the meetings to the District Hall, closer to the villages. This was an important pivot in addressing a perceived power imbalance between the Company and the villagers, and facilitating meeting attendance.

The mediation meetings were facilitated with assistance from an interpreter. When an issue in translation occurred, a break would be taken to clarify the point. With the Ground Rules in place, meetings could be extended as needed.

The Parties and observer-Stakeholders confirmed that the mediation process gave the Parties sufficient time to present their claims, consider the issues and negotiate agreed solutions.

Role of Stakeholders

CLAIM's Stakeholders included Provincial, District and Commune authorities, UNOHCHR, LAC, SDC and MRLG. IMG's astute Stakeholder management creates a blueprint for future land claim mediations.

The carefully curated list of Stakeholders were fully engaged in the CLAIM process from the start. Several Stakeholders were trained in mediation and were Community trainers in the pre-mediation phase.

Two tiers of local government officials and an UNOHCHR representative were signatories to the Ground Rules and Confidentiality Agreements, they were observers at the mediation meetings and they signed the Settlement Agreements. Thus, these Stakeholders had a balcony view of the mediation process that enabled them to vouch for its fairness. Their informed and responsible oversight ensured full transparency of CLAIM.

Parties' Engagement

The Parties were committed and engaged throughout the CLAIM process.

Feeling Heard: A key indicator of engagement is whether parties feel heard. Village Focus Groups were consistent in their view that the Company listened well. Socfin did not always agree with them, but the Community felt the Company was respectful. Quantitative results from the Focus Group surveys support the qualitative feedback that the Parties listened attentively to each others' problems.

Attendance and Preparation: Other indicators of engagement include attendance and preparation for negotiations. Not everyone could be at every CLAIM meeting. Frustrations arose if either side was not prepared to present options or provide an answer that day. When attendance issues arose e.g. village representatives committed to family and farming responsibilities, meetings could be delayed. Socfin had two representatives available for the five village negotiations. If only one could attend a meeting, Socfin's ability to respond on the day was impacted, slowing negotiations. The Company recognised it had underestimated the time needed to reach a resolution with each village. This learning, to have adequate people resources available to support negotiations, is relevant to all complex, multi-party mediations.







Inclusivity

"It was an interactive process. Everyone in the Community was represented. We have not left anyone behind" - Village Chief






The Evaluation found CLAIM met its objective of inclusivity. All villages elected their representatives with age and gender diversity in mind. Women were reported as integral to all stages of the mediation process, from the collection of information, to negotiations and finalising the settlements. Women were perceived as having greater familiarity with topography and land use, and were particularly adept at land mapping [*Mediator*]. The female representatives were also highly regarded contributors in the negotiations.

The five villages also elected elder representatives, who brought deep knowledge and gravitas to the mediation process.

Table 3: Mediation Process Rating Survey

Village	All Groups
Focus Group Representatives Voting	22
Statements	
A The times and place for the mediation meetings were convenient	
B The Community and the Company listened well to each other's problems	
C The legal support provided to the Community by LAC was very helpful	
D The mediation process proceeded as we expected	
E The agreements we reached with the Company were fair	
F The Mediator conducted the mediation impartially	

Ratings

 = Strongly Disagree  = Disagree  = Do not agree or disagree  = Agree  = Strongly Agree

Survey questions are structured around specified Evaluation objectives and correlate with the semi-structured interview questions. The quantitative results affirm the qualitative feedback provided in each meeting.

The inclusive approach adopted by each village extended to protocols around the elected representatives communicating back to their members and village decision-making. Each village had a clear process for informing their members on the issues and progress of the mediation negotiations. The Ground Rules dealt with Decision Making, requiring that before a decision was made by representatives, the village representatives must seek the support of their members within 20 days.

The village consultation processes were not without their challenges in gaining consensus. However, the intentional processes adopted ultimately ensured that all villagers in CLAIM had visibility of the negotiations and a decision-making voice:

- Villagers had meetings before and after negotiation sessions to agree matters between themselves before raising their issues with Socfin
- There was emphasis on taking time during negotiations; i.e. suspending or rescheduling them to allow time for village consultation
- It was an interactive process, everyone was represented. Before CLAIM, individuals or families went

direct to Socfin, with CLAIM they went as a collective. The Focus Groups highlighted a collaborative and cohesive approach in village decision-making:

- There were no big disagreements, only discussions to find common ground
- If there was a difference of opinion that was more difficult to resolve, the elders may meet that person, either one-on-one or in a meeting with other elders, and sort out the issue
- Sometimes the choices needed to be explained to the villagers multiple times, allowing them time to discuss and come to an agreement

Vulnerabilities such as hearing impairment, lack of literacy, and the complexity of three languages being used - Bunong, Khmer and English - were accommodated during the mediation. The need for an interpreter naturally brought a slower pace to the negotiations, and the Parties were encouraged to speak clearly and distinctly with fellow village members relaying information that may have been missed by others. This ensured everyone heard and understood what was being said. The LAC provided assistance with the Community's writing needs.

TIMELINE OF THE CLAIM PROCESS



Satisfaction with Mediation Process

“Mediation is not just about the agreement, it is also about building relationships between the parties and other stakeholders.” – UNOHCHR

The Mediator chose a ‘facilitative’ model of mediation over ‘evaluative’, on the basis it would be more effective in engendering deeper trust in the process.

It is sometimes thought an evaluative mediation can be more time-efficient than a facilitative model, as the mediator is willing to express their views on the merits of the matter. In doing so, the mediator can guide the parties toward a resolution. Nevertheless, parties as autonomous actors still need to make their own decisions. When there are differences of views, more time can be spent trying to counteract or reinforce the mediator’s opinions, diminishing the possibility of settlement. Thus, it is difficult to say that an evaluative style would have meant a faster process for CLAIM. Based on the settlements and the Parties’ increasing trust in each other over the course of the process, the facilitative model was a productive process for CLAIM.

The Community was satisfied they fully understood the mediation process, such that there were no surprises for them. The quantitative results in the Mediation Process Rating Survey at Table 3 are consistent with the qualitative responses of the village representatives.

Villagers also strongly agreed that the Mediator was fair, reasonable, and impartial; *the Mediator was impartial. He did not make any decisions. He allowed both sides to talk. He explained the stance of the Community to the Company, which was difficult.* Quantitative results affirmed this qualitative feedback from the Focus Groups. The Company agreed the Mediator managed the process equitably between the Parties.

In a facilitative mediation the objective is to resolve the conflict. However, it can deliver other benefits

including improving communication and the way parties approach future issues. CLAIM’s Parties were consistent in their feedback that the mediation process helped improve communication. This included the villagers’ confidence that they were still being ‘heard’ by Socfin when discussing the implementation of the Settlement Agreements.

Socfin was generally satisfied with the mediation process, subject to a few reservations:

- The stop-start nature of the process, dictated by uncertainty of available Phase 2 funding
- More meeting minutes would have been helpful - mediating with five different villages made it hard to find your way back to where you left off
- A disconnect between its expectations as a large, multi-national company with formal budgets and procedures, and the capacity of the Community to submit their proposals under the Settlement Agreements on time

The Deputy District Governor and the Busra Commune Chief were happy with what they observed as an equitable mediation process. They saw increasing levels of trust developed between Socfin and the Community, and also within the villages. The Commune Chief noted a sense of calm in Busra Commune since the mediation began in contrast to the difficult situation before it commenced, including 50 to 100 angry people outside the Commune Hall.

The UNOHCHR observer was wholly supportive of the facilitative model. He confirmed that the Mediator was impartial, and refrained from making decisions for the Parties.

Feedback from the Community, Company and Stakeholders was consistent in support of confidentiality. When asked ‘what went well?’, confidentiality was central to their perception of the mediation’s success.



Busra Village Focus Group. Photo by Chhaykea Son.

Roadblocks, Challenges and Solutions

The Evaluation found that the various roadblocks and challenges faced during the mediation were addressed effectively and collaboratively.

Negotiation Roadblocks: The Community entered negotiations with specific claims, and some of these claims were competing e.g., villagers claiming the same parcel of land. The Company's counter proposals during negotiations were often not popular with Community members, discussions became heated and Parties had to take a break to cool things down. Time-out was also necessary for the Company to digest, research and formulate its responses to the villages' various claims made in the mediation meetings, without prior notice. This also had the effect of slowing things down. When negotiations stalled, it could be for a month or so.

Covid-19: A significant and totally unexpected roadblock to the mediation came in the form of delays caused by the global COVID-19 pandemic. It impacted the progress of the mediation from March 2020. Public health measures prevented planned in-person meetings, such that progress was slowed over the next two years.

Court Case: In 2015, approximately 90 villagers

from Busra and Pu Lu villages commenced legal proceedings in France. When the option of mediation was introduced to the IPCs in 2016, some parties to the litigation changed their minds and decided to join the mediation, stalling the mediation process for about three months to bring the newcomers up to speed. It otherwise did not impact the mediation process.

However, there was some initial internal village conflict. For example, the parties to the Court Case accused the mediation group that they were not members of the village. There was also some perception that members of the Court Case were jealous of the mediation groups and felt regret for not joining the mediation.

On 10 February 2017, the Nanterre High Court, 6th Chamber, ruled that it required further information.²¹ Those representing the plaintiffs requested data from CLAIM, including its maps. When the confidential information was withheld, it created tension between the mediation group and plaintiffs in the litigation. However, the UNOHCHR noted that these tensions were nevertheless resolved, after explaining to the Community why the issue with confidentiality arose, and ultimately it did not negatively impact the mediation.

21 A B et al v Bolloré, Op. Cit.



Pul Lu Village Focus Group. Photo by Chhaykea Son.



Pu Teut Village Focus Group. Photo by Chhaykea Son.

External Actors: In early 2019, allegations were levelled against IMG and the CLAIM process on behalf of various individuals and NGO's. The allegations included:

- The IPCs did not have access to progress reports
- IMG was blocking communications between the villagers and the Company
- IMG's management of the mediation did not empower the affected villagers or facilitate effective dialogue
- There was social disorder both at a village and family level enabled by IMG, who had allowed irreversible exclusions in the mediation process that caused adverse impacts on the stability of villages and families

In response, UNOHCHR undertook a fact-finding mission to the IPCs (CLAIM and non-CLAIM related villagers) and the Company, to establish if the allegations had veracity. After thorough consultation, UNOHCHR concluded the claims made by the external actors were wholly unsubstantiated, finding no undue influence was experienced by the villagers. The Parties had full confidence in IMG and the Mediator. They remained engaged in the mediation and were careful not to breach confidentiality.

The allegations and subsequent investigation were significant issues for CLAIM, exacerbated by the escalation of related concerns by donors. It caused MRLG significant discomfort in Cambodia and Europe at a time when CLAIM's Phase-2 funding was being negotiated.

