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Dear Vice President Gratacós,

**Re: Complaint concerning IFC investments in Tien Phong Commercial Joint Stock Bank (TPBank) and Vietnam Prosperity Joint Stock Commercial Bank (VPBank)**

1. Inclusive Development International (IDI), Equitable Cambodia (EC), Highlanders Association (HA) and Indigenous Rights Active Members (IRAM) are submitting this complaint to the Office of the Compliance Advisor Ombudsman on behalf of communities adversely affected by a sub-project of the International Finance Corporation (IFC) through financial intermediary clients Tien Phong Commercial Joint Stock Bank (TPBank) and Vietnam Prosperity Joint Stock Commercial Bank (VPBank). Authorizations of representation accompany this letter of complaint.
2. The complainants are 12 communities in Ratanakiri Province, Cambodia who have suffered serious harm as a result of the activities of Hoang Anh Gia Lai (HAGL), a Vietnamese company operating in Cambodia through several wholly-owned subsidiaries.
3. The villages are located in the districts of Andong Meas and O'Chum. The villages consist mainly of Jarai, Kachok, Tampuon, and Kreung peoples, who identify as and are in many cases legally recognized by the government as Indigenous Communities. They are traditionally animist, and their culture, livelihoods and identities are intimately tied to the land, forests and other natural resources of the region. The communities practice shifting cultivation and rely heavily on forest resources for their livelihoods. The name, location and other characteristics of each village are set out in Annex 1.
4. On February 10, 2014, the complainants filed a complaint to the CAO in relation to the same sub-project, which was at the time linked to the IFC through its investment in Vietnamese Enterprise Investments Ltd (VEIL), a private equity fund managed by Dragon Capital Group Ltd.<sup>1</sup> The VEIL Fund has since divested its holdings in HAGL. However, the IFC is now exposed to HAGL through two new financial intermediary investments, made in 2016 and 2017 respectively, which are described in Section 1 below.
5. For the past five years, the complainants have engaged in good faith in the CAO dispute resolution process in an effort to secure redress for the harms and losses they have sustained as a result of HAGL's operations. Unfortunately, the company unilaterally

<sup>1</sup> Complaint to CAO VEIL 11 (Feb 2014). <<http://www.cao-ombudsman.org/cases/document-links/documents/ComplainttoCAOreDragonCapital-HAGL.pdf>>

withdrew from the process in January 2018, failing to provide any compensation for the damages it caused or to return, restore and rehabilitate lands, forests and waterways that it unlawfully destroyed. It is for this reason that the complainants regrettably file a second complaint to the CAO and seek a compliance investigation into IFC's investments in financial intermediaries that are providing considerable financial support to HAGL, despite its continuing non-conformity with the IFC Performance Standards.

6. Due to concerns for their security, we request that the names of signatories on the authorizations of representation not be disclosed.

7. This complaint is set out as follows: Section 1 describes the financial links between the IFC and HAGL; Section 2 describes the harms suffered by affected villages and to the environment; Section 3 explains the land tenure situation of affected communities; Section 4 sets out relevant breaches of Cambodian and Vietnamese law; Section 5 provides an analysis of IFC's failure to comply with applicable policies and procedures; Section 6 describes weaknesses and gaps in IFC policy with respect to financial intermediary investments; and Section 7 sets out outcomes sought by the complainants.

## **1. Financial links between IFC and HAGL's plantations in Ratanakiri**

8. IFC's financial intermediary portfolio lacks transparency. IFC publicly releases very little information about its financial intermediary transactions, and what it does publish on its website is not always accurate and reliable. In relation to its investments in commercial banks, IFC does not publish any information on its sub-clients. As a result, it is extremely challenging for project affected people to find out whether IFC is indirectly financing the project and whether, by consequence, they have entitlements under the Performance Standards and access to the CAO should those standards not be met. This badly inhibits accountability and access to remedies and is contrary to the spirit and principles of IFC's Access to Information Policy (2012). In particular, we point to paragraph 8, which states:

**“Taking into account its roles and responsibilities, IFC makes available information concerning its activities that would enable its clients, partners and stakeholders (including Affected Communities), and other interested members of the public, to understand better, and to engage in informed discussion about, IFC's business activities, the development outcomes and other impacts of its activities, and its overall contribution to development.”**

This critically important objective and requirement of the Access to Information Policy is rendered completely unattainable in terms of allowing communities who have suffered human rights abuses at the hands of sub-projects funded through IFC financial intermediaries to be able identify financial links between the two, and thereby to seek redress.

9. In this case, Inclusive Development International managed, through a laborious forensic financial investigation, which required highly skilled human resources and adequate financial backing, to identify the financial links between the IFC and the project causing harms and brought this information to the attention of the complainants. In the absence of a close relationship with international research and advocacy organization such as IDI, affected agrarian communities living in highly authoritarian states are 'on their own.'

10. The aforementioned financial links, through two IFC financial intermediary clients, TPBank and VPBank, are set out below.

11. In May 2016, IFC made a “quasi-equity” investment in Tien Phong Commercial Joint Stock Bank (TPBank) worth VND403.1 billion (approximately \$18.4 million). IFC’s investment in dividend preferred shares was designed to “allow the Bank to capitalize on new business opportunities and implement its growth strategy.”<sup>2</sup> In August 2016, IFC converted this investment into a 4.387% equity stake in TPBank, exposing it to the bank’s entire portfolio.<sup>3</sup>

12. In January 2018, TPBank provided a long-term loan to HAGL. The loan, worth VND2.96 trillion (approximately \$127.3 million), is due to mature in December 2026. The purpose of the loan was “mainly to finance the construction and development of,” inter alia, “rubber and sugarcane plantations.”<sup>4</sup> HAGL’s most recent financial disclosure, covering the fourth quarter of 2018, lists the loan as active. In addition, this disclosure shows an increase in HAGL’s short-term borrowing from TPBank, from VND321.6 billion at the end of 2017 to VND599.91 billion at the end of 2018.<sup>5</sup> TPBank has also provided short-term loans to HAGL Agrico, the HAGL subsidiary that directly owns the local companies that hold the Ratanakiri concessions,<sup>6</sup> after IFC converted its loan to TPBank into equity. HAGL Agrico increased its short-term borrowings from TPBank from zero at the beginning of 2017<sup>7</sup> to VND321.67 billion by March 31, 2018, the latest period for which financial information is available.<sup>8</sup>

13. In May 2017, IFC made a \$57 million “quasi-equity” investment in Vietnam Prosperity Joint Stock Commercial Bank (VPBank). Under the terms of the two-year convertible loan, IFC was given the option to convert the debt to equity in VPBank. IFC’s Project Information Portal notes that the investment was “in particular [...] expected to support SMEs.”<sup>9</sup> However, VPBank’s CEO, Nguyen Duc Vinh, made no mention of SMEs when he discussed the loan with the Vietnamese financial press. The CEO said the

<sup>2</sup> IFC Project Information Portal, Project Number 37920.

<https://disclosures.ifc.org/#/projectDetail/SII/37920>

<sup>3</sup> IFC, “IFC Arranges a Loan of \$100 Million for TPBank to Promote Digital Financial Services to MSMEs in Vietnam,” July 10, 2018.

<https://ifcextapps.ifc.org/IFCExt/Pressroom/IFCPressRoom.nsf/0/A1429989015E8FC9852582C6000DEA23>

-and-

*Viet Nam News*, “IFC acquires 5 per cent stake in TPBank,” August 27, 2016.

<http://vietnamnews.vn/economy/301838/ifc-acquires-5-per-cent-stake-in-tpbank.html>

<sup>4</sup> HAGL, Annual Report 2017, Pg. 112-113.

[http://www.hagl.com.vn/UserFiles/file/bctn%202017%20en/HAGL\\_AR2017\\_Eng\\_Pages.pdf](http://www.hagl.com.vn/UserFiles/file/bctn%202017%20en/HAGL_AR2017_Eng_Pages.pdf)

<sup>5</sup> Pg. 35 <http://www.hagl.com.vn/UserFiles/file/bc/HAG%20-%20BCTC%20hop%20nhac%20Quy%20IV%20-%202018.pdf>

<sup>6</sup> HAGL, Annual Report 2017, Pg. 12.

[http://www.hagl.com.vn/UserFiles/file/bctn%202017%20en/HAGL\\_AR2017\\_Eng\\_Pages.pdf](http://www.hagl.com.vn/UserFiles/file/bctn%202017%20en/HAGL_AR2017_Eng_Pages.pdf)

<sup>7</sup> HAGL Agrico, 2017 Annual Report, pg. 105.

[https://haagrico.com.vn/images/2018/06/hagl\\_agrico\\_annual\\_report\\_2017\\_v5\\_1.pdf](https://haagrico.com.vn/images/2018/06/hagl_agrico_annual_report_2017_v5_1.pdf)

<sup>8</sup> HAGL Agrico, Q1 2018 Quarterly Report, pg. 27.

[https://haagrico.com.vn/images/bao\\_cao\\_hop\\_nhat\\_hng\\_final\\_v105032018.pdf](https://haagrico.com.vn/images/bao_cao_hop_nhat_hng_final_v105032018.pdf)

<sup>9</sup> IFC Project Information Portal, Project Number 39020.

