



CAO PROGRESS REPORT – CAMBODIA VEIL II-01/RATANAKIRI PROVINCE

JANUARY 2020

This report provides an overview of the CAO's dispute resolution process regarding a complaint in relation to the IFC-supported VEIL II project (IFC #20926) in Cambodia.

SUMMARY

From March 2014 to January 2019, CAO convened a dispute resolution process between Hoang Anh Gia Lai (HAGL), a Vietnamese operator of rubber plantations in Cambodia's Ratanakiri province, and locally impacted villages, to address concerns about the environmental and social impacts of the plantations. The parties reached several interim agreements and sought the support of the Royal Government of Cambodia, which formed a provincial working group to support the process.

Significant agreements were reached relating, among other issues, to return of land, restoration of waterways, and repair of roads. CAO has been monitoring the implementation of these agreements and, to date, the extent to which these agreements have been implemented varies. In January 2019, the company decided to withdraw from the dialogue process, expressing that instead it wishes to see the government to assist in settling outstanding issues.

In October 2019, HAGL indicated an interest in re-engaging in dialogue. CAO met separately with HAGL and the community complainants in December 2019, and both confirmed their commitment to resolving outstanding issues in dispute through a CAO-convened dispute resolution process.

BACKGROUND TO THE COMPLAINT

The IFC investment

Vietnam Enterprise Investments Limited ("VEIL" or "the Fund") is an investment fund that has been in operation since 1995. The Fund has a capital base of just over US\$500 million and is managed

by Dragon Capital Management Ltd., a subsidiary of Dragon Capital Group (DCG). IFC invested US\$16.4 million in the Fund. The Fund aims to invest in publicly or privately issued securities of Vietnamese companies, with the stated purpose of providing incentives for the development of Vietnamese capital markets by increasing liquidity of Vietnamese securities. One of the companies DCG invested in through the Fund is HAGL.



Cleared trees of a local spirit mountain.(CAO, 2014)

The Complaint

In February 2014, local people from 17 villages in Ratanakiri Province, Cambodia, lodged a complaint with CAO, with the support and assistance of five NGOs. The complaint raises a range of environmental and social concerns about HAGL's Cambodia operations, including impacts on water sources and fish resources; loss of ancestral land and indigenous territory; illegal forest clearance and associated livelihood impacts; lack of compensation; lack of information disclosure and respect for the right of Free, Prior and Informed Consent for Indigenous Peoples; and threats to spiritual, cultural, and indigenous practices; as well as use of child labor. The complaint alleges noncompliance with IFC policies and procedures and with Cambodian

laws. The complainants requested that CAO keep their identities confidential.

CAO PROCESS

Assessment

The complaint was deemed eligible for further assessment in February 2014, and the CAO team travelled to the field in March to meet with the relevant stakeholders to explore options for a collaborative solution to the issues raised in the complaint. The communities voiced concerns about current and future impacts on their livelihoods and rights. HAGL committed to resolving the matters of concern and making the communities' interests a priority. In April 2014, the parties indicated their willingness to engage in a voluntary CAO-convened dispute resolution process.

A DISPUTE RESOLUTION PROCESS COMMENCES

Moratorium on further land clearances

At the outset of the process, HAGL agreed to stop clearing any further land within its concessions for a period of six months, to allow the dialogue process to advance. After the six months, the company committed to extending this moratorium until they were able to resolve the dispute with neighboring communities. Later in the process, in September 2015, HAGL informed the villages that they would return all lands not already cleared or planted to the government and request adjustment of the company's economic land concessions (ELCs). The three concessions were then officially reduced from 18,952 hectares to 8,371 hectares.

Preparing for mediation

Between May and August 2014, CAO conducted pre-mediation sessions with the parties in preparation for dialogue. During this time, CAO supported the communities in establishing who would represent them and in seeking to engage with relevant levels of government.



CAO team meets with H.E. Nhem Sam Oeurn, Deputy Governor, and Mr. Sek Hai, Director of the Provincial Office, of Ratanakiri Province, Cambodia, in November 2015.