Four key learnings were identified in the Evaluation from the challenge by external actors:

- Undertake 'actors mapping' to identify the agendas of those who may have an interest in the mediation
- Implement an agreed communication strategy to a broader range of interest groups

- Meet with protagonists personally, to better respond to their concerns
- Replicate the CLAIM protocol of having Stakeholder-observers representing multiple levels of government and the United Nations, who can vouch for the impartiality of the Mediator, empowerment of the Parties, and a fair process

Allocation of Parties' Resources: The efficiency and effectiveness of the CLAIM process relied on the Parties and Stakeholders allocating adequate time and resources to progress negotiations to settlement. The Community spoke of financial vulnerability e.g., affording petrol to get to a meeting. Villagers also spoke of opportunity costs of being unable to tend their farms that are often long distances from their villages, and sacrificing family time. CLAIM's budget was allocated for some of these costs e.g., catering and recompensing villagers for travel. A learning for future land claim mediations is managing expectations around likely time commitments to help ensure representatives fully appreciate the competing interests on their time, and prepare themselves and their farms, families and communities as best they can for the mediation process.

Socfin recognised they too had underestimated the time commitment of the mediation and that more preparation on their part would have been helpful. Given the time pressure of running five sets of negotiations simultaneously, it would have expedited the mediation if more Company resources (including negotiation and decision-making alternates) were provided.

Tri-Language Negotiations: Community representatives could speak in their Indigenous Bunong language, Khmer or English, with IMG providing an interpreter. Language barriers in mediation are

invariably a challenge, and there is always an inherent danger of meaning being lost. *'Listening in Khmer and translating into Bunong was time-consuming to get the nuances and emphasis'* noted one Community member. However, using a professional interpreter, the Mediator, the LAC and villagers who spoke two or more languages, the Parties found negotiations proceeded without significant difficulty, albeit slowly.

Other learnings from the CLAIM process

Stable Funding: Instability of funding was seen as contributing to delays with a funding gap from September 2018 to May 2019, as MRLG sought clarification on an anticipated timeframe to resolution. Phase-2 CLAIM funding was agreed to commence from May 2019 and the Parties resumed negotiations.

The Ground Rules supported the extension of time and it was prudent for the Parties to anticipate delays (not only in relation to funding). Large, complex multi-party Indigenous land claim mediations require significant time. While CLAIM experienced its unique set of challenges, it could not be considered an outlier in terms of time taken to reach a resolution.

CLAIM was made possible by the external funding from MRLG and UNOHCHR. While it is usual practice for mediations to be funded by the parties, this is not feasible for IPCs. Governments could reasonably provide funding, however, in Cambodia and other countries where corruption is prevalent, the Evaluation considered that independent funding would remain a benefit in resolving land claims disputes for the foreseeable future.

Option Generation: A key objective in mediation is to assist parties in identifying a 'range of options' that meet their needs. The emphasis is on looking at the possibilities, not merely debating fixed solutions. The more options on the table, the more likely it is for the parties to find one or more ideas that will meet their needs, and the less likely it is the discussion will result in haggling over a narrow or fixed solution. If the parties are not generating options on their own, a facilitative mediator can assist; not by proposing options but by using techniques such as brainstorming.²² While this sounds straightforward, generating options can be challenging, particularly with parties who may not be used to thinking about new possibilities or do not feel empowered to suggest them.

Capability training sessions in negotiation and option-generation were provided to village representatives in the preliminary phase of CLAIM. Nevertheless, during negotiations, the Company observed that often, when asking villages *'what options do you propose?'*, no options would be put forward. From the Company's perspective this contributed to delays in negotiations and a stop-start rhythm to the mediation. This, in turn, impacted Socfin's access to corporate funding; with annual budget provisions (in expectation of financing agreed solutions) expiring prior to agreements being reached.

Two key learnings from this CLAIM experience:

1. Deepening the Community's capability and confidence in proposing a range of options that could (not necessarily will) meet their needs, through further coaching or in brainstorming caucuses with the mediator
2. Leveraging the opportunities of a corporate budget in the context of a lengthy mediation i.e. the potential to use an annual budget provision to fund interim agreed actions e.g. a road repair. This would bring forward benefits from the mediation for IPCs, assist the Company in annual budgeting by using funds available, amortise compensation costs over more years, and create good-will between the parties

Detailed Agreement-Making: While funding constraints may have added to a feeling of 'rushed' agreement-making, it is common in mediation for the parties to become excited when they are close to agreement; they can see the finish line and want to get there as quickly as possible. It is the role of the mediator to help the parties slow-down and reality test the workability of their proposed solutions e.g., by asking *'how is this going to work practically?'*. The objective is to come up with agreements that the parties can live with and that are doable and durable.

Reality testing in agreement making takes time, and includes:

- Relevant operational factors (who, how much, what, where, by when)
- A consideration of how the agreement will work for each party short term and long term
- Checking that the agreement includes any necessary follow-ups or review
- Cross-checking that all parties share responsibility for making it work

²² ADC Manual, Op. Cit., p. 25-26, 55.

COMMON THEME:

The mediation process built greater trust between the Community and the Company, while improving each villages' community cohesion

- A practical and realistic provision to deal with any unresolved concerns
- Contingency plans in the event of implementation failure²³

The Mediator's Workload: As only one Mediator was responsible for managing all negotiation sessions and the process, stakeholders recognised that in the context of a long and complex mediation, the Mediator needed more support. Future multi-party mediations may benefit from a co-mediation model by:

- Spreading the load in meetings, with two sets of eyes and ears supporting negotiations
- Creating more opportunity for diversity e.g., gender balance, language and technical skills
- Providing risk mitigation should a solo mediator be unable or unwilling to continue the mediation for any reason e.g. duration of the mediation over many years

Confidentiality vis-a-vis Transparency

A significant challenge faced by CLAIM was the impact of external actors pressing for transparency in the mediation process and its outcomes. As agreed by the Parties, strict confidentiality was nevertheless respected and maintained. However, the costs of the 'transparency challenge' were multifaceted; financial, psychological, reputational, managerial, and significantly delaying the mediation.

Mediation has always been vulnerable to the tension between maintaining confidentiality and allowing transparency. The constant need to balance one against the other is similar to a swinging pendulum. Confidentiality is broadly recognised as the dominant characteristic of mediation, necessary to encourage parties to reveal sensitive issues, deep-seated feelings, or make admissions and concessions that would

otherwise be *'impossible if parties were constantly looking over their shoulders.'*²⁴ Yet it can be a double-edged sword. While it encourages honest negotiation, particularly where parties may be hesitant to reveal certain aspects of their situation, it can also cloak the unfair treatment of vulnerable parties.

In the context of CLAIM, and other independent mediations involving Indigenous communities, there are good reasons for tilting the pendulum more towards the transparency column. An important tool used by CLAIM to facilitate visibility and transparency of process and content was to involve the Busra Commune Chief and the Deputy District Governor, as the local authorities responsible for the day-to-day welfare of Community members, together with the UNOHCHR and its focus on the wellbeing of Cambodia's Indigenous communities. These three observers attended the mediation sessions and were bound by the Ground Rules and Confidentiality Agreements. In the context of this independent mediation, it afforded transparency of process to those who were accountable and had the interests of the Community at heart.

Another option for tilting the pendulum towards transparency relates to the mediation 'process' and other matters agreed by the Parties e.g., a communiqué on outcomes agreed by the Parties. To this end, the District Authority had reporting obligations to the Provincial Government. In reporting on CLAIM's progress, the focus was on the 'process' and not the 'content'.²⁵ Similarly, following the Settlement Agreements, the Parties worked on a joint statement for general release to the public. This approach supports maintaining the accountability of the Parties, Mediator, and the process, particularly in the context of managing potential power imbalances and for the purposes of any reporting obligations to Stakeholders and funders and/or for public policy interest.

To achieve this middle ground and depart successfully from a traditional binary model of confidentiality versus transparency, clear planning and agreement during the pre-mediation stage is key. Transparency in modern mediation is welcomed by many where there is greater public interest in the case. However, the transparency

²³ ADC Manual, Op. Cit., p. 31.

²⁴ Prigoff, Michael L *'Toward Candor or Chaos: The Case of Confidentiality in Mediation'* 12 Seton Hall Legis 1: 103, 1988.

²⁵ Recognised by SDC as working well during the mediation; keeping interested parties updated, while not disclosing the negotiations or agreements.



Rubber Seedlings being delivered to Pu Char Village. Photo by Chhaykea Son.

accorded to the traditional forums of courts and tribunals cannot simply be transposed onto mediation. Instead, parties need to allocate ample time to develop a pre-mediation agenda that assumes the mediation process is confidential and identifies what items, if any, should be placed in the ‘transparency’ column. Such a process necessitates flexibility. As the mediation process evolves, the number of parties or stakeholders increase, or salient information comes to light, further items may require consideration for disclosure. The above said, as further transparency is introduced, the quintessential characteristic of the mediation process may be compromised as parties may not feel they can negotiate freely without the fear of adverse consequences. A delicate balancing exercise ensues.²⁶

What differentiates CLAIM from earlier conflict resolution attempts?

The Evaluation found MRLG’s agreement to fully fund the CLAIM project was a watershed differentiator from earlier conflict resolution attempts. Its long-term commitment to financing this innovative approach to conflict resolution, and its commitment to leveraging CLAIM outcomes and learnings to assess the relevance and feasibility of mediation in resolving land conflicts in

Cambodia, was pivotal to the mediation commencing and progressing to a resolution.²⁷

IMG’s preliminary activities prior to mediation negotiations also significantly differentiated CLAIM from prior conflict resolution attempts, e.g. Socfin had undertaken earlier land mapping, but it was IMG’s early engagement of the Community and their own mapping process that contributed to the Community building a clearer understanding of the land boundaries and their claims. CLAIM’s capability training undertaken with the village representatives was also instrumental in empowering villagers for negotiations.

From the Compensation Program of 2009 - 2012, the rubber plantation scheme found some success with acceptance by a few families, but not by others. With the price of land increasing significantly, and monetary compensation sometimes going to a family member who had since absconded, even those who were financially compensated became disgruntled and asked for more. It was therefore important that in CLAIM the Parties learned from this previous experience to reach more appropriate and comprehensive agreements.

The role of the Mediator as a third-party neutral was another important differentiator from earlier conflict

²⁶ Refer Appendix D: Considerations in Balancing Confidentiality and Transparency

²⁷ MRLG Phase 1 and 2 Funding [2016-2021] at p. 8.