<https://disclosures.ifc.org/#/projectDetail/SII/39020>

loan would “provide VPBank with medium capital for foreign-currency loans, as well as contribute to its charter capital to strengthen the capital adequacy ratio.”<sup>10</sup>

Whatever development results IFC may have intended for the loan, and the scope of its authorized use of proceeds, became irrelevant in August 2017, when VPBank’s shareholders approved the conversion of IFC’s loan into equity.<sup>11</sup> This would give IFC a 5% stake in VPBank and expose it to all of the bank’s business activities.<sup>12</sup>

14. In April 2018, HAGL disclosed that VPBank holds corporate bonds issued by HAGL worth trillions of Vietnamese *dong*. One of those HAGL bond issues was designed to fund, inter alia, “investment in the projects including rubber and palm oil plantations in Laos and Cambodia.” VPBank holds VND1.39 trillion (approximately \$60 million) of this bond issue, or 82% of the total value of the issue.<sup>13</sup>

15. We further note that in August 2016, IFC provided a \$50 million trade finance guarantee to VPBank,<sup>14</sup> which has a well-documented and significant banking relationship with HAGL. As an agricultural commodity corporation with plantation operations in several countries and export relationships that span the globe, HAGL likely has significant trade finance needs. HAGL does not publicly disclose its trade financing transactions with banks, so we do not know if VPBank has provided trade finance to HAGL but we request that the CAO investigate this.

<sup>10</sup> *Vietnam Economic Times*, “VPBank receives \$57mn loan from IFC,” July 19, 2017.

<http://www.vneconomicstimes.com/article/banking-finance/vpbank-receives-57mn-loan-from-ifc>

<sup>11</sup> VPBank, Corporate Governance 2017, Pg. 50-51.

[https://www.vpbank.com.vn/sites/default/files/pictures/VPBank\\_AR\\_2017\\_English\\_part\\_2\\_1042017.pdf](https://www.vpbank.com.vn/sites/default/files/pictures/VPBank_AR_2017_English_part_2_1042017.pdf)

<sup>12</sup> VPBank Listing Prospectus, August 2017, pg. 117.

[http://static2.vietstock.vn/data/HOSE/2017/BAN%20CAO%20BACH/VN/VPB\\_Bancaobach\\_NiemYet\\_2017.pdf](http://static2.vietstock.vn/data/HOSE/2017/BAN%20CAO%20BACH/VN/VPB_Bancaobach_NiemYet_2017.pdf)

<sup>13</sup> HAGL, Annual Report 2017, Pg. 111.

[http://www.hagl.com.vn/UserFiles/file/bctn%202017%20en/HAGL\\_AR2017\\_Eng\\_Pages.pdf](http://www.hagl.com.vn/UserFiles/file/bctn%202017%20en/HAGL_AR2017_Eng_Pages.pdf)

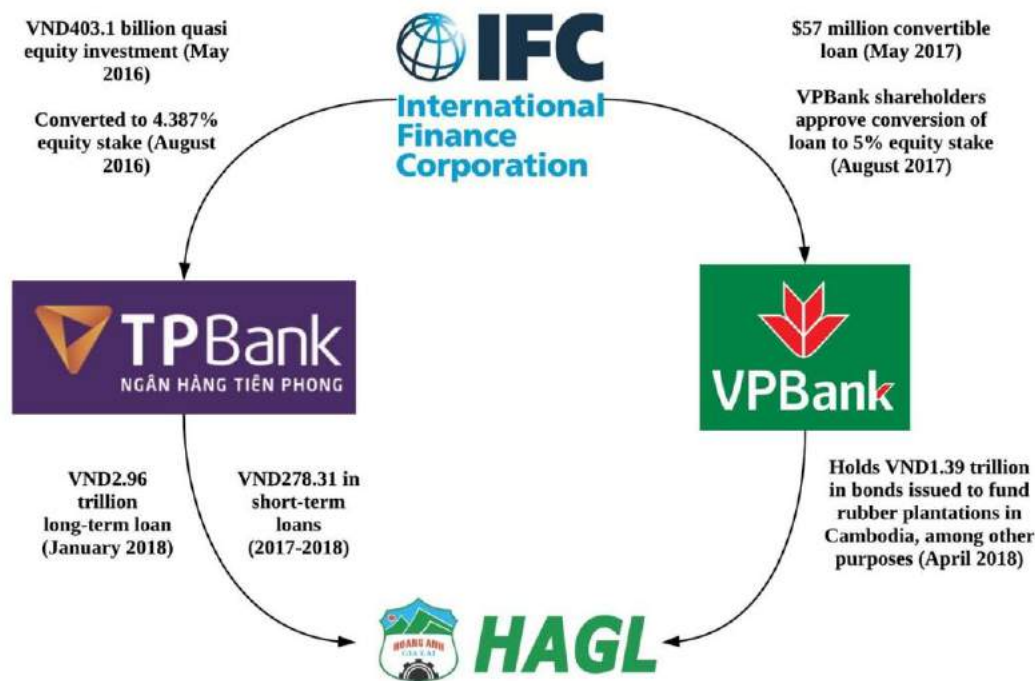
<sup>14</sup> IFC Project Information Portal, Project Number 38038.

<https://disclosures.ifc.org/#/projectDetail/SII/38038>

-and-

VPBank, Annual Report 2017, pg. 25.

[https://www.vpbank.com.vn/sites/default/files/pictures/VPBank\\_AR\\_2017\\_English\\_part\\_1.pdf](https://www.vpbank.com.vn/sites/default/files/pictures/VPBank_AR_2017_English_part_1.pdf)



## 2. Harms suffered by complainants and environmental impacts

16. HAGL operates through a number of wholly-owned subsidiaries in Cambodia. These subsidiaries hold several economic land concessions (ELCs) in Ratanakiri province, primarily for rubber plantations. The complainants are affected by three of these concessions held by Heng Brothers, CRD and Hoang Anh Oyadav. A map showing the overlap between the HAGL concessions and the complainant communities is provided in Annex 2. Detailed village-level maps showing the customary land use and features, along with the areas affected by the HAGL concessions, are available upon request.

17. As noted above, the harms suffered by the complainant communities as a result of HAGL's activities have been the subject of a CAO dispute resolution process since the communities jointly filed their first complaint in February 2014.<sup>15</sup> Despite the commitment of the complainants to act in good faith and find a negotiated resolution, since the time of the original complaint, the environmental harms and human rights violations suffered by the complainants have continued unabated.

18. As a result of HAGL's operations, the complainant communities have experienced losses of both a communal and household nature. Communal losses include collectively held and used lands, including forests, grazing land, reserved land for future generations and shifting cultivation, spirit forest and burial grounds; access to resin and other non-timber forest products (NTFP), and wildlife; and access to and pollution of water sources, including natural wetlands (*chrops*), indigenous grazing lands (*chrap*s) and fish resources. Household losses include rice fields and orchard/farming land (*chamka*) and crops

<sup>15</sup> Complaint concerning IFC investment in Dragon Capital Group and VEIL (Project no. 10740 and 20926), 10 February 2014.

including rice, cashew, cassava and a variety of fruit trees. In at least two cases, houses or other shelters have been destroyed by the company.

19. No compensation has been provided for communal losses. In some cases, households received compensation for lost rice field and farming land, but in all such cases the amount of compensation received was inadequate and accepted under duress after being told they would otherwise receive nothing.

20. Damage to water sources and fish sources as a consequence of HAGL's activities is extensive. The complainants report significantly reduced ground water, lower stream volume and the drying of natural springs at the head of streams. This has resulted in reduced fish catches, a primary source of protein and income for the complainants. Blockages in the stream caused by debris resulting from HAGL's activities are believed to have impacted on fish stocks, in particular the stocks of migratory species. The maps attached to HAGL's concession agreements contain 200 meter wide corridors encasing all streams, showing that these streams were outside of the concessions. The streams therefore were and are state property and HAGL's treatment of them violated the legal provision that states "Every person has the right to use water resources for his/her vital human need including drinking, washing, bathing and other domestic purposes including watering for animal husbandry, fishing and the irrigation of domestic gardens and orchards, in a manner that will not affect other legal right of others ..."<sup>16</sup>

21. The widespread loss of critical natural resources has had a severe impact on livelihoods. It has led to a decrease in income and in some cases significant reductions in quality, diversity and quantity of food consumption. Communities have relied heavily on natural resources as a food source, and are now forced to purchase more food from the market, but cannot always afford to do so. They believe the food from the market is of a poorer quality than food gathered from natural sources, especially because of the use of preservatives. In some villages, the diet of some families has been limited to rice alone. The complainants have reported that, as a coping mechanism, women tend to eat less than before, saving food for their husbands and children. Some women report deteriorating physical and mental health, with new feelings of anxiety over family livelihoods. Some villagers who previously used traditional medicines are finding it harder to access them due to the destruction of forest and other sources of traditional remedies such as *chrops*. Resin trees, a main source of energy and income for many villagers, have been largely destroyed by HAGL's land clearance.

22. Since the commencement of HAGL's activities in the area, some children have stopped attending school or attend less frequently in order to tend to the family's cattle. Many members of the complainant communities fear being fined by the company for alleged damage caused by their cattle and, previously, there have been warnings that cattle straying onto the company's plantation will be shot.

23. Spiritual and cultural practices of the complainants have been impeded by the loss of spirit forests and burial grounds. These losses have affected some communities' ability to conduct ceremonies, including those that facilitate intra-community dispute resolution, and this in turn affects community cohesion. The complainants believe that the destruction of forest and natural resources has angered the spirits, causing them considerable anxiety.

<sup>16</sup> Law on Water Resource Management (2007) article 11.