Securing government support

The support of the Royal Government of Cambodia for the process was sought and desired by both parties. Consequently, CAO met with key personnel at the Ministry of Land Management, Ministry of Environment, Ministry of Agriculture, Ministry of the Interior, Provincial Office, and relevant provincial departments to inform them about the process and seek their support. In November 2014, CAO received a letter from the Ministry of the Interior expressing its support for the CAO process.

Capacity building

With this government support, the dispute resolution process began in November 2014, with capacity-building training provided to parties on dispute resolution mechanisms and negotiation techniques. Further, CAO provided support throughout the process in bilateral meetings with the parties. In parallel, the communities' NGO advisors supported the community representatives and helped them participate in the process.

Representation

In December 2014, the affected communities each selected representatives from their respective villages in a series of village meetings attended by the CAO team. Each village selected a broader group of about nine representatives, as well as two core representatives to attend meetings.

Ground rules

The first joint meeting between parties to design a negotiation process took place in January 2015, during which the parties agreed and signed off on a set of ground rules to guide the process.

Agreeing on process structure

As the mediation process progressed, the parties were able to provide more clarity on actual villages affected by the HAGL project. As such, the communities were organized into three groups:

- Group 1: Three villages not affected by HAGL and located outside its economic land concessions.
- Group 2: Three villages found to be within the HAGL concessions, but not yet affected. Later, it became clear that one of these villages still had an overlapping land claim with a concession and it was grouped in with the villages of Group 3 for the ongoing mediation.
- Group 3: Eleven villages that were already affected by the HAGL activities.

In March 2015, the parties adopted a mediation agreement and issued their first Joint Statement, setting out the mediation process structure. Since then, CAO has convened regular mediated meetings between the parties. Various agreements were reached along the way and communicated by the parties in joint statements, which are all available on the CAO website: www.cao-ombudsman.org.

The role of NGOs

Five NGOs supported the communities in bringing the complaint to CAO and during the process: Highlanders Association, Cambodian Indigenous Youth Association, Indigenous Rights Active Members, Equitable Cambodia, and Inclusive Development International. NGOs assisted the communities' participation in the process, for example in preparing for joint meetings, preparing to present their needs, understanding the company's position, coming to joint positions, and generally building the community representatives' capacity to represent themselves and engage in the mediation process.

EARLY AGREEMENTS

First group of villages not directly affected by HAGL's Economic Land Concessions (ELCs)

Exchange of information between the parties helped to establish that three villages that were part of the complaint were not directly affected by

HAGL's operations. With a second Joint Statement, released in July 2015, the three villages communicated that they would no longer be a part of the process, and the Company committed to not be involved in the development of the areas occupied by them in the future in any way.

HAGL makes a series of commitments

In September 2015, the company made a series of commitments, including not to engage in any further clearance or development of its concessions, so as not to cause any further adverse impacts on the 11 villages. These commitments paved the way for further agreements with an additional three villages that are located within its concessions, but which will not be affected due to the company's commitment not to clear and develop any further land.

The agreement between the parties set out plans for a joint field trip so the communities and Company can clarify the boundaries of their land, and HAGL's commitment to establish a community grievance mechanism for its Cambodia operations (third Joint Statement, September 2015).

Also in September 2015, at a joint meeting that took place in Siem Reap, the company and the 11 most directly affected communities reached a set of agreements for this group of villages, including a plan to carry out a joint trip to the villages, restoration of water sources, road and bridge repairs, and an agreement to either compensate for or return land should HAGL have cleared or developed community land (fourth Joint Statement, September 2015).

The Siem Reap Agreements

- HAGL will only use chemical products that comply with environmental regulations;
- HAGL will repair and maintain any roads and bridges that villagers use which have been affected by HAGL's operations;
- Parties and other stakeholders, including NGO advisors, CAO, and local authorities, will jointly visit each of the 11

affected villages in order to identify the boundaries of HAGL’s plantations and the boundaries of the affected villages, for the purposes of demarcation;

- If through the joint visit it is ascertained that HAGL has cleared and developed land that belongs to the villagers, then the company will (a) offer compensation to the villagers for this land, and (b) if the villagers do not accept compensation, HAGL will return the land to the villagers and support the villagers in securing title to their land.
- HAGL will restore affected water sources, including any depleted fish resources, for all 14 villages engaged in the CAO dispute resolution process (including the above 11 villages and Ket, Nay, and Kachout villages).
- In recognition of the impacts caused by the rubber plantation projects of the Company, HAGL offered its sincere apologies to the 14 villages and offered as a gift one cow (400 kg in weight) and 500 USD to each of the villages for use in their spirit ceremonies.

representatives of the Provincial Government, as well as the CAO team, participated in a spiritual ceremony on November 13, 2015. HAGL publicly apologized to the indigenous communities for the impacts it caused to them and their way of life.