COMMON THEME:

Following the mediation the Parties are feeling empowered and are looking to the future with renewed optimism.

resolution attempts and instrumental in effecting a successful mediation process. The impartial, third voice of the Mediator was helpful in ensuring the Parties were actively listening to each other. In CLAIM, the Mediator's commitment to a facilitative, rather than evaluative model of mediation helped build unprecedented trust between the Parties.

In facilitative mediation, the mediator structures a process that assists the disputants in reaching a mutually agreed resolution. Using a variety of techniques such as active listening and questioning skills, the mediator encourages parties to evaluate, communicate and create solutions so they may arrive at a resolution. Ultimately, the parties are in charge of the outcome, and the mediator is in charge of the process. Facilitative mediation is predominantly held in joint sessions, with bilateral meetings between each party and the mediator as required. In the facilitative model, the mediator shapes the process by:

- Facilitating communication
- Promoting understanding of the issues
- Focusing the Parties on their interest
- Encouraging creative problem solving solutions outside legal normative²⁸

In comparison with earlier conflict resolution attempts, in CLAIM, the Mediator managed a flexible mediation process that allowed for an informed and empowered environment to develop between the Community and the Company. In leveraging thorough preparatory work, the Mediator created space to allow straight talking, self-determined negotiations and a collaborative spirit to develop between the Parties. This enabled the opportunity for durable agreement-making.

Results of the Mediation

Settlement Agreements

Community representatives, Socfin, the Mediator, observers and witnesses signed the final Settlement Agreements (**SAs**) in September 2021, successfully concluding the CLAIM process.

There are between one and four SAs for each of the five villages. They cover the four types of land claims; communal land, related farmland, land cultivated in protected areas along the stream and rubber family contracts. The SAs are consistent, and include important commercial provisions, such as a warrant from the company that the contract will be honoured if there is a change of leadership or transfer to another company, and dispute resolution clauses.

Satisfaction with Settlement Agreements

The Evaluation found the Parties and Primary Stakeholders were highly satisfied with the SAs and they praised the amicable environment fostered by the mediation process.

The village Focus Groups were relieved and grateful that the CLAIM process had resolved their long conflict, expressing a sense of optimism about the future and the benefits to them of the SAs. In approaching their negotiations, the Community was pragmatic. They recognised that the land now in Socfin Cambodia rubber plantations would not be returned to them and sought other compensation. The Community did not receive everything they asked for but saw this as part of the mutual give and take of negotiations.

The senior officials of the Provincial, District and Commune authorities were all grateful to see the long-standing conflict in Busra Commune resolved through CLAIM. With their primary focus on ensuring villagers' lives were improved by the SAs, they recognised that mediation helped end the conflict without violence, it achieved a win-win result without corruption, and they would recommend mediation for resolving future disputes.

Local authorities, as 'parents of the people' were also focused on their role of supporting implementation of the SAs. This oversight became another tool in building greater trust between villagers and the Government.

28 ADC Manual, Op. Cit., p. 39.



Pu Char Village Elder. Photo by Deborah Lockhart.

Fairness of CLAIM Compensation

“We did not want to give the impression of favorability for one village over another.”

– Socfin Cambodia

The concept of fairness applies to both Parties and is central to determining if their agreements will be durable, or if there may be further conflict in the future.

In the context of the IPCs’ original loss of land from 2008, the villagers might have thought that anything but the return of that land was unfair. However, the Community recognised the land was no longer in its original state. They also recognised their lives had changed, and the socio-economic benefits they can derive from the SAs will help them access land registration and more commercial opportunities in the changed world in which they find themselves. New roads have opened up markets for their produce, new cash crops have opened up income streams and new skills have made them more efficient farmers.

In working with the Community the LAC did not talk about ‘what is right and what is wrong’, but rather focused the Community on learning about the other party’s needs and then generating options. With different priorities, farming focuses and village traditions, the villagers inevitably came into the negotiations wanting different things. While claims varied, the Evaluation found Socfin was consistent in focussing on:

- Negotiating settlement agreements that were fair and equitable across the five village groups
- Negotiating compensation ‘in-kind’ rather than offering cash payments
- Making redress for its activities that had detrimentally impacted cultural practices
- Improving the economic position of families for the long-term
- Having protocols in place to confirm compliance with agreements
- Boosting local infrastructure to improve village life

COMMON THEME:
Implementation of the agreements is not yet complete and villages seek ongoing support.

Based on Socfin Cambodia's experience from the 2009-2012 Compensation Program, and advice from the UNOHCHR, the Company was reluctant to compensate with cash. Rather, the Company offered an annual budget (**Budget**) for Community development projects. However, Socfin Cambodia ultimately agreed to 25% of the Budget being available in cash for community welfare, e.g. assisting the elderly and infirm, with funds credited to an agreed community-managed bank account.

The qualitative feedback from the Community was that they considered the SAs were fair, and this was supported in the quantitative survey results.

Representatives from one village were not available to complete the survey, but it was clear from their Focus Group that they were satisfied with the agreements made. However, during the implementation phase a difference of opinion arose between the village and Socfin Cambodia on how the cash compensation could be used and by whom. The Parties engaged in direct discussions to seek to resolve the issue.

Implementation and Impact of the Agreements

Implementation

The Evaluation looked at the progress of the agreements being actioned. Long or unexplained delays could jeopardise the goodwill and trust built during the mediation process and undermine the Parties' efforts.

While each village reached its own agreement with Socfin Cambodia, at the time of their Focus Groups in June 2022 a consistent theme from the Community was that while some parts of their agreements were implemented they were still waiting on others.

Socfin Cambodia considered that implementation could have been expedited with more detailed agreement-making. However, by September 2022, it was able to confirm that it had either implemented, or was ready to implement, all agreements with the villages.

To help ameliorate villagers' concerns and calls for support during implementation, and give Parties comfort any future concerns could be resolved within the context of the mediation framework, one option could have been for the SAs to include future mediation sessions. For example, agreeing follow-up meetings to discuss the status of implementation and land registration at say 6 months, 12 months and 2 years.

Relevant to full implementation and continuing dialogue, the Company saw CLAIM as one part of their ongoing relationship with the Bunong villagers. Socfin Cambodia recognised the iterative nature of the implementation program and future discussions between the Community and the Company, necessitated by new issues arising between them. Socfin's approach presents as a positive factor in the outlook for sustainability of the SAs and the amicable resolution of future issues with the Community.

Impact

The Evaluation found that overall CLAIM's outcomes mean better farming and land management practices, better trust and communication between Parties, the opportunity for land registration, and no more protests or conflicts.

The Evaluation analysed the impact of the SAs for each of the four different types of claims and found substantial socio-economic benefits attached to the promise of the agreements.

Communal Land

Socfin had long recognised the significance of the cemetery and sacred forest land, and CLAIM negotiations began with Communal Land, being identified as the least problematic area of conflict. The Mediator understood that mediations regularly build momentum through small wins, creating a culture of agreement between the Parties prior to tackling the complex issues.

The Evaluation found the mediation delivered on its objectives in benefiting the Community with:

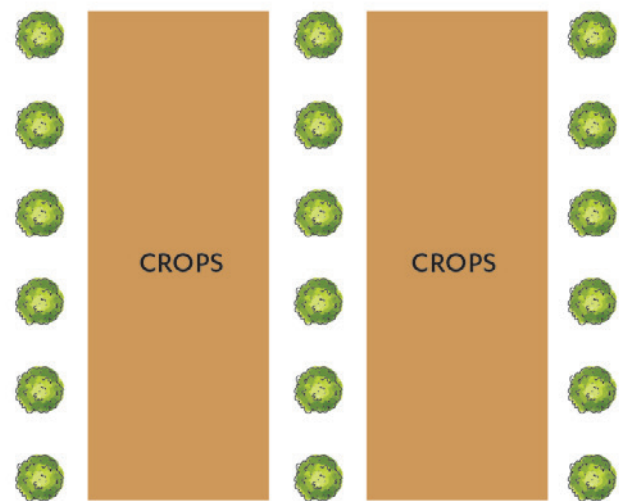
- **Land Registration** – Socfin Cambodia’s consent to carve out designated hectares from its ELCs, and confirm these agreements for the RGC, creates the opportunity for villages to register Community Land with the Government
- **Preservation of Spiritual and Cultural Practices** – Socfin Cambodia formally demonstrated its sensitivity to the importance of the Community’s spiritual life by contributing to several ceremonies at sacred sites; supporting the villagers’ cultural practices through the conservation and protection of spirit and sacred forests, cemeteries and reserve land
- **Land Protection** – Communal Land is not only vulnerable to the Community’s activities, but to poaching, deforestation and general encroachment by other people. The SAs give comfort and practical support to the Community in monitoring and preventing this illegal activity, including the use of signage and security patrols

Infrastructure Projects

In addition to the above, the SAs provide that Socfin Cambodia compensate the Community in the form of infrastructure. This is of immediate and long-term socio-economic value, benefiting villagers and the Cambodian economy in a tangible way. Village Focus Groups noted the benefits to them:

- **Roads** - travel time reduced; enabling villagers to transport their produce to market, get their children to school and safely reach the hospital
- **Bridges** - more efficient transportation of rice and other produce to home, without the need to detour
- **Community Hall & Ablution Amenity** - facilitating social interaction among villagers and improved sanitation
- **Canals** - demarcating communal land to protect from encroachment and manage water
- **Wells** - providing a consistent and reliable water supply for a growing population

FIGURE 1: INTERCROPPING BETWEEN ROWS OF RUBBER TREES



Family Rubber Farmland

The focus of the SA’s was to agree to re-negotiate the terms of the existing Rubber Family Farmland contracts, with some provisions negotiated during the mediation such as road maintenance and rental fees.

Small holdings of rubber plantations are generally commercially viable propositions and have proven successful in India and Thailand where many plantations are owned by small holders.²⁹ It is also consistent with the experience of Bunong’s current small rubber farmers. As one village representative observed, they had seen other villagers make good money from their rubber plantations.

Benefits to the rubber families will ultimately be based on the yield of their rubber farms. This is dependent on factors such as the fertility of land, the genetic quality of seedlings, seasonal fluctuations (rain/sun), changing market prices for latex and the ability of the farmer.

A 5-6-year development period for rubber trees is not necessarily lost production time for villagers because they can plant crops between rows of immature rubber trees for food and income. See Figure 1.

The SA’s provided for draft new agreements to be negotiated collectively between the representatives of all five villages and Socfin by mid 2022.

²⁹ Goswami, S.N. and Challa, O. ‘Economic Analysis of Smallholder Rubber Plantations in West Garo Hills District of Meghalaya, Indian Journal of Agricultural Economics’, Vol. 62, No. 4, Oct-Dec 2007.



Mondulkiri flora. Photo by Deborah Lockhart.