Moreover, a number of graves have been destroyed by HAGL and others have been planted over, which is deeply offensive to the complainants.

24. A number of spirit mountains, burial grounds and chrobs/chrabs have been demarcated through a process overseen by the provincial government of Ratanakiri under the auspices of the CAO dispute resolution process. The Provincial Governor has recommended that these areas be excised from HAGL's concessions and returned to the communities; however, at the time of writing, no spiritually significant land or cultural heritage sites have been returned to the complainants and access to these sites remains severely restricted. Moreover, HAGL has refused to compensate the communities for the damage it has done to these sites.

25. The ability of communities to maintain traditions of cultural identity and to realize and enjoy those rights enshrined in the UN Declaration on the Rights of Indigenous Peoples has been further jeopardized with the rapid recruitment by HAGL of migrant workers from the dominant Khmer ethnicity with a starkly different culture. This has begun to have an effect on the relationship of younger indigenous people with their own customary cultural practices.

26. Communities are also concerned about the loss of reserved land for future generations and for practicing shifting cultivation, their traditional form of agriculture. They are concerned about declining soil fertility and crop yield on their current farming land over time if they are unable to shift to other areas. These cumulative losses of both land and soil fertility have seriously eroded the communities' sovereignty over their land and system of food production and consumption, which is deeply interconnected with their identity and way of life.

27. There has been clear felling of intact forests, which the complainants have traditionally relied upon for sources of, inter alia, livelihoods, food, fuel, housing materials and medicine. Many resin trees from which communities extracted the liquid for use as an energy source and to sell have been cleared. Villagers have also witnessed the clearance of a range of other rare and precious tree species. Complainants report changes to the local climate due to intensive and rapid deforestation, affecting human health and crop yields. Satellite imagery shows evidence of significant clearance of evergreen and semi-evergreen forest in HAGL concessions (see Annex 3). The destruction of evergreen forest within economic land concession boundaries is a serious violation of Cambodian law and the concession agreements signed by HAGL's subsidiary companies.<sup>17</sup>

28. In all cases the company failed to provide notice or sufficient information to affected communities about its development plans. The company failed to consult affected indigenous communities and to request and obtain their consent for operations that seriously impact on their land and natural resources.

29. Annex 5 is a human rights impact assessment, conducted by Equitable Cambodia and Inclusive Development International, which describes in greater detail the range losses, impacts and violations experienced by the complainant communities.

<sup>17</sup> See for example, *Contract of Rubber Plantations Investment Between MAFF and CRD*, section 6.2 (available on request).

### 3. Land tenure situation of affected communities

30. Under the customary land tenure system of affected villages, a particular area of land and forest is regarded as being collectively owned by the community.<sup>18</sup> This typically includes a residential area, grazing land, community forest, chrop, chrap, spirit forest, burial ground, shifting agriculture land and reserved land for future generations. Also within a community's territory, households hold individual tenure rights over farming/orchard plots and rice fields. These components of a community's territory are not necessarily contiguous and the community will typically refer to natural landmarks to describe boundaries. The concept of collective ownership over their territory and resources is central to the communities' identity.

31. As the villagers consist of indigenous communities, they have a number of special rights under Cambodia's 2001 Land Law, including the right to collective title, reflecting their customary form of tenure.<sup>19</sup> However, while a number of affected villages are at various stages in the process of preparing their application, only one has received collective title.<sup>20</sup> This is not unusual: collective titles have been issued to only approximately 24 indigenous communities out of an estimated total of 455 throughout Cambodia.<sup>21</sup> In principle the slow titling process should not be a problem because the Land Law reserves to indigenous communities the lands that the Land Law identifies as eligible for community titles.<sup>22</sup> These legal rights and protections are regularly flouted in Cambodia, however, and communities attempting to assert their rights to their lands and forests confront opposing claims by the State and private companies.<sup>23</sup>

32. In May 2012, the Prime Minister issued an instruction known as Directive 01BB, which ordered a review of economic land concessions. As part of the implementation of the directive, the Prime Minister announced a land titling campaign involving the rapid measurement of plots and issuance of land titles to individual households whose land is located inside economic land concessions. Under this program, many households received titles to their farming land and rice fields, and in some cases to residential plots, inside the boundaries of HAGL concessions. These plots were cut out of HAGL concessions and returned to households. As a consequence of accepting titles to what were relatively small plots, the villagers were obligated to sign statements giving up all of their communal rights. Villagers in effect traded off the increasingly tenuous-looking possibility of ever being able to obtain communal titles to their full traditional lands, for the apparent solid tenure security provided by private titles to relatively small parcels of land.

<sup>18</sup> Only one village does not appear to practice a system of customary/collective land tenure.

<sup>19</sup> Cambodia Land Law 2001, article 26.

<sup>20</sup> Kres village has received collective title.

<sup>21</sup> J.Vize and M.Hornung, 'Indigenous Peoples and Land Titling in Cambodia: A Study of Six Villages,' prepared for the *Annual World Bank Conference on Land and Poverty* 2013, p. 2. Vize and Hornung state: "This is the number of villages, nationwide, which are home to at least some indigenous families. The figure is cited in a 2009 government circular, 'Procedures and Methodology for Implementing National Policy on the Development and Identification of Indigenous Communities,' but some believe the actual number of villages may be much higher."

<sup>22</sup> Land Law, article 23, 24.

<sup>23</sup> See, UN Committee on the Elimination on Racial Discrimination, Concluding Observations on Cambodia, 2010, UN Doc. CERD/C/KHM/CO/8-13, at para 16; and *The Rights of Indigenous Peoples in Cambodia*, 2010 (submitted to CERD by Indigenous Peoples NGO Network), available at [http://www2.ohchr.org/english/bodies/cerd/docs/ngos/NGO\\_Forum\\_Cambodia76.pdf](http://www2.ohchr.org/english/bodies/cerd/docs/ngos/NGO_Forum_Cambodia76.pdf)



33. Some affected villages express satisfaction with the Directive 01BB process and the individual security of tenure they perceive the titles to provide. However, in the vast majority of complainant villages, people accepted the individual titles only because they feared that they would otherwise lose all their farming land and rice fields, which were located within the communal lands. These communities are deeply concerned about the impacts of Directive 01BB on their customary tenure and their right to apply for communal title over their entire territory, including community and spirit forests and grazing, fallow and reserved land that are critical resources of the community. Indeed, villages have lost significant parts of these communal lands and resources to the HAGL concessions as described above and in detail in Annex 5.

34. In some villages, despite receiving titles under Directive 01BB, the company has taken titled household farming land and rice fields without payment of compensation. In other cases, households face difficulty in accessing their plots because they are now surrounded by HAGL's plantations. In yet other cases, the company has pressured households to sell their plots because it had already planted rubber trees on the land before the households had received titles. In these cases the company threatened to charge the landowners up to \$500 per tree if they did not sell their land to the company. The amount offered to "purchase" the plots was in all cases exceedingly inadequate but the households felt they had no choice but to acquiesce.

#### **4. Breaches of Cambodian and Vietnamese laws**

35. The ELCs held by HAGL's subsidiaries are in breach of a number of Cambodian laws and regulations. The Land Law stipulates that land concessions can only be granted over private property of the State (art 58); however HAGL's ELCs cover forest, classified in the law as public property of the State (art 15). The concessions have also blocked access to and destroyed ponds and streams used by local communities, which is prohibited by the same article of the Land Law.<sup>24</sup>

36. HAGL's land concessions cover significant tracts of land belonging to indigenous communities. The company's activities, including seizures of lands under cultivation and reserved for shifting cultivation, as well as destruction of forests, including spirit forests and burial grounds, have infringed upon the rights of the indigenous communities to continue to manage their community and immovable property according to their traditional customs (Land Law, art 23, 25). Implicit in this legal protection of indigenous communities' territory, is the right of communities to freely give or withhold their consent to any use of their land by outsiders. Consent was not sought, and indeed, no consultations with local residents took place as required by Sub-decree No. 146 on Economic Land Concessions (art 4).

37. The conduct of HAGL subsidiaries hinder the communities' peaceful tenure rights over their lands, an area not yet covered by cadastral index maps, and therefore constitute a penal offense under the Land Law (art 248). HAGL and its subsidiaries did not conduct environmental and social impact assessments prior to commencing activities. Impact assessments are required by a number of Cambodian laws and regulations, including Sub-decree No. 146 (art 4); the Law on Environmental Protection and Natural Resource

Management 1996 (art 6); Forestry Law 2002 for projects in or adjacent to forest land (art 4); and the Protected Areas Law 2008 for projects that impact on protected areas (art 44).

38. The felling of rare tree species, including *keranboung*, *neang noun*, *beng* and *thmong*,<sup>25</sup> as well as Dipterocarp tree species from which local communities extracted resin for traditional uses, violates the Forestry Law (art 29), unless it was authorized by the Ministry of Agriculture, Forestry and Fisheries.

39. Annex 4 contains a matrix detailing breaches of Cambodian law.

40. Under the Vietnamese Law on Investment (Article 51.2), Vietnamese companies that make foreign investments are required to “comply with” the “laws of host countries” where they invest. “Any entity that violates this law shall face disciplinary actions, administrative penalties, or criminal prosecution depending on nature and severity of the violations, and pay compensation for any damage caused” (Article 73.1). In multiple ways HAGL is in long-standing violation of this law because of its own conduct as well as the conduct of its controlled entities in Cambodia, which are in violation of a host of Cambodian laws and in breach of concession agreements signed with the Ministry of Agriculture, Forests and Fisheries.