Field visits to clarify land boundaries

In January 2016, the parties met to discuss the implementation of the “Siem Reap Agreements” and to plan joint mapping trips to each of the affected villages to determine the boundary delimitation of HAGL’s Economic Land Concessions (ELCs) (fifth Joint Statement, January 2016).

Between January 2016 and July 2017, the company and community representatives, members of the provincial government, NGO advisors, and the CAO team conducted several joint trips to the affected villages to establish the lands under dispute. Each party provided their own mapping experts.

During the first joint trip, the parties confirmed that two of the represented villages lie outside the boundaries of HAGL’s ELCs. However, the two villages decided to continue to engage with the company through the CAO-facilitated mediation process on other items, as agreed in September 2015 (see fourth Joint Statement). A sixth Joint Statement (July 2016) summarizes the outcomes of the joint trip.

Government Working Group

In October 2016, the government established a Working Group to assist the parties in identifying the alleged overlapping areas between HAGL’s ELCs and indigenous communities’ customary land. Starting then, the government participated in the dispute resolution process through the Working Group, at the request of both parties, to help them find an amicable solution.

Agreements to return Spirit Mountains and burial grounds

In July 2017, following a series of CAO-facilitated meetings, the representatives of 11 affected villages, HAGL, and NGO representatives issued a Joint Statement setting out additional agreements, including the return of Spirit Mountains, and the implementation of an earlier



Representatives of the communities, CAO, the company, and the Royal Government of Cambodia attend a spirit ceremony, November 2015

IMPLEMENTATION OF EARLY AGREEMENTS

An apology and support for ceremonies

To kick off the implementation of interim agreements, the parties, NGO advisors, and

agreement to restore water sources and roadways (seventh Joint Statement).

The parties agreed to cooperate with the government to enable the full implementation of the Joint Statement. Furthermore, the parties agreed that the location, size, and boundaries of the Spirit Mountains and burial grounds would be identified by the communities and HAGL, with the support and approval of the government of Ratanakiri, through a joint demarcation process.

For the areas that were not agreed between the parties, it was resolved that the government would make a decision as to whether they should be returned to the communities.

In November 2017, the Governor of Ratanakiri Province appointed a Working Group of seven officials from the Provincial Departments of Land, Agriculture, Environment, and a multi-sectoral division to support and implement this activity.



A land department official takes a GPS point during the demarcation process, March 2018.

The joint land demarcation process

From November to December 2017, the representatives of 12 villages, HAGL, the Government Working Group, NGO representatives, and the CAO team conducted the first round of the joint land demarcation process, with the objective of identifying Spirit Mountains, burial grounds, *chrops*, and *chraps* (fresh water areas and natural salt water areas) for return to the villagers.

A second round of land demarcation was conducted in March 2018, bringing the demarcated areas to a total of 46 locations, including 21 Spirit Mountains, eight burial grounds, 14 *chrops*, and three *chraps*. Every GPS point was negotiated by the parties with the assistance of the CAO mediator.

Following the conclusion of the demarcation process, HAGL agreed to return 20 Spirit Mountains and two burial grounds to the control of the villages. However, the communities expressed their expectation for the return of all of the 46 areas that were demarcated.

The Government Working Group prepared a data worksheet report after demarcation setting out 64 land plots in the 46 areas that were measured by GPS. The total land area that had been demarcated was initially 1023.76 hectares. The Working Group analysed the data by reducing the areas claimed and demarcated that were outside of HAGL's Economic Land Concession. The Working Group then concluded that the area that was measured and inside the ELC of HAGL amounted to 742.26 ha. The Working Group also made a calculation of 169 ha that had been measured but which the company did not wish to return to the communities, mostly because these areas had already been planted.