The Company agreed to repair 100m of road once a year, as needed, and the Community agreed not to damage roads by using chains attached to motorbikes and cars.

Related Farmland

SA's on 'Related Farmland' settled all claims connected with the 2009-2012 Compensation Program of individual and family farmland. This included claims where the land was reportedly not compensated and claims where compensation was paid but was being disputed.

The Community's claimant families agreed to a total amount of compensation available as an annual Budget. The Budget is paid 'in kind' and allocated over 3-5 years, with socio-economic benefits flowing from its agreed purposes i.e. community development activities to be decided by the villagers. If the Budget is not spent within that period, the residual 'rolls-over' for ongoing annual payments for uses agreed between the Community and the Company, until the Budget reaches zero.

The Budget is thus of considerable short term and long-term benefit to the related farmland families, and their communities. For example, the purchase of rubber plant seedlings, providing investment in a new or expanded source of income.

The SAs set out how each Community project is proposed, agreed and monitored; establishing a project management and governance framework for Budget expenditure. With 25% of the Budget available in cash payments to a community-managed fund, the SAs also provide a social welfare benefit that would not otherwise be available to the Community.

Land Along the Stream

Negotiating the resolution of issues relating to land along the stream that villagers were using for small-holder farming was complex, but the Parties agreed to practical and durable solutions.

The SAs provide that the Community can cultivate farmland that villagers have already developed. Four villages agreed to register this land with the RGC as communal land. Pu Teut village is the exception to communal registration. Its 18 community members participating in land along the stream negotiations already holding ownership certificates.

The Community agreed that forest clearance, formerly authorised by the village authority, will stop; noting the village authority has no right to allow land clearance. For its part, the Company agreed that its activities would not affect the villagers' crops. The Community is free to enter and exit the ELCs to access their farms, using gates with security checkpoints.

The Community agreed to inform the Company when burning is to occur (slash and burn agricultural tradition), and not burn forests for new land clearance. The Parties also agreed to share information and cooperate in preventing the spread of wildfires.

The SAs ensure that the Community has certainty in relation to their current farmland they brought to the negotiation table. The land is mapped, and following registration with the RGC it will deliver a multigenerational benefit to the Community. Villagers can cultivate the agreed land without interference from the Company. Socfin in turn has comfort that the Community's activities will not further encroach on environmental areas or detrimentally affect its rubber production. The Company noting that some families did not want to bring information about their current farmland to the table, which could then not be negotiated for them.

CLAIM's Impact on Community Social Relations

'Before the mediation, people were individualistic and focused on their own concerns, and went directly to the Company when an issue arose. After the mediation, there was a better way of communicating and families went to Socfin as a group' - Village Focus Group

The Evaluation found the CLAIM process led to a pronounced improvement in social relations between the Community and the Company. Village cohesion also improved, with villagers more focused on their collective interests than individual wants and needs. These impacts are positive signs for the sustainability of CLAIM's outcomes. Looking forward, Community representatives are optimistic their relationship with the Company will continue to be collaborative.

The Company retains its long-standing Bunong Administration team whose role includes engaging with the local communities on all aspects of the plantation's activities in which the population can be integrated and involved such as the smallholder program, safety prevention (particularly during the "slash and burn" season when local farmers burn their fields for new cultures) or protection of their cultural sites and traditions. Given the significantly improved situation with the Bunong IPCs following mediation, Socfin Cambodia reduced its Bunong Administration team by one staff member.

CLAIM compared to other Land Conflicts

The Evaluation considered the CLAIM process and outcomes, vis-à-vis other comparable dispute resolution processes in Cambodia and South-East Asia. It conducted a wide-ranging literature review of reports published in relation to disputes arising between local communities and large multinationals who farm, mine or manage local community land to produce or obtain



Pu Char Village Focus Group. Photo by Chhaykea Son.

rubber, oil, timber or other natural resources.

The objective of this review was to assess the efficacy of the various methods adopted by the companies, National Park Authorities (NPAs) and government bodies to address the widespread discontent among communities from the presence of companies and the impact of their activities on local lands and villagers' livelihoods.

In all closed cases, the Parties reported satisfaction with the outcome and improved relations immediately following mediation. In most cases where compensation was required, the compensation given appeared satisfactory, and was sometimes independently assessed by experts to quantify. In other cases, the provision of compensation and implementation of schemes was inhibited by external factors e.g. lack of government support. Other compensation schemes and action plans require ongoing commitments and enforcement, with varying levels of implementation so far.

The Evaluation considered the duration (years) of the mediations. Comparing like-with-like in this context-dependent analysis is difficult e.g. differences in size, complexity and challenges encountered. However, in running and resolving five complex mediations in tandem, while impacted by delays caused by the Covid-19 pandemic (when most mediations reviewed were not), the Evaluation concluded that the CLAIM process was as efficient as comparable mediations.³⁰

30 Refer Appendix E - Comparison of Comparable Mediation Matters in SE Asia

CLAIM Evaluation and ADC Partnership Process

The ADC Partnership Process (**ADC-PP**)³¹ is a framework designed by the Australian Disputes Centre to assist parties in understanding the key elements for effective multi-party dispute resolution, and how these elements interrelate. It draws from interdisciplinary research spanning law, anthropology, social sciences and dispute resolution principles. The elements overlap and complement one another, with its key components distilled under the domains of *Authority*, *Decision-Making* and *Collaboration*. The Evaluation assessed the CLAIM process through the ADC-PP framework.

CLAIM managed *Authority* well. It had the right people at the table, all with transparent authority (including any potential limits or caveats to that authority) that supported accountability of its decision-makers. Of the 5 key elements for building trust (*straight-talking, deep-listening, time, respect and visibility*) it is ultimately *visibility* that is the golden key to large parties (the Bunong villagers) trusting their negotiators and the mediation process. CLAIM provided protocols for communication between negotiation representatives and their respective villagers, and decision-making. This enabled full visibility of negotiations, advice from LAC and any comments or requests from the Mediator. Importantly, the Evaluation found that village families trusted their representatives and the mediation process.

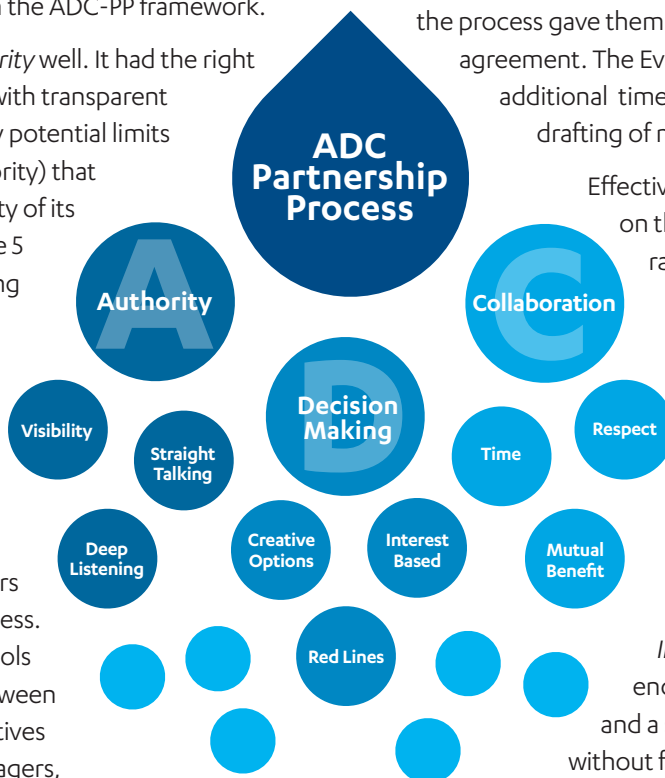
CLAIM's Mediator succeeded in facilitating *straight-talking* and *deep-listening* between the Parties. The honesty of communication was a reflection of the

villagers and Socfin's values in seeking to understand each other. Quality in communication and procedural fairness correlate strongly with increased trust, and CLAIM did well on both domains.

The ADC-PP prioritises building enduring and respectful relationships. Trust is built in many small moments, not one grand gesture. Showing consistent *respect* is a crucial component in developing *mutually beneficial* (win-win) outcomes. Quality *collaboration* also takes time and the Parties to CLAIM thought that the process gave them sufficient time to reach agreement. The Evaluation concluded that additional time could have been given to the drafting of more detail into the SAs.

Effective decision-makers focus on their stakeholders' interests rather than taking positions. Open communication also assists in drawing *red lines*, saving time (and therefore valuing the time of others) by clearly establishing boundaries. In their negotiations the Parties used red lines effectively.

Interest-based discussions encourage *creative options* and a safe space to brainstorm without fear of criticism. Village representatives had been given training and guidance in generating options. However, one learning from CLAIM was that this level of coaching could be increased to facilitate more options coming to the table from the IPCs. A fuller understanding by the Parties of how options, interests and boundaries interrelate to develop creative, workable, win-win outcomes would support clearer SAs.



31 See also its application in other sectors: Lockhart, Deborah and Xu, Jessica, 'How the upstream oil and gas industry can leverage interdisciplinary research to more effectively engage with Indigenous communities' (2021) 61 *The APPEA Journal* 1,3 < https://disputescentre.com.au/wp-content/uploads/2021/07/ADC_APPEA_Article-FF1.pdf >

CLAIM Evaluation Results and OECD-DAC Criteria

The Evaluation results and outcomes were analysed through the prism of the OECD-DAC Network on Development Evaluation (**EvalNet**). The six criteria provide a normative framework in determining the impact of CLAIM for the Community.

Relevance

CLAIM responded to the needs of the Parties and other Stakeholders in resolving long standing, acrimonious and complex multi-party conflict. The key purpose of the mediation process was to help the Parties reach mutually agreed solutions that they could live with. In the face of multiple challenges, the mediation successfully met its objectives in resolving the conflict. This was facilitated in a reasonable time-frame by clearly defining the Parties' needs and goals, delivering a comprehensive capacity building program and providing an equitable and self-determinative mediation process.

Coherence

The CLAIM process was internally coherent, improving the IPC's land tenure security through the appointment of a neutral mediator, an inclusive mediation process that resulted in the Parties reaching a sustainable agreement (when they had failed to achieve this outcome over the previous decade through bilateral or tripartite negotiations) and agreements that enable the IPCs to obtain land registration from the RGC. The independent mediation, by a Cambodian mediator who knew and understood the IPCs, was externally coherent with other institutional land dispute resolution processes e.g., District Authority, RGC Courts and the International Finance Corporation's mediation process, undertaken by the Compliance Advisor Ombudsman (**CAO**).