41. We note that HAGL has publicly admitted its activities in Cambodia fail to follow local law. In documents related to its listing on London’s Professional Securities Market in 2011, HAGL stated: Certain of our existing projects are being developed without necessary government approvals, permits or licenses and development and operation of certain projects are not fully in compliance with applicable laws and regulations ... Pursuant to applicable laws and regulations, we may be subject to certain potential administrative liabilities and sanctions due to the lack of necessary approvals, such as fines, temporary or permanent suspension of construction or operations or compulsory termination of investment activities. In addition, the development and operation of some of our projects are not in compliance with the applicable laws and regulations, which may cause a material adverse impact on our businesses. [W]e have been advised ... with respect to legal matters in Cambodia, Laos and Thailand, that the relevant governmental authorities may still have the power to impose administrative sanctions upon us based on certain of our prior non-compliances.<sup>26</sup>

## **5. Failure to engage in dispute resolution in good faith and continuing harms to the complainants**

42. Since 2015, the complainants have engaged in good faith with HAGL as parties to the CAO-mediated dispute resolution process. At every stage of the process, the complainant communities have sought to reach a mutually-agreeable negotiated settlement. HAGL did not reciprocate this good faith. The company has continually reneged upon agreements made throughout the mediation process.

43. Under the joint statement dated 19 September 2015, also known as the “Siem Reap Agreement”, HAGL made a number of public commitments to the complainants. These included pledges to restore roads and bridges affected by HAGL’s operations. This has

<sup>25</sup> These species are listed as rare and valuable in Prakas no. 089 on Forest and Non-Timber Forest Products Prohibited from Harvesting (2005).

<sup>26</sup> HAGL Joint Stock Company, Confidential Circular Offering, 11 May 2011, [http://info.sgx.com/listprosp.nsf/5a8e36bd740e1bce48256604000bb31e/de143384a-be2783e482578990013d0b7/\\$FILE/OC%20BSI00796BSI073\\_N\\_May17\\_1245\\_Efinals.pdf](http://info.sgx.com/listprosp.nsf/5a8e36bd740e1bce48256604000bb31e/de143384a-be2783e482578990013d0b7/$FILE/OC%20BSI00796BSI073_N_May17_1245_Efinals.pdf).

not happened. Where repairs have been undertaken they have been substandard, and, in many cases, caused further harm to roads and bridges. As a consequence, many complainant villages have become increasingly isolated as their access roads are virtually impassible, especially during the rainy season.

44. HAGL also pledged to restore affected water sources including any depleted fish resources for the complainant communities. As noted above, this has not happened and the complainants continue to suffer the multiple effects of reduced access to their natural resources.

45. HAGL also agreed to:

A joint visit by the Parties and other stakeholders, including NGO advisors, CAO and local authorities to each of the eleven 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.

46. Neither land return nor appropriate compensation or any other of the complainant communities' demands have been met at the time of writing, despite ongoing engagement with the government authorities. HAGL has disputed the return of a number of demarcated areas but not provided alternative compensation. As such, the complainant communities remain deprived of critical sacred and agricultural land vital to their indigenous way of life and general physical and mental health, which constitutes a continuing human rights violation.

47. The complainants have held back from exercising their right to take further action against the company and have continued to endure ongoing violations of their legal rights based on the understanding that ultimately a settlement would be negotiated in good faith. Meanwhile, the company has continued to deplete water resources, cause other environmental harm, and deprived the complainants of their ability to maintain their cultural and religious practices at sacred sites that have been occupied and destroyed by the company.

48. HAGL then unilaterally withdrew from the process in January 2019.

49. The complainants deplore the harm that they have continued to experience at the hands of the company throughout this period.

## **5. Non-compliance with IFC policies and procedures**

50. IFC investments in TPBank and VPBank, approved in 2016 and 2017, respectively, and the subsequent financing that these IFC intermediary banks provided to HAGL, are subject to the IFC's 2012 Sustainability Framework, including its Policy and Performance Standards on Social and Environmental Sustainability.

## **TPBank**

51. IFC categorized its 2016 quasi-equity investment in TPBank as FI-2 according to IFC's Environmental and Social Sustainability Policy. The lower risk classification was justified by the assertion that "TPBank provides financial services mainly to SMEs, microlenders and limited number of corporate clients operating predominantly in medium risk sectors," although IFC noted that "the bank has also very limited exposures to higher risk sectors such as mining, gas and large construction businesses."<sup>27</sup> Some two years later, TPBank made a \$127 million dollar loan to HAGL for the purposes of financing the construction and development of rubber and sugarcane plantations – the very plantations that are the subject of a high-profile CAO complaint by thousands of indigenous people living in and around them. This is a strong indication that IFC mis-categorized this investment.

52. According to the Summary of Investment Information (SII) provided on IFC's Project Information Portal, "the Applicable Performance Requirements for this project are the IFC Exclusion List, the applicable National Laws and Regulations of Vietnam and in the case of project and long-term corporate finance the Performance Standards."<sup>28</sup>

53. Without access to the investment agreement, the complainants are unable to determine if these environmental and social (E&S) requirements were stipulated in the contract or if TPBank understood and expressed a willingness to implement them. What is clear from IFC's disclosure, however, is that TPBank lacked the capacity and systems to implement the requirements at the time of IFC's investment. According to the SII, TPBank did "not yet have a specific E&S policy or procedure in place to evaluate and address E&S risks," nor did it have a designated department or staff responsible for E&S Risk Management.<sup>29</sup> IFC states in the SII that, "the bank will be required to develop an ESMS and designate E&S staff prior to IFC commitment to ensure adequate screening and management."<sup>30</sup> IFC disbursed funds to TPBank some four months after the Board approved the project. This suggests that for IFC, the requirement to develop an ESMS is merely a box-ticking exercise, rather than a genuine effort to ensure that its financial intermediary clients are in fact willing and able to ensure that its sub-clients meet the Performance Standards.

54. All that IFC offers as a mitigation measure is that the client must develop an External Communications Mechanism to receive and review complaints from interested parties regarding the E&S risks and impacts of their operations, and that affected communities have "unrestricted access to the Compliance Advisor Ombudsman (CAO), the independent accountability mechanism for IFC."<sup>31</sup> Given TPBank's lack of disclosure of 1) its loan to HAGL and 2) its status as an IFC financial intermediary, affected communities would have no way of knowing that they could lodge a complaint with the bank (or the CAO), or indeed that they are entitled to the protections set out in the Performance Standards. In this case, the communities were only made aware of these financial relationships because of research conducted by Inclusive Development

<sup>27</sup> IFC Project Information Portal, "TPBank Quasi Equity" Summary of Investment Information, <<https://disclosures.ifc.org/#/projectDetail/SII/37920>>

<sup>28</sup> IFC Project Information Portal, "TPBank Quasi Equity" Summary of Investment Information, <<https://disclosures.ifc.org/#/projectDetail/SII/37920>>

<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

International utilizing costly specialized financial databases. In any case, a search of TPBank's website found that no such grievance mechanism exists. We also found no evidence of an E&S policy.

55. Following the investment, IFC's Sustainability Policy requires it to monitor and supervise TPBank's environmental and social performance. According to paragraph 45 of the policy, IFC's supervision should involve a periodic review of TPBank's process and results of environmental and social due diligence on TPBank's investments. Such supervision may include visits at the FI level, as well as to recipients of FI loans/investments, particularly high-risk subprojects. If shortcomings are identified, IFC is to help TPBank address them.

56. This supervision should have been amplified in 2018, when IFC proposed a new \$100 million senior loan to TPBank.<sup>32</sup> However, the SII for this new investment tells a different story. It states that, as "an existing client of IFC, TPBank has developed an ESMS and has so far been implementing it."<sup>33</sup> This public IFC statement was made some four months after TPBank made a \$123 million dollar long-term loan to HAGL to finance rubber plantations in Cambodia - the subject of an open CAO case, and a company that should never have passed a cursory screening against the Performance Standards.

### **VPBank**

57. IFC categorized its 2017 quasi-equity investment in VPBank as FI-2 under IFC's Environmental and Social Sustainability Policy. The lower risk classification was justified by the stated purpose of the investment, "to support the client in raising long-term funds for its lending program to micro, small and medium enterprises." IFC acknowledges that the bank's main activities include corporate finance and that the bank's existing portfolio "includes limited exposure to companies involved in business activities with potentially significant adverse environmental and social impacts."<sup>34</sup> Under the "Main Environmental & Social Risks of the Project" section of the SII, IFC states:

The key risks is (sic) related to the ability of the bank to identify and manage environmental and social risks associated with its lending activities, in particular lending to companies operating in sectors such as agriculture, energy production and distribution and real estate. **Additional E&S risks and impacts of the bank derive from the capacity and systems in place to manage these risks as well as reputational risks posed by legacy E&S issues associated with some of its existing agriculture and real estate portfolio clients.**<sup>35</sup> (emphasis added)

This statement suggests that IFC may have identified VPBank's exposure to HAGL during its portfolio review. This makes the FI-2 risk categorization even more inappropriate and irresponsible, particularly given the likelihood of a quick conversion of the ostensibly SME-targeted loan to equity. This project should have been categorized as FI-1 to ensure that IFC conducted an appropriate level of due diligence, supervision and capacity-building, commensurate with risk.

