



CAO ASSESSMENT REPORT

**Regarding Concerns in Relation to
IFC's Investment in TPBank and VPBank
(#37920, #41043, #38038, #39020) in Cambodia**

January 2020

Office of the Compliance Advisor Ombudsman
for
the International Finance Corporation and the
Multilateral Investment Guarantee Agency
www.cao-ombudsman.org

About CAO

The Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA), the private sector arms of the World Bank Group. CAO reports directly to the President of the World Bank Group, and its mandate is to assist in addressing complaints from people affected by IFC/MIGA-supported projects in a manner that is fair, objective, and constructive, and to enhance the social and environmental outcomes of those projects.

For more information, see www.cao-ombudsman.org

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LIST OF ACRONYMS

CAO	Office of the Compliance Advisor Ombudsman
EC	Equitable Cambodia
IFC	International Finance Corporation
HA	Highlanders Association
HAGL	Hoang Anh Gia Lai
IDI	Inclusive Development International
IRAM	Indigenous Rights Active Members
MIGA	Multilateral Investment Guarantee Agency
NGO	Non-Governmental Organization
TPBank	Tien Phong Commercial Joint Stock Bank
VPBank	Vietnam Prosperity Joint Stock Commercial Bank

1. OVERVIEW

In March 2019, a complaint was lodged with CAO by NGOs Inclusive Development International (IDI), Equitable Cambodia (EC), Highlanders Association (HA), and Indigenous Rights Active Members (IRAM), on behalf of local communities in Ratanakiri Province, Cambodia. The complaint raises concerns about a range of social and environmental impacts of rubber plantation operations of Hoang Anh Gia Lai (HAGL or “The Company”), through IFC’s Financial Intermediary clients, Tien Phong Commercial Joint Stock Bank (TPBank) and Vietnam Prosperity Joint Stock Commercial Bank (VPBank). CAO determined that the complaint met its three eligibility criteria, as per its Operational Guidelines, and began an assessment of the complaint.

This is the second complaint that CAO has received in relation to HAGL’s Cambodia operations. The first complaint, lodged in 2014, was found eligible based on IFC’s investment in Dragon Capital’s VEIL fund. The two complaints raise the same concerns in relation to impacts on communities. After a CAO-convened dispute resolution process led to several interim agreements, HAGL withdrew from the process in early 2019. At the request of the provincial government, CAO has remained involved through its monitoring role to assist the government in the implementation of a land return agreement made by the parties.

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. As a result, this complaint will now be referred to CAO dispute resolution.

2. BACKGROUND

2.1 The IFC Investments

At the time of the complaint IFC had two active investments in TPBank – \$18.1 million equity and \$100 million debt (including \$60 million A loan; \$22.5 million from IFC acting in its capacity as implementing entity for the Managed Co-Lending Portfolio Program; and \$17.5 million B loan). IFC had two active investments in VPBank – \$57 million quasi-equity (May 2017) which was fully repaid by VPBank on the maturity date of May 31, 2019, an up to \$50 million A loan, and an up to \$40 million B loan (June & December 2016).

At the time CAO received the complaint, both TPBank and VPBank were lenders to HAGL, a Vietnamese company active in real estate, rubber manufacturing, energy and mining. HAGL operates rubber plantations through a number of subsidiaries who in turn hold several economic land concessions in Ratanakiri province, Cambodia.

2.2 The Complaint

In March 2019, four international and local NGOs, Inclusive Development International (IDI), Equitable Cambodia (EC), Highlanders Association (HA), and Indigenous Rights Active Members (IRAM), submitted a complaint to CAO on behalf of twelve villages located in Ratanakiri, Cambodia. The complaint claims that the communities, largely comprised of indigenous groups, have suffered a range of adverse social and environmental impacts, including impacts on water sources and fish resources, loss of land, lack of compensation, lack

of information disclosure and engagement with the people, threat to spiritual, cultural and indigenous practices, as well as use of child labor. The complaint also claims a failure to obtain the indigenous communities' free, prior and informed consent prior to conducting operations on their lands. The complaint further alleges non-compliance with IFC's Policy and Performance Standards on Environmental and Social Sustainability and with Cambodian and Vietnamese laws and international human rights law. Due to concerns for their security, the complainants requested that CAO keep the names of signatories to the complaint confidential.

The complaint alleges that IFC is exposed to HAGL through two Financial Intermediary clients, TPBank and VPBank. The complaint further sets out a number of outcomes that the complainants seek. The full complaint can be accessed on CAO's website at www.cao-ombudsman.org. In April 2019, CAO found the complaint eligible and commenced an assessment of the issues. The issues raised during the assessment are described in more detail below.