Effectiveness

CLAIM met its objectives in data gathering, empowerment of the IPCs through skills-training, and building trust between the parties and in the Mediator to keep the mediation negotiations on track to settlement. The settlement agreements delivered tangible economic and social benefits to the IPCs and also a sense of gratitude that the conflict is over and optimism for the future. Socfin Cambodia appreciated its improved relationship with the IPCs and is optimistic that any issues ahead can be resolved with goodwill now ignited. The Community found a new confidence in representing its own interests in negotiating future agreements with Socfin that can also be applied in a wide range of commercial and community matters.

Efficiency

Confronted with various internal and external challenges (including COVID-19), the CLAIM process felt drawn-out to the Parties and Secondary Stakeholders. Yet despite the roadblocks, with the Mediator guiding the process (generating patience and goodwill from all involved), CLAIM progressed to a resolution in a realistic time-frame, consistent with other long-standing, complex, multi-party disputes. Budgetary constraints were managed with increasing efficiency throughout the mediation, and the MRLG and UNOHCHR agreement to fund Phase 2 facilitated the CLAIM Parties reaching settlement agreements on all issues in dispute.

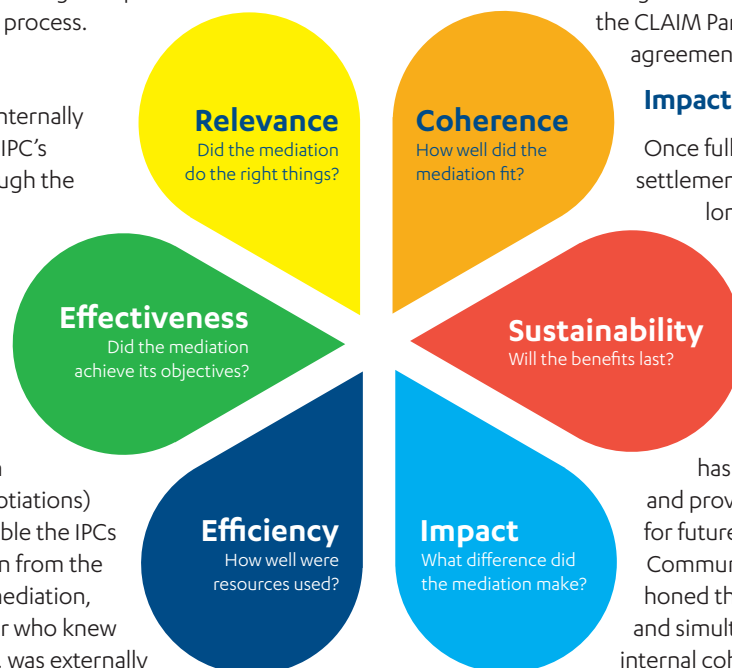
Impact

Once fully implemented, the settlement agreements end the long-standing conflict between the Parties, providing economic benefits and enhanced land security for the IPCs. Trust between the IPCs and Socfin Cambodia has improved significantly and provides a solid framework for future communication. Community members have honed their negotiation skills and simultaneously deepened internal cohesion in their villages.

The Provincial, District and Commune authorities were grateful to see Busra Commune restored to calm and the lives of its families, financially and socially strengthened.

Sustainability

CLAIM successfully achieved settlement agreements on all issues in dispute that can be sustained into the future. However, sustainability is reliant on full implementation. While there has been substantial execution of agreed actions, one learning from CLAIM is to include greater detail on the what, where, when and how the agreements are to be implemented. With the improved relationship between the Parties, and their ongoing discussions on outstanding matters, it is anticipated that the substantive agreements will be implemented. If not, there are articles in the SAs stipulating what the Parties will do.



Public Policy Implications

The CLAIM process provides governments and NGOs with a pragmatic, effective and culturally flexible template for resolving Indigenous land claims with full regard to international instruments and norms, while ensuring access to a fair process and self-determined outcomes.

Improving the health, education, economic development, land security, clean energy, good governance and access to justice for Indigenous communities are priorities for many countries across SE Asia. These development goals, and the significant international aid budget and investment committed to helping reach them, are guided by a raft of international instruments.³² The rise of *social licence to operate (SLO)* and *environmental, social and governance investment principles (ESG)* magnify the risks for governments and commercial entities in failing to apply these norms. They are no longer mere fringe considerations, but real and present risks to the continued support of investors and donors, and to a nation's standing both within ASEAN, and globally.

When the RGC granted ELCs in Cambodia, free, prior and informed consent from IPCs was not sought. In resolving the decade of conflict arising from these omissions, IMG's preliminary work recognised the Community's rights in applying the principles of *Free Prior and Informed Consent of Indigenous Peoples (FPIC)*. Ensuring FPIC was a design feature of CLAIM³³ and a prerequisite for villagers joining the mediation process. FPIC could affect their ancestral lands and natural resources, if participants chose to reach an agreement. CLAIM shows that the steps taken in gaining FPIC were instrumental in building trust in the mediation process, the Mediator and the Company, and in establishing the Community's commitment to making the process work for them in resolving the conflict.

COMMON THEME:

The Community was happy to have their voices heard by the Company and reach agreement.

The relevance to policymakers of IPCs having trust in, and commitment to, their dispute resolution process cannot be overstated. For CLAIM the benefits are not just current Settlement Agreements. The Community is forward focused, and their new trust in Socfin Cambodia and sense of commitment to collaborative decision-making is manifest in optimism. The IPCs are optimistic for the implementation of their agreements and using their new confidence and skills in amicably resolving future issues for the mutual benefit of villagers and the Company. Preventing future conflict is an important public policy objective and processes that can support this objective are desirable.

Participation is a human right. In CLAIM, the IPCs demonstrate their '*right of self-determination*',³⁴ consistent with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), and '*right to participate in decision-making in matters which would affect their rights through representatives chosen by themselves in accordance with their own procedures*'.³⁵ CLAIM was a facilitative, self-determinative process that empowered the IPCs to choose and authorise their representatives, while ensuring visibility of negotiations and protocols for collective decision-making that was free from coercion and corruption.

A key feature of good governance is having '*mechanisms available for peaceful management of conflict embedded in the system*' to manage both internal and cross-border conflict without violence and instability.³⁶ In a region where corruption is prevalent, public policy makers will be looking for dispute

32 See UN instruments: United Nations Declaration on the Rights of Indigenous Peoples; UNESCO Policy on Engaging with Indigenous Peoples; FAO Policy on indigenous and tribal peoples; FAD Engagement with indigenous peoples; UNDP and indigenous peoples: a policy of engagement; UNEP and indigenous peoples: a partnership in caring for the environment policy guidance; Free Prior and Informed Consent, An indigenous peoples' right and a good practice for local communities, and World Bank Indigenous Peoples' Policy. Also OECD Investment Policy Reviews: Cambodia 2018.

33 See *The Preliminary or 'Pre-Mediation' Phase* at p. 9 detailing gaining consent without coercion, respect for the time needed in consultation and decision-making and providing full information on the mediation process.

34 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), Art. 4.

35 Ibid. Art. 18.

36 Wallensteen, Peter et al, '*Democracy and mediation in territorial civil wars in Southeast Asia and the South Pacific*' (2009) 7(2) Asia

resolution frameworks that internally mirror what they want to see happen externally, i.e., removing potential risks of dispute resolution processes being influenced or coerced by higher authorities and wealthy powers.

Mediation offers an independent process, outside of local authority decision-making and the courts. CLAIM demonstrates oversight without influence, transparency without breaching the confidentiality of Parties, confidence by the IPCs that they have access to just outcomes, and the Parties' agreement on the impartial mediator who will manage the process. The CLAIM process empowered Parties to negotiate effectively. This feeling of empowerment is important in land claims conflict where villagers have experienced long-standing resentment, but are fearful of government and corporate power.

*'Indigenous peoples have the right to ... engage freely in all their traditional and other economic activities' and 'deprived of their means of subsistence and development are entitled to just and fair redress.'*³⁷

In reaching their own settlement agreements, the Parties demonstrated the efficacy of CLAIM's 'power-with' rather than a 'power-over' dispute resolution framework. The flexibility in generating and agreeing options that met their needs, delivered a range of solutions for the Parties, e.g. Socfin Cambodia made cultural redress for activities that had detrimentally impacted the IPCs' spiritual and cultural practices.

Many of the agreed solutions would not have been available to the Parties from the win-lose paradigm of a determinative process, such as a court case.

Public policymakers will be interested in CLAIM's experience; demonstrating what is achievable from a rigorous and self-determinative mediation process using best practice methods and well-trained, experienced mediators to deliver multiple benefits, including:

- Flexibility in process design, to meet the specific needs of the parties and respond to roadblocks
- A self-determinative mechanism for IPCs' voices to be heard and have their rights protected



Bousra Falls Temple. Photo by Deborah Lockhart.

- The Parties' choice of an impartial mediator
- Confidence in an independent process free from corruption and external influence
- Collecting, sharing and mutually agreeing on data, e.g., mapping
- Flexibility in balancing parties' agreed confidentiality with transparency of process
- Delivering a cost-effective dispute resolution process
- Improving the relationship and communication between parties and creating a culture of dialogue and collaboration to resolve future conflict
- Independent funding to ensure accessibility to the mediation process for IPCs
- Attracting and retaining international investors confident that Indigenous land rights are being protected consistently with international instruments and norms, e.g. UNDRIP and FPIC friendly dispute resolution processes

Europe Journal p. 254.

³⁷ UNDRIP Op. Cit., Art. 20.

Conclusion

CLAIM is a complex set of five independent but interwoven mediations with many actors and a variety of claims. There was also a range of complicating factors to manage e.g., lack of knowledge and experience in the Community; Stakeholder expectations; time and budget constraints; a global pandemic, and a fraught historical relationship between the Parties, to name a few. Despite the roadblocks and challenges faced, CLAIM progressed slowly but surely to an overall fair and equitable conclusion, culminating in the signing of multiple Settlement Agreements.

The Australian Disputes Centre based its Evaluation on the stated objectives of CLAIM, OECD Evaluation Criteria, best-practice pre-mediation and trust frameworks, and ADC's model for multi-party mediations. The Evaluation included research, interviews, analysis of documentation and literary reviews.

The Evaluation found CLAIM a best-practice model in demonstrating inclusive and self-determined decision making, the pragmatism of Parties' negotiating needs and interests (rather than rights and obligations), a manifest respect for spiritual beliefs and practice, and socio-economic outcomes that are fair.

CLAIM's use of the facilitative mediation model, provided a roadmap for the Parties to amicably resolve their conflict, and establish levels of communication and trust that would have seemed inconceivable in the past. Its Ground Rules and a Confidentiality Protocol ensured a safe space for straight talking, and the Mediator's deft use of stakeholder-observers provided important oversight of the process and its outcomes.