58. As noted above, in April 2018, HAGL disclosed that VPBank holds corporate bonds issued by HAGL worth trillions of Vietnamese *dong*. One of those HAGL bond issues was

<sup>32</sup> <https://disclosures.ifc.org/#/projectDetail/SII/41043>

<sup>33</sup> Ibid.

<sup>34</sup> IFC Project Information Portal, "VPBank Quasi-Equity," Summary of Investment Information, <  
<https://disclosures.ifc.org/#/projectDetail/SII/39020>>

<sup>35</sup> Ibid.

designed to fund, inter alia, “investment in the projects including rubber and palm oil plantations in Laos and Cambodia.” VPBank holds VND1.39 trillion (approximately \$60 million) of this bond issue, or 82% of the total value of the issue.<sup>36</sup> It is unclear from HAGL’s reporting when VPBank acquired these bonds. VP Bank is identified as a bondholder in previous HAGL annual reports, including 2016, so it is certain that the company was part of the bank’s pre-existing portfolio at the time of IFC’s review. We do not know, however, whether or not VPBank acquired more HAGL bonds following IFC’s equity investment.

59. According to the IFC Policy on Environmental and Social Sustainability (2012), during the appraisal process, “IFC reviews the existing portfolio and prospective business activities of its FI clients to identify activities where the FIs and IFC could be exposed to risks as a result of their investments, and defines requirements for managing these risks.” IFC is also required to review the implementation capacity of FIs as well as their ESMS, as required by Performance Standard 1.<sup>37</sup> The portfolio review should include *inter alia* the FI’s high risk exposures and exposure to projects under CAO investigation.<sup>38</sup> The review of the implementation capacity and ESMS of the FI should cover a number of aspects of the client’s system and capacity, including the “commitment of the client to undertake E&S risk management in line with IFC’s E&S requirements.”<sup>39</sup> Where gaps are identified, IFC is required to define E&S actions to address those gaps and to prepare and an E&S Action Plan, including a timeline for implementation. According to IFC’s procedures, “gaps in the ESMS procedures of FIs that are engaged in projects with either potentially significant E&S risks or risk exposure to IFC must be closed to ensure compliance with the applicable performance requirements before IFC Commitment or as a condition of IFC disbursement.”<sup>40</sup> Significant gaps in the E&S performance of existing clients must also be closed as condition of commitment or disbursement.<sup>41</sup>

60. IFC states in its SII that VPBank will “need to enhance its E&S capacity and upgrade its ESMS to cover extended requirements including application of the Performance Standards to higher risk transactions, and establishing an external communication mechanism. It is unclear what, if anything, IFC required VPBank to do to address the “legacy E&S issues associated with some of its existing agriculture and real estate portfolio clients,”<sup>42</sup> including HAGL.

61. While IFC’s Sustainability Policy specifies that IFC requirements regarding environmental and social risk management are only applicable to the portfolio of the FI that is originated from the time IFC became a shareholder or investor, there is nothing stopping IFC from requiring prospective equity clients to address significant legacy environmental and social issues in its pre-existing portfolio as a condition of IFC’s investment, particularly when these issues pose a reputational risk to the client, as IFC observed that they do. At the time that IFC was appraising the VPBank quasi-equity investment in early 2017, HAGL was effectively disengaged from the CAO dialogue process, citing its financial troubles. Had VPBank used its considerable leverage as a

<sup>36</sup> HAGL, Annual Report 2017, Pg. 111.

[http://www.hagl.com.vn/UserFiles/file/bctn%202017%20en/HAGL\\_AR2017\\_Eng\\_Pages.pdf](http://www.hagl.com.vn/UserFiles/file/bctn%202017%20en/HAGL_AR2017_Eng_Pages.pdf)

<sup>37</sup> IFC Policy on Environmental and Social Sustainability (2012), para 34.

<sup>38</sup> IFC-CESI Environmental and Social Review Procedures Manual (July 2014), Section 7: Financial Intermediary Investments: Early Review and Appraisal, para 3.4.1.

<sup>39</sup> Ibid, para 3.4.3.

<sup>40</sup> Ibid, para 3.4.4

<sup>41</sup> Ibid.

<sup>42</sup> VPBank Quasi-equity, Summary of Investment Information, Op cit.

bondholder at this time, HAGL may have been compelled to return to the table and implement critical remedial actions. IFC should have used its leverage as a prospective VPBank investor to urge the bank to do so, or it should have declined to make this investment.

### **HAGL Non-compliance with Performance Standards and Exclusion List**

62. The harms detailed in Section 2 of the present complaint, and previously documented in the February 2014 complaint, constitute gross violations of the Performance Standards, including PS 1 on Assessment and Management of Environmental and Social Risks and Impacts; PS2 on Labor and Working Conditions; PS3 on Resource Efficiency and Pollution Prevention; PS4 on Community Health, Safety and Security; PS5 on Land Acquisition and Involuntary Resettlement; PS6 on Biodiversity Conservation and Sustainable Management of Living Natural Resources; PS7 on Indigenous Peoples; and PS8 on Cultural Heritage.

63. HAGL's activities are also covered by the exclusion list, which the FI clients should have applied to deny the HAGL loan. The exclusion list includes commercial logging operations for use in primary tropical moist forest.<sup>43</sup> While HAGL's overt purpose was cultivation of rubber plantations, there is overwhelming evidence in the public domain of illegal logging activities, including of evergreen forest, taking place within HAGL's concessions.<sup>44</sup> See, for example, the satellite imagery contained in Annex 3. According to Global Witness:

Numerous sources stated that [Cambodian tycoon] Try Pheap signed a logging contract with HAGL subsidiary Heng Brother, a concession within which all the timber has now been cleared, including 2,000ha of forest belonging to one village alone. Under this contract, they explained, Heng Brother cleared the timber, while Try Pheap paid royalties to the Forest Administration, arranged for them to stamp the logs, and then organised for a local businessman to set up a sawmill inside the concession. The tycoon then transported the processed timber to Phnom Penh in trucks, each carrying 35 cubic metres (m<sup>3</sup>) of timber. Village elders estimated that 100m<sup>3</sup> of timber was trucked-out on a daily basis from the Heng Brother concession through this system.<sup>45</sup>

64. Through its bond purchases or loans, TPBank and VPBank enabled and profited from HAGL activities that are not only non-compliant with the Performance Standards and the Exclusion List, but are also illegal and may in fact amount to criminal conduct (see Annex 4). These activities have caused severe and potentially irreversible harm to thousands of affected indigenous people, along with the forests and ecosystems of Ratanakiri. The proceeds of these illegal and harmful activities flowed from HAGL to TPBank and VPBank in the form of interest, and then on to IFC in the form of dividends.

65. It is readily apparent that IFC has not complied with its policies and procedures in relation to these investments. IFC has failed to conduct appropriate due diligence and

<sup>43</sup> IFC Exclusion List,

[http://www.ifc.org/wps/wcm/connect/topics\\_ext\\_content/ifc\\_external\\_corporate\\_site/ifc+sustainability/sustainability+framework/sustainability+framework+-+2006/ifc+exclusion+list](http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/sustainability+framework/sustainability+framework+-+2006/ifc+exclusion+list)

<sup>44</sup> Global Witness, Rubber Barons, p. 19.

<sup>45</sup> Ibid.

failed to ensure through its own supervision that these IFC intermediaries have in place an adequate ESMS that ensures its environmental and social requirements are met.

## **6. Failure of IFC policy provisions to provide adequate level of protection for FI investments**

66. It is evident that the 2012 Sustainability Requirements for FI investments, even if they had been correctly applied, would fail to provide an adequate level of E&S protection in the case of the HAGL sub-project. The framework fails to ensure that FI subprojects ‘do no harm’. Its requirements for supervision, and particularly for identifying and monitoring problems at the sub-client level, continue to rely excessively on client reporting, and do not involve systematic monitoring of social and environmental impacts, particularly with respect to commercial banks. Procedures on remedial action when problems *are* identified leave too much discretion to IFC staff with competing demands and incentives. Combined with the complex nature of FI investments, the lack of disclosure that hinders external scrutiny, and the incentive structure at the IFC, the current policy remains highly problematic in terms of fulfilling the objective of the Sustainability Framework.

67. The lack of transparency about IFC investments in financial intermediary clients and their end use seriously compromises the accountability of the IFC and the World Bank Group. It effectively means the IFC, a publicly funded institution, operates under a shroud of secrecy with regard to over half of its portfolio.<sup>46</sup> With due regard to legitimate commercial and proprietary sensitivities, the scale is tipped too far on the side of client confidentiality and should be better balanced with the rights of affected persons to critical information about matters that have serious repercussions on their rights and interests. As the CAO recognised in its audit of third-party financial intermediaries, “potential complainants may not know about IFC’s relationship to the sub-client transaction – or about the CAO as an available resource mechanism.”<sup>47</sup>

68. According to its Policy on Disclosure of Information, the IFC does not disclose “financial, business, proprietary or other non-public information” provided by its client because “to do so would be contrary to the legitimate expectations of its client.”<sup>48</sup> However, by adopting the Sustainability Framework and projecting a corporate image of global leadership in environmental and social issues,<sup>49</sup> the IFC is creating a legitimate expectation among stakeholders that its investments, including their end use, do no harm. This case and others being examined by the CAO demonstrate that there is a dramatic failure by IFC to meet this expectation. While the policy and practice of non-disclosure continues, accountability at the IFC to its own social and environmental commitments will not occur. Clients seeking the reputational value of having IFC among its investors should agree to the disclosure of pertinent information to allow for a reasonable degree of public scrutiny of its actual environmental and social performance. At an absolute minimum, the Policy should require that IFC disclose the names of its higher risk sub-clients/projects

<sup>46</sup> CAO, Audit of a Sample of IFC Investments in Third-Party Financial Intermediaries, 2012, p. 8.