2.3 Background of CAO engagement with the issues of concern

This is the second complaint that CAO has received in relation to HAGL's Cambodia operations. The first complaint, lodged in 2014, raised concerns about the same impacts on local communities. It was found eligible based on IFC's investment in Dragon Capital's VEIL fund. From 2014 to 2019, CAO facilitated a voluntary dispute resolution process between the community representatives and HAGL ("the parties"), during which the parties made a number of partial agreements, documented in Joint Statements¹, and CAO and the parties worked closely with a working group formed by the Provincial Government to implement these agreements.

In January of 2019, HAGL informed CAO of its decision to withdraw from the CAO-convened dispute resolution process, and instead seek the support of the government for resolution of the communities' outstanding concerns. In March 2019, the Government of Ratanakiri Province requested CAO's assistance during the final stages of the implementation of the return of land as an outcome of the joint land demarcation process, as documented in the parties' Joint Statement dated March 20, 2018. Following this request, CAO has remained involved in monitoring the implementation of this land return agreement.

3. ASSESSMENT SUMMARY

3.1 Methodology

The aim of the CAO assessment is to clarify the issues and concerns raised by the Complainants, gather information on the views of different stakeholders, and determine whether the Complainants and the IFC Project Sponsor would like to pursue a dispute resolution process facilitated by CAO, or whether the complaint should be handled by CAO's Compliance function for appraisal of IFC's performance (see Annex A for CAO's complaint-handling process).

¹ All documents related to the first complaint related to HAGL's Cambodia operations are available here: http://www.cao-ombudsman.org/cases/case_detail.aspx?id=212

While CAO, as per its Operational Guidelines, is not a legal enforcement mechanism or a substitute for court systems in host countries, CAO can address the issues and concerns as expressed in the complaint and offer its processes to the affected parties.

In this case, CAO's assessment of the complaint included:

- a desk review of project documentation;
- telephone conversations with the Complainants and the NGOs who lodged the complaint on the communities' behalf;
- telephone conversations and written correspondence with TPBank, VPBank, as well as HAGL;
- telephone conversations with IFC's project team;
- meetings in Vietnam and Cambodia with the company and community representatives.

This document presents a summary of the views heard by the CAO team, and explanations of next steps based on the parties' choice. This report does not make any judgment on the merits of the complaint.

3.2 Summary of views

Complainants' perspective

The complainants state that they have engaged in good faith in the CAO dispute resolution process to seek remedy for losses and impacts suffered as a result of HAGL's Cambodia operations. The complainants explain that they are filing a new complaint because of the company's withdrawal from the CAO process in January 2019, which occurred before agreements reached by the parties had been implemented (and they still remain to be implemented), and with outstanding community concerns still left unaddressed in the process.

The complainants still seek remedy for losses and impacts, seeking the return of lands, compensation for losses of crops, structures and livestock, restoration of roads, water sources and fisheries, reforestation of high value trees, and remediation of the destruction of religious sites.

While the complaint sets out the complainants' wish to see this complaint referred to CAO compliance, during assessment, the complainants expressed that they would like to see the outstanding issues of discussion between HAGL and the twelve communities addressed via a CAO convened dispute resolution process. The complainants note that they believe that IFC and its clients, TPBank and VPBank, have provided financing to HAGL despite its environmental and social performance, which they note shows clear violations of the Performance Standards and an unwillingness to remediate harms to the communities. The complainants believe that TPBank has a contractual obligation to bring HAGL into compliance with the Performance Standards, including by encouraging it to return to the CAO Dispute Resolution process and negotiate remedies with the affected communities in good faith, or to sever its financial relationship with the company if it is unwilling to do so.

The complainants have expressed that they believe that TPBank's representation of its financial relationships with HAGL and its subsidiaries is factually inaccurate and that it contradicts audited financial reporting by the HAGL group which shows direct exposure to the activities subject to the complaint.

The complainants further believe that if TPBank is unwilling to apply the Performance Standards to its financing of HAGL, then IFC should exercise its legal remedies and exit this investment.

Company's perspective

VPBank

VPBank representatives confirm that the Bank's credit relationship with HAGL predates IFC's investment. VPBank notes that it has not made any new investments in HAGL since receiving IFC funding and as of end June 2019, it has completely withdrawn all HAGL bonds and terminated its credit relationship with HAGL.