The design and delivery of CLAIM's pre-mediation activities and its Secondary Stakeholder management strategy were evaluated as world-class. The preliminary work contributed to the Parties' steadfast trust in the Mediator, which was a testament to his values and expertise, and was foundational in the Parties reaching a resolution to their conflict.

The ultimate success of CLAIM will be the full implementation of the SAs, and registration of the Community's land. Assuming this happens, all conflict and claims will be resolved to the satisfaction of the Parties and other Stakeholders. The Evaluation considered the sustainability, efficacy and durability of the mediated agreements. It found important socio-economic benefits flowing from the SAs in the form of land protection and registration, infrastructure improvements, financial compensation focused on the Community's economic development, and a social safety net.

There are multiple learnings from the CLAIM process and complex set of challenges it faced. Conflict is a normal part of life, as are roadblocks in any project or mediation process. Ultimately, it is how you deal with the issues that makes the difference. The Evaluation recognised all Parties and Stakeholders' agility and willingness to flex and pivot during the mediation when change or recommitment was needed.

Reflecting on CLAIM, the Parties and Stakeholders were deeply thoughtful in their observations of the process and the learnings they shared with ADC. This level of engagement exemplified their commitment to CLAIM's success and to leveraging their experience for the success of future land claim mediations.

Overall the Evaluation concludes that the CLAIM process provides a valuable model and a case study that is replicable for use in other land conflicts in Cambodia and across SE Asia. CLAIM's complex, multi-party process, with its astute design elements, challenges faced and overcome, and multiple positive outcomes, offers a rich-experience mediation model. The Evaluation found it is a model that warrants public policy consideration for empowering IPCs, resolving their conflict, and bringing forward (in years) new social and economic benefits for Indigenous communities, corporations, investors and governments.

Appendices



Appendix A:

Analysis of CLAIM pre-mediation activity against best-practice

Best-Practice Pre-mediation Activity	CLAIM	Pre-mediation Activities for CLAIM
1. Gather information about the dispute and the disputants	✓	Significant information gathering undertaken by IMG to create land maps, conflict analysis and identification of Stakeholders
2. Establish who should be involved in mediation e.g. disputing parties, interpreters, support people and legal representatives	✓	Village-wide mediation awareness program conducted to inform potential participants, and confirm who wanted to join the mediation. Stakeholder engagement strategy and observers to the mediation agreed. Interpreter engaged. LAC appointed to provide legal support to the Community
3. Assess the parties' negotiation styles and sources of power	✓	Comprehensive training in negotiation [UNOHCHR] and the legal aspects of the dispute [LAC] to empower Community to negotiate on an equal footing with the Company
4. Ensure parties understand the mediation process so that they can make an informed decision to participate	✓	Comprehensive training for all villagers about the mediation process, including the roles of the Mediator and Parties to the conflict [IMG]
5. Obtain the consent of parties to participate in the mediation	✓	Agreement to mediate signed by Parties in Nov 2016
6. Provide basis for diagnosing the dispute and develop theories of appropriate interventions. If appropriate, suggest referrals to other forms of assistance in place of, or before mediation	✓	Land and conflict mapping, dispute process design, classification of the conflict and capacity-building training in preparation for negotiations
7. Establish parameters of authority for negotiation and settlement, i.e. who has the authority to settle the dispute and/or make decisions. Determine the limits to this authority, if any	✓	Each village elected their representatives with full regard to age and gender diversity. Agreed the process of communication and decision-making by the village and a decision-making protocol (both confirmed in Ground Rules)
8. Select an appropriate mediator	✓	A Cambodian professional with expertise in Bunong land issues, and an accredited mediator, was agreed to by the Parties as their independent Mediator
9. Monitor conflict of interest issues on the mediator's part	✓	Mediator's appointment designed to avoid potential conflicts of interest, i.e. not Bunong nor connected with the Company
10. Select appropriate timing of the mediation	✓	Mediation negotiations commenced after the full suite of preparatory and capacity building activities was completed. The villagers felt empowered to negotiate and both Parties had built trust in the Mediator
11. Select appropriate venue i.e. neutral, private, access to phone, copying facilities, safe, accessible, private meeting rooms, waiting areas and seating	✓	Venue requirements were considered and provided. Initial experience that its accessibility (distance from villages) was an issue and the venue was later changed to be closer to the villages
12. Organise for parties to sign an Appointment Agreement and/or Confidentiality Agreement	✓	Parties' signed Ground Rules and Confidentiality Agreements [Dec 2017]

Appendix B:

Analysis of CLAIM's pre-meditation activity for efficacy in building trust

7 Functions of the Mediator that Create Space for Building Trust and Confidence ¹	CLAIM's 6 Key Elements of Mediators Pre-Mediation Process
1. Educating the Parties	1. Mediation Awareness-creation: Primary and Secondary Stakeholders were informed about the mediation and its process through a series of workshops, meetings, and training exercises.
2. Promoting Reality 3. Advising and Evaluating	2. The mapping of conflict areas by village and by households: Critical for this large-scale land conflict as a foundation for the Parties to gain a common understanding of the land being claimed. IMG's mapping team, Community members, the Company and local authorities were all involved in mapping village boundaries and land use boundaries. After digitising the maps, the drafts were reviewed by Community representatives in each village for verification and then presented at a district meeting.
4. Analysing the Conflict and Designing Appropriate Interventions	3. Conflict Analysis Report: Understanding the nature of the conflict, the factors behind its complexity, its evolution, its legal aspects, and the Stakeholders involved. Using this analysis, IMG developed the objectives of the mediation process.
5. Establishing a framework for cooperative decision-making	4. Classification of the conflict into homogenous conflict types: Important for categorising and effectively managing complex issues. IMG distilled the conflict into five main categories that were later agreed by the parties under 4 headings under Art. 11.3 of the Ground Rules. The parties agreed that the conflict mediation would focus on the following issues: <ol style="list-style-type: none"> a. Communal Land reserved forest, protected forest, spiritual forest and burial forest land; b. Riparian Land practically cultivated or farmed; c. Affected Land that remains unsettled or not compensated; and d. Smallholder Rubber Plantations. Inclusive elections for village negotiation representatives, together with communication and decision-making protocols for whole-of village visibility of the negotiations and their collective decision-making as documented in the Mediation Ground Rules.
6. Educating the Parties	5. Capability Building: The pre-meditation training programme was implemented to ensure Community representatives had the skills and know-how to participate in negotiations on a more level playing field with the Company. Legal instruction was provided by the LAC, negotiation skills by the UN-OHCHR, training the Community in how to identify issues, develop options, and problem-solve in a mediation.
7. Promoting Constructive Communication	6. Ground Rules & Confidentiality Agreements: Jointly developed by the Parties and served as instruments governing the mediation process. They bound the Parties, the Mediator and other named Stakeholders in conforming to the rules of the mediation. The documents also contribute to the 'level playing field', with each party having the same rights and being restricted by the same rules. The 'Ground Rules' and 'Confidentiality' agreements governing the mediation were signed in two groups, two villages in Dec 2017 and three villages early 2018.

¹ Boulle, Laurence and Field, Rachel, 'Mediation in Australia', LexisNexis, 2018.

Appendix C: Busra Commune Conflict and CLAIM Process Timeline

DATE	ACTIVITY
2008 - 2013	Socfin-KCD Co. Ltd. ¹ and Coviphama Co. Ltd. known as Socfin Cambodia (Socfin), both local subsidiaries of the international agro-industry Socfin Group, acquired three ELCs in Pech Chreada district, Mondulkiri Province ² to establish rubber plantations
April 2008	Socfin starts land clearing in Peach Chreada district, Busra Commune on the first part of the concession (before the signature of the contract)
May 2008	Around 100 community representatives protest at the Provincial Governor's Office
June 2008	Socfin agrees to pay compensation to those recognised by the authorities
Oct 2008	Socfin signs contract for Varanasi (ELC)
Oct 2008	Community representatives file complaints about the ELC with the Council of Ministers, the Prime Minister's Office, MAFF, Ministry of Interior and the Ministry of Land management Urban Planning and Construction
Dec 2008	Meetings are held to attempt to resolve issues with the communities, but no agreement is reached
Dec 2008	Around 400 Bunong community members demonstrate and destroy 43 rubber seedlings, burn three earth excavators and damage another excavator. The army intervenes
Dec 2008 - Jan 2009	Meetings are held, led by Provincial authorities and including both Socfin and community representatives
Jan 2009	Meeting with Minister of LMUPC, provincial and local authorities, and villagers of the seven affected villages to discuss incidents
Jan 2009	The Provincial Court summoned community representatives on charges of robbery, arson and destruction of property
2011	Ministry of the Interior and Ministry of Land Management, Urban Planning and Construction issue an Inter-Ministerial Circular on Interim Protective Measures to protect the lands of an indigenous community that has requested and is waiting for the granting of a collective land title
2013	A second company under the Socfin Group, Coviphama, acquires a third LEC
2013	Jef Boedt, General Manager at Socfin, interested in taking a different approach to the conflict. Seeking to engage with the Community.
2015	90 Bunong families file legal proceedings in France
Sept 2015	Tripartite Committee (Community, Company and Local Authorities) is re-established and approved by the Chief of Busra Commune
Dec 2015	First 'multi-stakeholder' meeting commences, after establishment by the UNOHCHR
2016	State Land Registration process commences
Feb 2016	Socfin contacts GIZ Land Rights Program for support on land conflict resolution with the communities
Mar 2016	GIZ's Land Rights Program is requested by seven IPCs to support preparation of new preliminary maps

Continues over...

1 A joint venture was agreed in 2007 between European company Socfinasia and Cambodian construction company Khaou Chuly Group(Socfin-KCD).

2 UN Special Rapporteur's Report on Land Concessions in Cambodia: 5345 hectares, Coviphama [17.02.2008]; 4,273 hectares, Sethiluka [17.02.2009], and Varansi 2,346 hectares [3 April 2009].