<sup>47</sup> CAO, Audit of a Sample of IFC Investments in Third-Party Financial Intermediaries, 2012, p. 8.

<sup>48</sup> IFC Policy on Disclosure of Information, para. 9.

<sup>49</sup> CAO, Audit of a Sample of IFC Investments in Third-Party Financial Intermediaries, 2012, p. 19.



and locations. It should also require disclosure of the FI client's E&S policy and environmental and social action plans.

69. One glaring omission in the Sustainability Framework is the absence of requirements to ensure effective remedy to people harmed by activities financed by the IFC. The 2012 Policy states:

IFC recognizes the responsibility of business to respect human rights, independently of the state duties to respect, protect, and fulfill human rights. This responsibility means to avoid infringing on the human rights of others and to address adverse human rights impacts business may cause or contribute to. Meeting this responsibility also means creating access to an effective grievance mechanism that can facilitate early indication of, and prompt remediation of various project-related grievances.

Yet, no corresponding requirements are placed on the IFC to ensure its clients, including its FI clients, remedy human rights violations or other breaches of the Performance Standards. This policy gap is critical for the people of Ratanikiri who have suffered severe losses and harms from an IFC investment and have no recourse to compel the responsible businesses to address the violations of their human rights.

## **6.0 Outcomes sought**

70. In order to repair the harm that has been done to the complainants as a result of HAGL's operations in Ratanakiri, and in accordance with their rights under Cambodian and international law, the complainants are seeking the following remedies:

71. All lands, wrongly taken by HAGL, must be returned to the affected communities. These include residential plots; rice fields; chamka/plantation land; community reserved land for shifting cultivation and next generation; community reserved land for resettlement in case of natural disaster); community forests; spirit forests, burial grounds and other sacred places; grazing land and mountains.

72. Affected communities will not provide a payment of any kind to HAGL for rubber trees already planted on land wrongly taken from them. Lands must be returned without any conditions adverse to the complainants.

73. Compensation must be provided at replacement cost<sup>50</sup> for losses of crops, structures, livestock and other chattels. Compensation must be provided for the income the complainants have lost since their crops, resin trees and other NTFPs were destroyed by the company and for the money they have spent making offerings to spirits to ask for forgiveness for the destruction of spirit forests and other sacred places.

74. Access roads that have been damaged must be restored.

<sup>50</sup> Replacement cost is defined as the market value of the assets plus transaction costs. In applying this method of valuation, depreciation of structures and assets should not be taken into account. Market value is defined as the value required to allow Affected Communities and persons to replace lost assets with assets of similar value. For those cultural and religious assets that cannot be assigned a cash value, culturally appropriate reparations must be provided in accordance with community demands.

75. All affected water sources and fisheries must be restored to their previous condition or replaced in kind.

76. High value and rare trees that have been destroyed should be replaced, including through a reforestation program that meets international standards.

77. The destructed of religious sites, including burial grounds and spirit forests, must be remediated through the provision of culturally appropriate ceremonies, according to the directions of community elders. Such ceremonies are vital for the communities to heal wounds which they feel have been inflicted upon their ancestors by not being able to properly protect their sacred areas.

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**Inclusive Development International (IDI)** is an international human rights organization working to make the international economic system more just and inclusive. Contact: David Pred, Executive Director, Tel: +1-828-505-4340, Email: [natalie@inclusivedevelopment.net](mailto:natalie@inclusivedevelopment.net), Address: 9 SW Pack Square, Suite 302, Asheville, NC, 28801, USA.

**Equitable Cambodia (EC)** is a Cambodian organization working to promote equitable development and the progressive realization of human rights in Cambodia through research, evidence-based advocacy, community empowerment and grassroots organizing. Contact: Mr. Eang Vuthy, Executive Director, Tel: +855-12-791700, Email: [vuthy@equitablecambodia.org](mailto:vuthy@equitablecambodia.org), Address: #5, Street 145, Village 3, Phsar Daem Thkov, Chamkarmorn, Phnom Penh, Cambodia.

**Highlanders Association (HA)** was created in 2001 at the request of the National Assembly of Ratanakiri Province to form an indigenous people's association to raise awareness about land rights and to explore opportunities for economic and cultural development. A women-led association, HA works to combat encroachment on indigenous lands, the erosion of indigenous culture and the exploitation of vital natural resources.

**Indigenous Rights Active Members (IRAM)** is an advocacy network in Cambodia that supports indigenous people in 15 provinces, including by providing legal awareness and facilitating community organizing.

## Annex 1: Village Characteristics

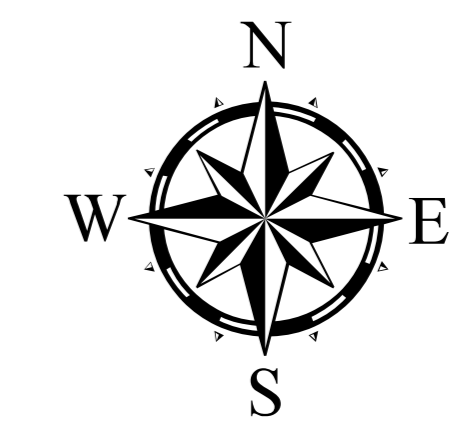
Village Name	Location	No. of HHs	Ethnic Group(s)	Main Livelihood Sources <sup>#</sup>	Land Tenure
<b>1. Inn</b>	Talao commune, Andoung Meas district	78	Kachok	Farming	<ul style="list-style-type: none"> <li>Lived in current location since 1993*</li> <li>No communal title (but regard community forest, spirit forest and grazing land as collectively owned)</li> <li>Approx. 40 HHs have receipts for farming plots and rice fields through D01BB</li> </ul>
<b>2. Kak</b>	Talao commune, Andoung Meas district	89	Kachok	Farming, raising livestock and NTFP	<ul style="list-style-type: none"> <li>Lived in current location since 1998</li> <li>No communal title but has begun application process</li> <li>HHs with cashew plantation plots close to the concession area have title through D01BB. (Do not want individual title but afraid would lose land.)</li> </ul>
<b>3. Kanat Thom</b>	Talao commune, Andoung Meas district	168	Kachok	Farming, raising livestock and NTFP	<ul style="list-style-type: none"> <li>Lived in current location since 2000</li> <li>No communal title but has begun process and recognized as indigenous community.</li> <li>Most HHs have title over farming plots through D01BB. (Do not want individual title but afraid would lose land.)</li> </ul>
<b>4. Kanong (also called Tanong)</b>	Talao commune, Andoung Meas district	80	Kachok (majority), Jarai, Tampoun and Khmer	Farming and raising livestock	<ul style="list-style-type: none"> <li>Lived in current location since 2004</li> <li>No communal title (regard burial ground, sacred pond and reserved land etc. as collectively owned but attempts to register reserved land was rejected)</li> <li>Some HHs have receipts for farming plots through D01BB. (Do not want individual title because it restricts them from practicing shifting cultivation as per their tradition, and they fear the soil will become unfertile.)</li> </ul>
<b>5. Kres</b>	Poey commune, O'Chum district	73	Kreung (Majority) and some Tampoun	Farming, hunting, raising livestock, weaving for tourists (women)	<ul style="list-style-type: none"> <li>Lived in current location since 1990</li> <li>Recognized as indigenous community and has communal title (regard all land as collectively owned)</li> </ul>

Village Name	Location	No. of HHs	Ethnic Group(s)	Main Livelihood Sources <sup>#</sup>	Land Tenure
<b>6. Malik</b>	Malik commune, Andoung Meas district	200	Tampoun (majority), Khmer, Jarai and Kachok	Farming	<ul style="list-style-type: none"> <li>Lived in current location since 1985</li> <li>No communal title (but regard community forest, reserved forest, spirit forest and burial ground as collectively owned)</li> <li>HHs have receipts for their farming plots through D01BB.</li> </ul>
<b>7. Mouy</b>	Nhang commune, Andoung Meas district	97	Jarai	Farming, fishing, NTFPs	<ul style="list-style-type: none"> <li>Lived in current location since 2000</li> <li>No communal title (has not started process but agreed to keep spirit forest, burial ground and communal forest as collective).</li> <li>HHs have receipts for rice fields and farming plots through D01BB.</li> </ul>
<b>8. Nay</b>	Nhang commune, Andoung Meas district	100	Kachok (majority), Khmer, Jarai, Tampoun, and Kreung	Farming, raising livestock, logging hunting	<ul style="list-style-type: none"> <li>Lived in current location since 1999</li> <li>No communal title (tried to register communal forest but rejected by district authorities because its inside a concession area).</li> <li>HHs have receipts for farming and residential plots through D01BB.</li> </ul>
<b>9. Peng</b>	Nhang commune, Andoung Meas district	64	Jarai (majority) and Khmer	Farming, raising livestock, hunting and collection of forest products	<ul style="list-style-type: none"> <li>Lived in current location since 1996</li> <li>No communal title (have not started process but residential land, spirit forest, burial ground regarded as collective).</li> <li>HHs have receipts to farming plots and rice fields through D01BB. Do not want individual title but afraid would lose land.</li> </ul>
<b>10. Talao</b>	Talao commune, Andoung Meas district	140	Lao (majority), Kachok, Jarai and Khmer	Farming, timber collection	<ul style="list-style-type: none"> <li>No communal title</li> <li>46 HHs have titles to rice field and farming plots through D01BB. Others have receipts from the commune chief.</li> </ul>
<b>11. Kam</b>	L'ak commune, O'Chum district	212	Kreung (majority), some Tampoun and Prao	Farming, hunting, raising livestock, fishing, weaving	<ul style="list-style-type: none"> <li>Lived in current location since 1989</li> <li>No communal title, but have started the process. Recognized as indigenous community in 2011 (forest, burial ground, spirit forest, bamboo forest and settlement area regarded as collectively owned)</li> <li>108 HHs received title to farming plots through D01BB</li> </ul>
<b>12. Mass</b>	Poey commune, O'Chum district	67	Kreung	Farming (rice and cashew) and raising livestock	<ul style="list-style-type: none"> <li>Lived in current location since 1994</li> <li>Some households received title to farm plots through D01BB</li> <li>No communal title (have not started process but regard all land except farm plots as collectively owned).</li> </ul>

<sup>#</sup> Listed are the main livelihood sources practiced traditionally prior to the confiscation of their lands and destruction of their forests. Many of these have been seriously impaired, or are under threat, as a result of the concessions.