TPBank

TPBank representatives informed CAO that TPBank's limit for HAGL is reserved for the purpose of supplementing working capital to make payment/advance payment to buy raw materials (such as latex, fruits, and spices), and not for the purpose of compensating for land clearance or planting rubber trees in Cambodia. TPBank notes that the land it holds as collateral in Cambodia is located in Kratie province, while the land in question in the complaint is located in Ratanakiri province. Also, TP Bank notes that after careful review, it found that HAGL did not intend to use TPBank's loan to plant rubber trees, but only to buy and sell latex. TPBank points out that its loan to HAGL is short-term (while, it maintains, loans for planting rubber trees are long-term). TPBank further notes that it lent to HAGL at a time later than HAGL's development of rubber trees, when HAGL started to grow fruit instead of rubber trees. TPBank maintains that the above information confirms that TPBank's credit limit for HAGL is not related to the complaint of the 12 communities in Ratanakiri province in Cambodia.

Both Banks expressed that they hoped for a positive outcome in Cambodia but stated that in their role as lenders without direct lending specifically for HAGL's Cambodia operations it would be inappropriate or impossible to seek to influence HAGL's operations and decision making related to the CAO process in Ratanakiri.

HAGL

Receipt of this new complaint gave HAGL the option to reengage in a CAO-convened dispute resolution process. Such a process requires at a minimum the voluntary participation of the operating company and the local communities. In October 2019, HAGL reached out and expressed an interest in (re)engaging in a CAO-convened dispute resolution process, a commitment it confirmed in a meeting with CAO in December 2019.

4. NEXT STEPS

As both the complainants and HAGL are interested in pursuing resolution of their concerns using a dispute resolution process convened by CAO, in keeping with CAO's Operational Guidelines, the complaint will now be referred to CAO Dispute Resolution.

Annex A: CAO Complaint Handling Process

Once CAO declares a complaint eligible, an initial assessment is conducted by CAO Dispute Resolution specialists. The purpose of CAO's assessment is to: (1) clarify the issues and concerns raised by the complainant(s); (2) gather information on how other stakeholders see the situation; and (3) help stakeholders understand the recourse options available to them and determine whether they would like to pursue a collaborative solution through CAO's Dispute Resolution function, or whether the case should be reviewed by CAO's Compliance function.

As per CAO's Operational Guidelines,² the following steps are typically followed in response to a complaint that is received:

- Step 1: **Acknowledgement** of receipt of the complaint.
- Step 2: **Eligibility:** Determination of the complaint's eligibility for assessment under the mandate of the CAO (no more than 15 working days).
- Step 3: **CAO assessment:** Assessing the issues and providing support to stakeholders in understanding and determining whether they would like to pursue a consensual solution through a collaborative process convened by CAO's Dispute Resolution function, or whether the case should be handled by CAO's Compliance function to review IFC's/MIGA's environmental and social due diligence. The assessment time can take up to a maximum of 120 working days.
- Step 4: **Facilitating settlement:** If the parties choose to pursue a collaborative process, CAO's dispute-resolution function is initiated. The dispute-resolution process is typically based on or initiated by a Memorandum of Understanding and/or mutually agreed-upon ground rules between the parties. It may involve facilitation/mediation, joint fact finding, or other agreed resolution approaches leading to a settlement agreement or other mutually agreed and appropriate goals. The major objective of these types of problem-solving approaches will be to address the issues raised in the complaint, and any other significant issues relevant to the complaint that were identified during the assessment or the dispute-resolution process, in a way that is acceptable to the parties affected.³

OR

Compliance Appraisal/Investigation: If the parties opt for a Compliance process, CAO's Compliance function will initiate an appraisal of IFC's/MIGA's environmental and social due diligence of the project in question to determine whether a compliance investigation of IFC's/MIGA's performance related to the project is merited. The appraisal time can take up to a maximum of 45 working days. If an investigation is found to be merited, CAO Compliance will conduct an in-depth investigation into IFC's/MIGA's performance. An investigation report with any identified non-compliances will be made public, along with IFC's/MIGA's response.

Step 5: **Monitoring and Follow-up**

Step 6: **Conclusion/Case Closure**

² For more details on the role and work of CAO, please refer to the full Operational Guidelines: http://www.cao-ombudsman.org/documents/CAOOperationalGuidelines_2013.pdf

³ Where stakeholders are unable to resolve the issues through a collaborative process within an agreed time frame, CAO Dispute Resolution will first seek to assist the stakeholders in breaking through impasse(s). If this is not possible, the Dispute Resolution team will inform the stakeholders, including IFC/MIGA staff, the President and Board of the World Bank Group, and the public, that CAO Dispute Resolution has closed the complaint and transferred it to CAO Compliance for appraisal.