Socfin Cambodia Offices and Rubber Factory (Credit: Socfin Cambodia, 2020)



River Crossing, Mondulkiri (Credit: Socfin Cambodia, 2022)

June 2016	GIZ's LRP is phased out and the preliminary maps for the seven IPCs cannot be finalised. IMG and Socfin agree to support the preliminary mapping exercise
Aug 2016 - Feb 2017	Preliminary mapping project for IPCs of seven villages in Busra Commune by IMG
Nov 2016	Socfin Cambodia, representing entities Sethikula, Varanasi and Coviphama, and the Pu Char, Pu Raing, Pu Teut, Pu Lu and Busra villages agree to participate in a mediation process mediated by the IMG. This mediation is supported by MRLG
Nov 2016	MRLG's Phase 1 of CLAIM commences with support from the UNOHCHR for legal advice from the LAC
Dec 2017	Ground Rules and Confidentiality Agreements for the mediation [Pu Char, Pu Raing, Socfin with observers UNOHCHR, District and Commune Authorities]
Jan 2018	Socfin, Pu Raing and Pu Char begin mediation negotiations
Oct 2018	Pu Raing reaches agreement with Socfin on Communal Land
Aug 2020	First signing ceremony; Pu Char, Pu Teut and Pu Lu agreements with Socfin on Communal Land (communal land not in dispute for Busra)
Mar 2019	The mediation process is challenged by external actors and is paused for approximately 3 months. An UNOHCHR representative visits the Community to establish if there is veracity to the claims made against the CLAIM and the IPCs commitment to the process. The claims were not substantiated and the CLAIM progressed
May 2019	MRLG's Phase 2 funding of CLAIM commences, with support from the UNOHCHR for legal advice from the LAC
Sept 2021	Signing of final settlement agreements between representatives from the Pu Char, Pu Raing, Pu Teut, Pu Lu and Busra villages and Socfin Cambodia

Appendix D: Considerations in Balancing Confidentiality and Transparency

The underlying interests and value propositions of confidentiality in the mediation process vis-à-vis those accorded to transparency are highlighted in the following table (green = a positive and orange = a negative):

Underlying Interests and Value Propositions¹

CONFIDENTIALITY	TRANSPARENCY
Encourages parties to participate fulsomely	Strong public interest dimension
Enhances effectiveness	Ensures compliance with reporting obligations to stakeholders and funders
Encourages self-determination and party autonomy	Consequences and outcomes of mediation can be measured through review of the outcome
Contains commercially sensitive information vis a vis competitors	Easy to report back to shareholders
Ensures finality with no challenges from external parties	Ensures accountability of the parties, process, and mediator
Encourages parties to reveal deep-seated feelings or sensitive issues, and even to make admissions and concessions	Consistent with the traditional dispute resolution forums of tribunals and courts
Facilitates bone fide contribution of information during both the joint and separate sessions	Reduces information asymmetry
Can cloak the unfair treatment of vulnerable parties	Flexibility in what is disclosed, i.e. flow of information is controlled through joint-statements and formal reports
Can exacerbate information asymmetry	More transparency around mediation can help reduce information asymmetry and can provide useful precedent for similar disputes
If the mediation is non-binding the supervision of the courts may be required to formally enforce the agreement, particularly if the dispute is already being litigated and/or the mediation is court-ordered	Parties may be concerned that statements made during mediation in an effort to resolve a dispute might be used against them should a full settlement not be achieved
Flow of information from a mediation is not controlled	Party autonomy, which is critical to empowering the parties to participate in good faith and correcting imbalances, can be undermined by external influence and opinion

¹ ADC thanks Prof Laurence Boule for his contribution in formulating this analysis.

Appendix E: Comparison of Comparable Mediation Matters in SE Asia

Conflict Transformation

A consistent theme across the literature is that mediation is critical not only to conflict resolution, but also to conflict transformation. The latter focuses on fostering long-term changes in communities and relationships, community empowerment and recognition. Transforming the parties' attitudes to each other, their behaviour and the key issues in the conflict can encourage mutual respect, beneficial actions, and gains. The lessons learnt from conflict transformation are vital to preventing or managing similar disputes in the future.

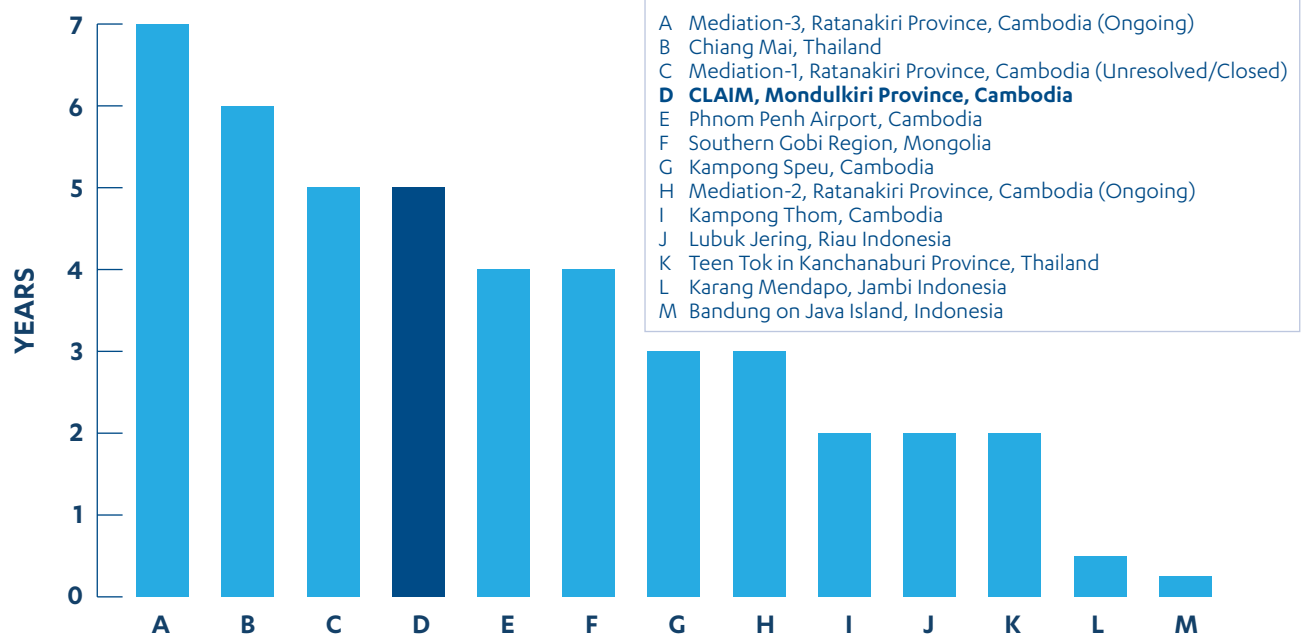
Overall, mediation efforts appeared to be largely successful in assisting the parties in reaching a resolution between the parties. In some cases, however, external factors would result in the failure of the mediation or closure without agreement. This occurred most commonly where government action was inimical to local community interests, and/or poor compliance from successive governments prevented the successful implementation of agreements. e.g., the 2019 Ratanakiri Mediation 1 resulted in a second mediation after the initial mediation collapsed, and agreements facilitated by the CAO did not produce material outcomes for the affected parties due to lack of commitment to the agreements and the absence of the required Government approval. Problems were exacerbated where stakeholders, including funders and NGOs, would intrude on the interests of villagers, resulting in agreements that were not wholly aligned with community needs and

long-term dissatisfaction with the outcome. For the most part however, the mediations that occurred in Indigenous communities were successful in facilitating not only conflict resolution, but more importantly, conflict transformation.

Mediation Duration

It is difficult to identify the typical duration for the mediations reviewed, as they are highly context dependent. The research suggests however, that there exists some correlation between medium to higher intensity conflict i.e. where violence or disruption is involved, and a faster resolution or agreement. Undoubtedly, the impetus of resolution is stronger where the risk of harm to parties' wellbeing and livelihood is higher and more pervasive. The duration of mediations is also influenced by various factors including but not limited to the diversity and number of disputing parties; extent of involvement of the State; the support (or not) of NGOs; the experience, skill and aptitude of mediators or the administering organisation, and the duration of the conflict preceding commencement of mediation. Also significant is any previous attempt at mediation or other dispute resolution processes. This can have one of two key effects, either (1) expedite the process; or (2) create mediation fatigue. The pre-mediation phase, allowing time for social preparation, conflict assessment and clarifying interests, was unsurprisingly considered a vital step prior to mediation and which could assist in expediting the process.

1 Compliance Advisor Ombudsman 'CAO Assessment Report – Regarding Concerns in Relation to IFC's Investment in TPBank and VPBank (#37920, #41043, #38038, #39020) in Cambodia (January 2020).



Compensatory Schemes following Mediation

In all closed cases, the parties reported satisfaction with the outcome and improved relations immediately following mediation. In most cases where compensation was required, the compensation given appeared satisfactory, and often independently assessed by experts to quantify the amount. For other cases, such as in Lubuk Jering, the provision of compensation and implementation of schemes was inhibited by external factors such as lack of government support. Other compensation schemes and action plans, such as in the case of the Gobi Desert in Mongolia, require ongoing commitments and enforcement, with varying levels of implementation thus far.

Ratanakiri¹

Ongoing as of 2022. HAGL re-joined the mediation process in late 2019 and intends to resolve the dispute by end of 2022. The firm has apparently so far agreed to cut off 710 hectares of the 742.26 disputed hectares from the concession land to indigenous communities, but no legal document produced yet. The remaining 32.26 hectares remain in dispute. Further, it remains to be seen whether any substantial compensation will be offered for the Indigenous land HAGL was accused of allegedly clearing and damaging, and whether there will be assistance in rehabilitating their land and waterways. A press release² issued by HAGL Agrico (HNG) in December 2021 affirmed their commitment to resolving the dispute.

Karang Mendapo, Jambi Indonesia³

The conflict was generated by the plantation not being returned to the villagers by the company after the 4 years (by 2005) as agreed. Villagers were also concerned about lack of transparency on costs of plantation development and benefit sharing, leading to high unrest, villagers occupying the plantation by 2008, and conflict peaking in 2011, when police seriously injured protesting villagers.

Mediation efforts were a success: the villagers were able to continue managing palm oil plantations after the reclamation of land, which led to greater opportunities for employment and income generation for communities. They also reported increased awareness and understanding of the issues relating to their conflicts

post-mediation. In 2016, it was reported that the PT KDA has carried out all its obligations on the agreement and continues implementation of the ongoing actions.

No indication from available data of whether any compensation sought or received for the years in conflict from around 2005-2011.

Lubuk Jering, Riau Indonesia⁴

The impact of mediation was positive. In addition to the handover of the management of palm oil plantation from the company to the community, additional income from the plantation would be handed over as compensation, and the company would also fund social infrastructure improvements to the community's benefit.

Some agreements successfully implemented, including the handover of the plantation to the community, the establishment of a 224-hectare enclave over the community gardens and a 1,627 hectares acacia plantation apart from the conflicted area. However, other compensatory agreements were seriously inhibited or did not materialise, including a 160-hectare palm oil plantation that RAPP would establish for the community, and two areas of PHBM community forests covering 240 and 400 hectares. This was owing to new local government refusing to acknowledge the agreement, much to both side's disappointment.

Teen Tok, Kanchanaburi Province, Thailand⁵

This study relies heavily on qualitative data through interviewing stakeholders, rather than quantitative assessments of economic and environmental impact of mediation, such as household income or forest area before and after mediation.