A ceremony hosted by Provincial Government

By end March 2019, the Provincial Government had communicated publicly its decision to recommend to the Ministry of Agriculture, Forestry and Fishery (MAFF) the return of all of the demarcated areas – at total of 742.26 ha. The return of a part of a partially planted mountain at the end of the Economic Land Concession was discussed. At a ceremony on March 26, his Excellency the Provincial Governor convened members of the villages, HAGL, the provincial government and CAO to update the parties on the outcome of the demarcation process and congratulate everyone on progress made. On 18 April 2019, HE Governor of Ratanakiri submitted

to MAFF the request of 742.26 ha to be cut from the ELC of HAGL.

On request of the Government, CAO is supporting the government-led process of engagement between the Provincial Office of Ratanakiri, MAFF, and other relevant ministries to finalize and implement the return of land. This process is ongoing.

Implementation of earlier agreements

In May 2018, representatives of the 12 villages, HAGL, the Government Working Group, the Ratanakiri Department of Land Management, Urban Planning and Construction, and the Department of Environment, discussed options for addressing the concerns related to land and the implementation of previous agreements related to repair of bridges and roads and water restoration.

During the meetings, the parties reviewed the GPS mapping data that was recorded in the demarcation process, and they agreed that it accurately reflected all the demarcated areas. The communities and the company also agreed to obtain measurements for the rights of way or access roads to the areas to be returned to the communities.

Restoring roads and waterways

HAGL committed to implement the previously agreed road repairs, in cooperation with the local communities. While the company did address some road repairs, the communities expressed concern both about the quality of the repairs and a lack of consultation in the process. The agreement to restore waterways had been advanced by the company's commitment to retain relevant expertise. However, since HAGL's withdrawal from the CAO-convened dialogue, implementation of these commitments had appeared to be on hold.

HAGL's re-engagement in the process will now enable the parties to discuss and plan implementation of their existing agreements.

IFC's role as observers to the process

IFC has sent an observer to the process at various points, including during a trip to discuss restoration of waterways and wetlands in December 2018. The observer supported the parties by sharing her environmental expertise.

Company withdrawal from CAO dispute resolution

At the occasion of the first set of what were planned to be final negotiations between communities and HAGL on outstanding issues HAGL withdrew from the mediation and expressed a preference for the Government of Cambodia to make a determination to resolve the outstanding issues. These outstanding issues relate to other land areas that the communities claim should be returned but that have not yet been demarcated, and community demands to receive compensation for damages.

A new complaint

Following HAGL's withdrawal from the CAO-convened dialogue, the communities lodged a new complaint with CAO about HAGL's Ratanakiri operations, this time related to IFC's Financial Intermediary clients, Tien Phong Commercial Joint Stock Bank (TPBank) and Vietnam Prosperity Joint Stock Commercial Bank (VPBank). In the course of CAO's assessment of this complaint, HAGL expressed an interest to re-engage in dispute resolution. The community representatives equally expressed their preference for dispute resolution. In keeping with CAO's operational guidelines, this complaint will be handled by CAO's dispute resolution function. Given the complete overlap of parties in dialogue and issues for discussion, these two cases will be handled jointly through one dispute resolution process. Reporting on both cases will equally be joint from this stage forward.

HAGL comes back to the table

In October 2019, HAGL indicated an interest in (re)engaging in dialogue. CAO met separately with HAGL and the community complainants in December 2019, and both confirmed their commitment to resolving their dispute through a CAO-convened dispute resolution process.

Next steps

CAO will convene the company and the

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community representatives early in the new year
to discuss next steps.

Process Documentation

All the Joint Statements and other
documentation relevant to the case are available
on the CAO website: www.cao-ombudsman.org

The Cambodia: VEIL II-01/ Ratanakiri Province
case page can be directly accessed via -
[http://www.cao-
ombudsman.org/cases/case_detail.aspx?id=212](http://www.cao-ombudsman.org/cases/case_detail.aspx?id=212)