<sup>\*</sup> Villagers from time to time move their homes to various locations within the area subject to their customary tenure system. Villages move for a range of reasons such as shifting cultivation, climate conditions, and illness and death in the community prompting relocation to move away from bad spirits. Recorded in the matrix is the year villagers settled in their current location. They have accessed, used and managed the area under their customary tenure system since the time of their ancestors. Displacement from ancestral lands may have occurred during the Pol Pot regime.

# COMPETING LAND CLAIMS IN ANDONG MEAS AND O CHUM DISTRICTS - RATANAKIRI



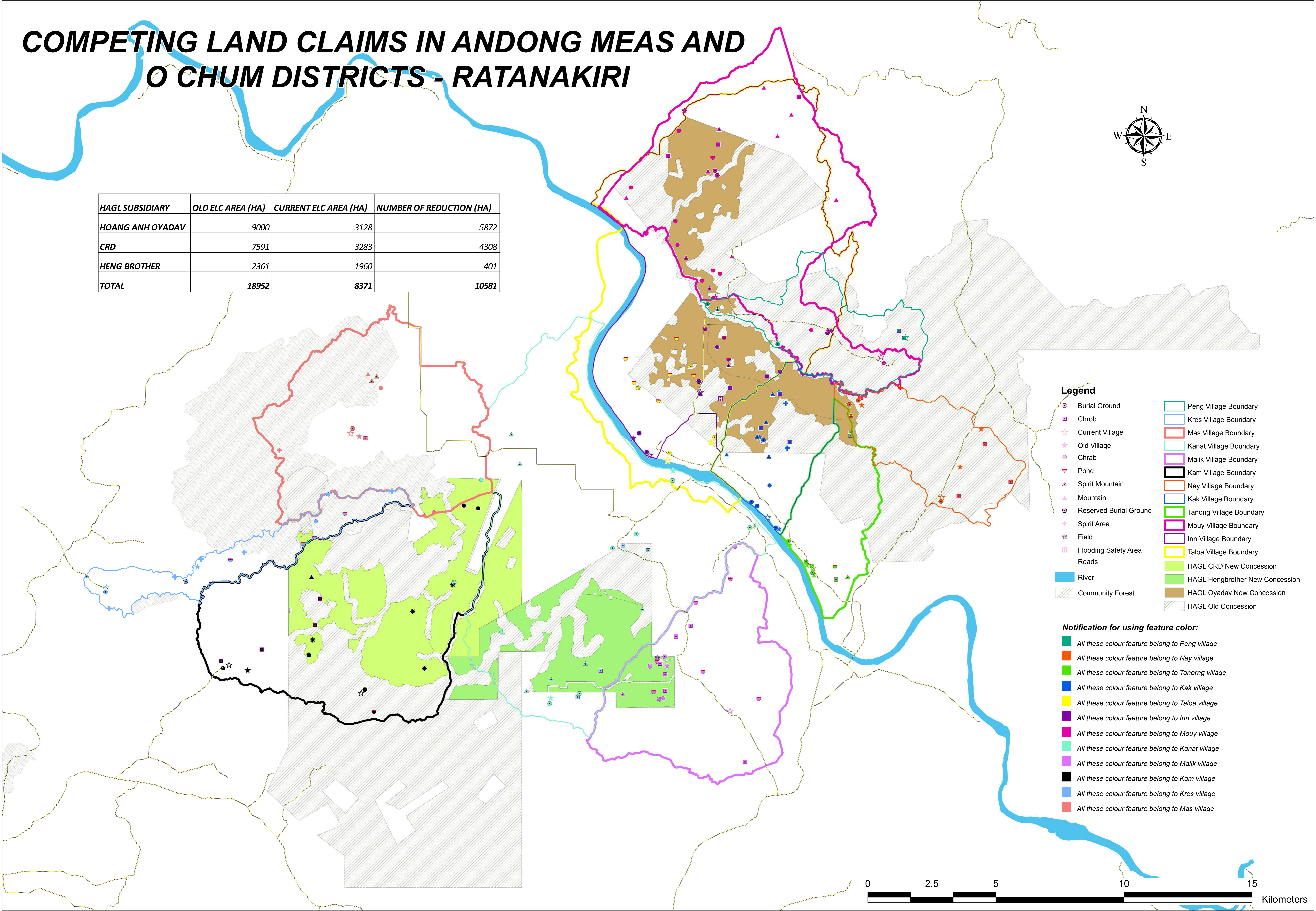
HAGL SUBSIDIARY	OLD ELC AREA (HA)	CURRENT ELC AREA (HA)	NUMBER OF REDUCTION (HA)
HOANG ANH OYADAV	9000	3128	5872
CRD	7591	3283	4308
HENG BROTHER	2361	1960	401
<b>TOTAL</b>	<b>18952</b>	<b>8371</b>	<b>10581</b>

## Legend

- Burial Ground
- Chrob
- Current Village
- Old Village
- Chrab
- Pond
- Spirit Mountain
- Mountain
- Reserved Burial Ground
- Spirit Area
- Field
- Flooding Safety Area
- Roads
- River
- Community Forest
- Peng Village Boundary
- Kres Village Boundary
- Mas Village Boundary
- Kanat Village Boundary
- Malik Village Boundary
- Kam Village Boundary
- Nay Village Boundary
- Kak Village Boundary
- Tanong Village Boundary
- Mouy Village Boundary
- Inn Village Boundary
- Taloa Village Boundary
- HAGL CRD New Concession
- HAGL Hengbrother New Concession
- HAGL Oyadav New Concession
- HAGL Old Concession

## Notification for using feature color:

- All these colour feature belong to Peng village
- All these colour feature belong to Nay village
- All these colour feature belong to Tanong village
- All these colour feature belong to Kak village
- All these colour feature belong to Taloa village
- All these colour feature belong to Inn village
- All these colour feature belong to Mouy village
- All these colour feature belong to Kanat village
- All these colour feature belong to Malik village
- All these colour feature belong to Kam village
- All these colour feature belong to Kres village
- All these colour feature belong to Mas village



# Comparison of landcover change within the HAGL concession boundaries

2009 and 2015: Rôtânôkiri, NE Cambodia.

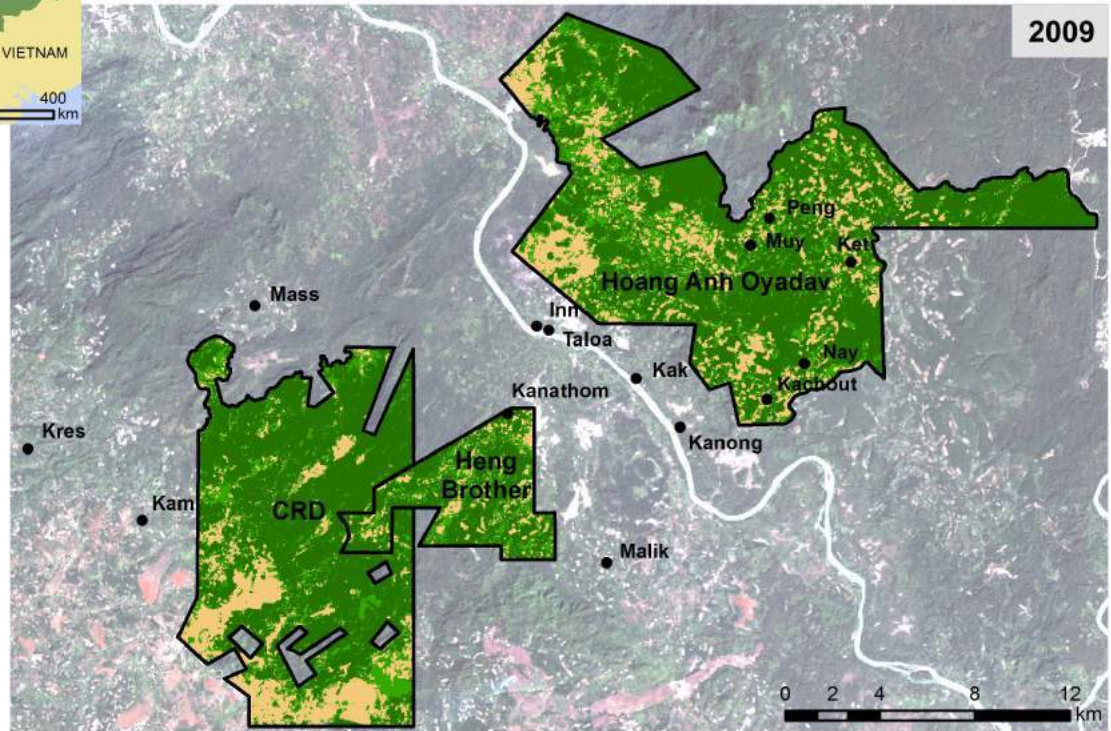
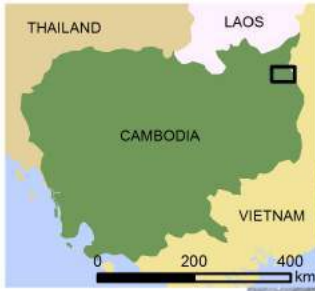
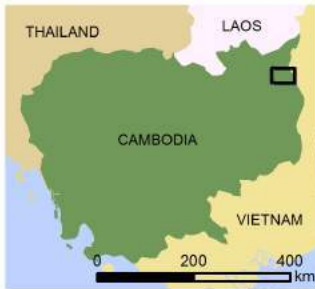


Image date: Jan 11th 2009

Landsat 7 imagery courtesy of NASA Goddard Space Flight Center and U.S. Geological Survey.