Access to forest resource and forest-based livelihoods and agriculture was previously prohibited, affecting their economic situation and food security, and generating conflict. Nevertheless, villagers reported after mediation, greater confidence in investing in agricultural activities year-round, resulting in more stable and secure income, improved quality of life and in particular, improvement to their economic well-being as they were able to use land for agriculture and other income-generating activity without disruption. Mediation enabled dialogue to promote mutual understanding between national park

1 Compliance Advisor Ombudsman, 'CAO Assessment Report - Regarding Concerns in Relation to IFC's Investment in TP Bank and VP Bank' (#37920, #41043, #38038, #39020), Cambodia, January 2020, p. 3.

2 https://haagrico.com.vn/images/20211202_2_hagl_agrico_press_release_en_1.pdf

3 Dhiaulhaq, Ahmad et al 'Transforming conflict in plantations through mediation: Lessons and experiences from Sumatera, Indonesia', 2014, 41 Forest Policy and Economics p. 22-30.

4 Ibid.

5 Dhiaulhaq, Ahmad et al, 'Transformative mediation, a tool for maximizing the positives out of forest conflict: A Case study from Kanchanaburi, Thailand', 2014.

rangers and local communities about forest conservation, and each other's needs and concerns. Locals became more concerned about forest conservation and protection, assisting NP rangers with forest patrols. Both parties perceived improvement in forest quality, density, and biodiversity.

Phnom Penh Airport, Cambodia⁶

The Royal Government of Cambodia confirmed that the airport would not be expanded, and land titles could be issued to communities in the area to secure their land tenure and thus end the dispute. There was no need for resettlement, as the Government announced plans to build a new airport elsewhere. Affected households pleased with the outcome.

Mongolia, Southern Gobi⁷

Mediation yielded considerable results, with over 60 action items related to pastureland, water, compensation and the Undai River. The company acknowledged its inadequate resettlement compensation and agreed to pay much more substantially for eligible claimants. By April 2020, the company would pay out USD1.22 million to 148 households in individual compensation. Additional forms of compensation included student scholarships, employment, and training opportunities. As at May 2020, over 2/3 of commitments were completed or making progress toward completion.

However, many larger commitments affecting the broader community and their livelihoods, such as building new wells, opening new pastures, and connecting herders to markets are far more complex, and the ultimate impact of the agreements remain unclear. While the achievements so far have been well received, the true scale of the impact, and whether the agreements will be able to fulfil the promise of supporting herder's traditional way of living and livelihoods remains unclear.

Indonesia, Bandung, Java⁸

Two families had been in dispute with the company about the potential sale of land located above the tunnel. They alleged tunnel construction by the company affected their paddy field, damaging their land and leaving it drier and less productive. A Land Sale Agreement was entered, wherein the families agreed on their sale of land, the purchase price based on professional land evaluation and included compensation for crops planted on the land.

There were broader community concerns too, and protest over the company's lack of responsiveness. They were brought together through a facilitated dialogue process, yielding ongoing workshops and monthly meetings to improve communication. Relations improved and a joint commitment prevailed to addressing challenges since.

6 Compliance Advisor Ombudsman, 'CAO Conclusion Report-Cambodia Airports - 01/Phnom Penh', Webpage, May 2020.

7 CAO, 'CAO Dispute Resolution Conclusion Report – Oyu Tolgoi 01 & 02/Southern Gobi' (May 2020).

8 CAO, 'Dispute Resolution Conclusion Report – Indonesia Rajamandala Hydropower Project-01', Web Page, PDF.

CAO, 'Complaint Regarding MIGA's Rajamandala Hydropower Project', 11862, CAO, Assessment Report, August 2016. Kansai Electric Power 'Rajamandala Hydropower Project in Indonesia', Web Page.

Table of Comparable Mediation Matters in SE Asia (Part 1)

Location	Parties	Mediator	'First impact' date	Initial complaint date/ start of conflict	Start of mediation	Outcome/Status
Ratanakiri Province, Cambodia Given the overlap of parties and issues in dispute, the two cases were eventually merged and handled by CAO through a single dispute resolution process	Vietnam Enterprise Investments Limited (VEIL), rubber plantation company, Hoang Anh Gia Lai (HAGL) and 17 villages of Ratanakiri Province	Compliance Advisor Ombudsman (CAO)	By 2002, environmental concerns about HAGL's operations were raised including their effect on water sources and fish resources, loss of land and lack of compensation	In February 2014, the first complaint was lodged with the CAO with assistance from NGOs regarding the social and environmental impacts of the HAGL's operations	In March 2015, CAO released a communique regarding the adoption of a mediation agreement to proceed with the mediation process In December 2019, CAO met with HAGL and the complainants confirming their commitment to resolving outstanding issues in dispute	From March 2015 – March 2018, a series of agreements were made to address specific issues. However, in January 2019, HAGL informed CAO it was withdrawing from the dispute resolution process Ongoing. As of January 2022, it appeared to be reaching a close
	Tien Phong Commercial Joint Stock Bank (TPBank), Vietnam Prosperity Joint Stock Commercial Bank (VPBank) and HAGL and 12 villages of Ratanakiri province	CAO	By 2013, approximately 164 households in 13 affected villages had lost private residential areas or farmlands to HAGL	In March 2019, a second complaint was lodged with CAO by NGOs on behalf of the local communities in Ratanakiri Province regarding the social and environmental impacts of the operations of HAGL	April 2019, CAO found the complaint eligible and commenced an assessment of the issues, resulting in mediation	Ongoing. As of January 2022, it appeared to be reaching a close
Karang Mendapo, Jambi Indonesia	Palm oil plantation company (Company) and local communities in Sumatera, Indonesia	The Forests Trust, NGO	In 2001, villagers made an agreement with the Company under a Primary Cooperative Credit for Members scheme. In the agreement, the villagers handed over their land for the plantation development. The land was to be returned to the villagers 4 years after planting	The plantation was not returned by the Company in 2005 as agreed by the parties, leading to dissatisfaction and distress by the villagers, and ultimately resulting in conflict. In 2008, the villagers decided to occupy the plantation which escalated in January 2011 when police shot six villagers with rubber bullets causing serious injuries	With the agreement of the community, the Company contacted The Forests Trust to help mediate the conflict	Resolved, duration 6 months, agreement reached. The agreement has seen the community manage the plantation with the condition that the oil palm fruit is sold to the company
Lubuk Jering, Riau Indonesia	Pulpwood plantation company, PT Riau Andalan Pulp & Paper (PT RAPP), and the local community	Scale-Up (Sustainable Social Development Partnership), NGO	In 1997, PT RAPP was granted concession by the Ministry of Forestry for establishing a plantation area which overlapped with community land. The community used the lands for rubber, durian, jack fruit and other plants for domestic and commercial purposes	The conflict between PT RAPP and the community had been building for some time and reached its peak in mid-2006 when the pulp company opened an even bigger concession of forest land. The community mobilised by conducting a series of protests and sent letters of objection to PT RAPP	By the end of 2006, PT RAPP initiated a meeting with villagers and NGOs, which led to a third party, Scale-Up mediating the conflict, with assistance from Iwan Tjitrajaja, an expert anthropologist	Resolved in November 2008, duration 2 years. Parties agreed that the community would be recognised as an owner of part of the land, and in compensation, 224 hectares were made available for community gardens. However, other agreements entered into by the parties for compensation did not materialise

Table of Comparable Mediation Matters in SE Asia (Part 2)

Location	Parties	Mediator	'First impact' date	Initial complaint date/start of conflict	Start of mediation	Outcome/Status
Teen Tok in Kanchanaburi Province, Thailand	National Park authorities and local community	Seub Nakhasathien Foundation, NGO	The National Park Act (1961) forbids anyone to settle, extract or conduct economic activity in the national park (NP). The Thailand Government subsequently defined and classified forest areas into National Parks which prevented their traditional use by communities for hunting and gathering as their typical livelihood. Accordingly, from 1981 to 2005, a conflict ensued between NP officials and villagers	The conflict escalated in 1998 – 1999 when NP officials arrested people for levelling land to build a house	A national NGO, Seub Nakhasathien Foundation started working in the area in 2004 under Joint Management of Protected Area and soon after, commenced a mediation between the parties. The mediation provided a platform for dialogue between the parties	Resolved, duration 2 years, agreement reached. Following the mediation, local communities' participation in forest conservation increased. In 2008, the villagers created a forest protection volunteer network, consisting of more than 150 villagers who work together with NP officials for forest protection, forest-fire watch, and management
Cambodia, Phnom Penh Airport	Société Concessionnaire de L'Aéroport (SCA) and 59 households from Thmor Korl and Prey Chisak villages	CAO	The SCA held a 25-year concession from the Cambodian government from 1995 to design, construct and maintain several airports in the vicinity to the capital city of Phnom Penh and neighbouring villages	In June 2013, the first complaint with the CAO was lodged by 59 households of the two villages with assistance from Equitable Cambodia, a local NGO	The parties agreed to work with CAO's dispute resolution function using a collaborative approach. In February 2014, CAO facilitated multi-shareholder meetings, provided training to the parties regarding their communication skills and facilitated information sharing	Resolved, duration 4 years. In June 2016, the Cambodian Government announced there would be no resettlement, and that alternative plans to build a new airport elsewhere were being considered. CAO is monitoring the agreements
Mongolia, Southern Gobi region	Oyu Tolgoi LLC (OT) and nomadic herders who reside or raise livestock close to the region	CAO	As early as 2004, when the herders first felt the effects of the mining project on the water sources which were critical to the herders' nomadic lifestyle	In October 2012, the first complaint was filed by nomadic herders with the support of NGOs	Following multiple field trips to Mongolia between November 2012 and February 2013, the parties agreed to mediate under the CAO's process. A Joint fact-finding process was also conducted	Resolved, duration 4 years. May 2017, the formalising and signing of the agreement by the parties. In March 2019, after monitoring the parties' implementation of agreements, CAO held case closure events in Mongolia. Enforcement mechanism was implemented to ensure execution of agreements
Indonesia, Bandung on Java Island	PT Rajamandala Electric Power (REP) and local youth organisation on behalf of a local individual and his family	CAO	In October 2014, REP commenced construction of the Hydropower Plant which would have had early flow-on effects to the complainant	In October 2016, the complaint was filed by the local youth organisation on the basis that the tunnel construction associated with the Hydro-electric plant had negatively impacted the family's paddy field	From October 2016, a training session has been conducted to assist the communication and cooperation between the parties, following monthly meeting to continue to improve communication and assist in strengthening capacity to address future disputes	Resolved, duration 4 months. In January 2017, CAO issued a conclusion report. Reported improved community-company relations and ongoing dialogue and cooperation.

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