- Affected villages
- Closed canopy forest
- Clearance
- Inland water
- ELC boundaries
- Degraded forest
- Agriculture / urban

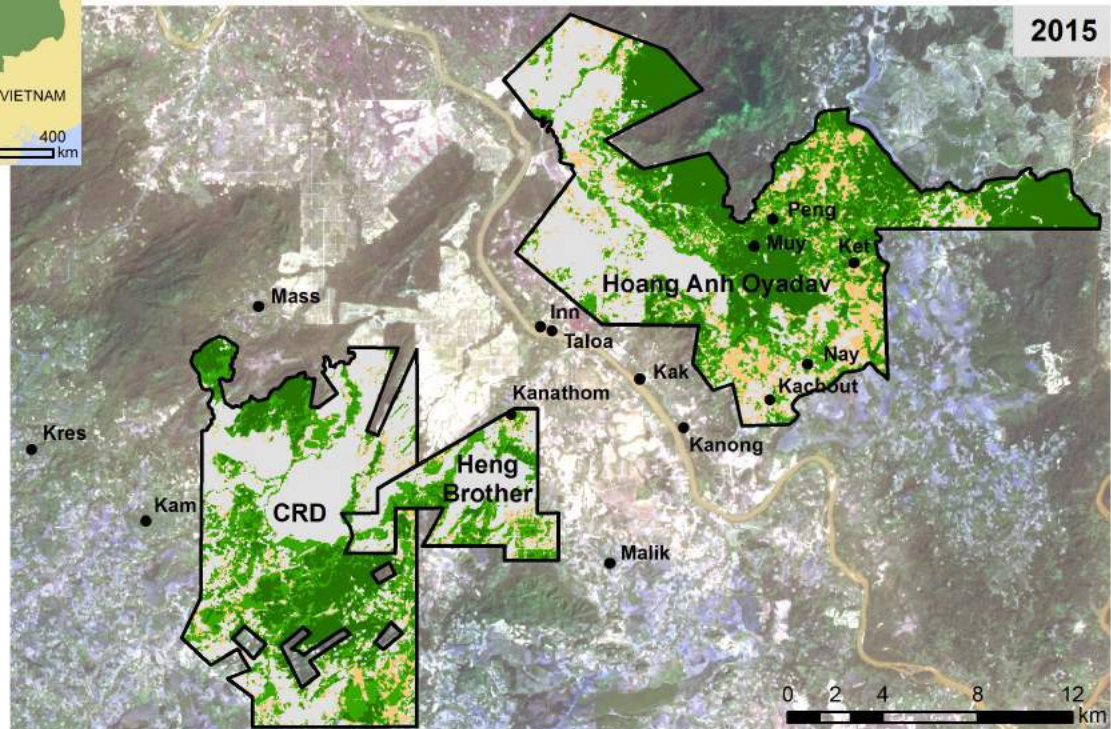


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Landsat 8 imagery courtesy of NASA Goddard Space Flight Center and U.S. Geological Survey.

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- Degraded forest
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## Annex 6: Breaches of Cambodian Law<sup>1</sup>

Law/ Sub-decree	Article	Breach
<p><b>Land Law 2001</b></p>	<p>23. An indigenous community is a group of people that resides in the territory of the Kingdom of Cambodia whose members manifest ethnic, social, cultural and economic unity and who practice a traditional lifestyle, and who cultivate the lands in their possession according to customary rules of collective use.</p> <p>Prior to their legal status being determined under a law on communities, the groups actually existing at present shall continue to manage their community and immovable property according to their traditional customs and shall be subject to the provisions of this law.</p> <p>25. The lands of indigenous communities are those lands where the said communities have established their residences and where they carry out traditional agriculture.</p> <p>The lands of indigenous communities include not only lands actually cultivated but also includes reserved land necessary for the shifting of cultivation which is required by the agricultural methods they currently practice and which are recognized by the administrative authorities.</p> <p>The measurement and demarcation of boundaries of immovable properties of indigenous communities shall be determined according to the factual situation as asserted by the communities, in agreement with their neighbors, and as prescribed by procedures in Title VI of this law and relevant sub-decrees."</p>	<p>The meaning of these articles is that until communal titling of the residential and traditional agriculture lands takes place, these lands are reserved to the communities to manage according to their customs etc. (Determining legal status under a law on communities referred to the fact that not until a community was granted legal status could it accept communal titles.) It was therefore illegal for HAGL to obtain ELCs that contained large amounts of the traditional agriculture lands of communities, and to clear and plant rubber and other crops on these lands.</p>

<sup>1</sup> This should not be considered an exhaustive list of breaches of Cambodian laws and regulations.

	<p>28. No authority outside the community may acquire any rights to immovable properties belonging to an indigenous community.</p>	
	<p>54. A land concession is conditional. It must comply with the provisions of this law that are provisions of public order.</p> <p>The concession document may further contain other specific clauses that have contractual force.</p>	<p>The three concession contracts that cover the land that is the subject of this complaint all say the following in their section 2: The two parties “within the period of three months after this contract is signed shall cut off the areas which are: Evergreen forest, semi-evergreen forest, deciduous forest,” “mountains”, “and the sites to be protected by other laws.” Other areas to be cut were “If you could not peacefully mediate with the legal land owner, such as where people are productive.”</p>



		<p>Large amounts of evergreen, semi-evergreen and deciduous forest were not cut out, and indeed were logged. Spirit mountains were not cut out and these were (a) mountains and therefore should have been cut out, and (b) by Forest Law articles 10.2 and 45 they were classified as Protection Forest and could not be put to commercial use by anyone, so these were “sites to be protected by other laws” and for this reason should have been cut out. Moreover there was no agreement by peaceful mediation resulting in the indigenous people allowing HAGL use of their extensive “productive” lands (agriculture, chop, forests for gathering subsistence materials etc.), therefore all these should also have been cut out but were not.</p> <p>HAGL therefore grossly violated its concession contracts, which constituted violations of article 54 of the Land Law.</p>
	<p>58. A land concession can only be granted on lands that are part of the private property of the State.</p> <p>The land concession may not violate...waterways, pools, ponds and water reserves used by the people in their daily lives.</p>	<p>The lands in question were reclassified from state public land to state private land. Land Law article 16 says "When State public properties lose their public interest use, they can be listed as private properties of the State by law on transferring of state public property to state private property." There was no such law at the time of reclassification in this case, nor is there now. In any event, the types of lands that were reclassified included three types that in article 6 of Subdecree 83 on Procedures of Registration of Lands of Indigenous Communities (2009) are identified as state public land: “Reserved land necessary for shifting cultivation,” “spiritual forest” and “burial ground forest land”. Also among the reclassified lands were forests, which Land Law article 15 identifies as state public land. Subdecree 129 on Rules and Procedures on Reclassification of State Public Properties and Public Entities (2006) article 6 says Constitution article 58 contains categories of state public lands. They include mountains and streams. Both mountains and streams were among the reclassified lands. All of the six categories of lands listed here were therefore included in the reclassifications that took place in this case. Taken together these six made up</p>

		<p>virtually all of the land to which HAGL obtained concessions. None of any of these types of properties had lost any of their “public interest use” at the time of reclassification. All were intact and were serving the public-interest purposes that caused them to be identified in a subdecree, a law and in the Constitution as state public lands. The reclassifications were a fig leaf ostensibly meant to comply with the legal requirement of state land having to be state private in order to provide it for concessions, but in fact these reclassifications were fraudulent. Based on them HAGL proceeded to severely damage if not to utterly destroy the state public properties that were reclassified.</p>
	<p>59. Land concession areas shall not be more than 10,000 hectares.</p> <p>...</p> <p>The issuance of land concession titles on several places relating to surface areas that are greater than those authorized by the first paragraph in favour of one specific person or several legal entities controlled by the same natural persons is prohibited.</p>	<p>As originally approved, HAGL’s three ELCs that are the subject of this complaint jointly covered 18,952 ha.</p>
	<p>248. The following acts are considered as infringements on ownership and other legal rights to immovable property and constitute penal offenses under this law:</p> <p>...</p> <p>- An act or conduct, in fact, that hinders the peaceful holder or possessor of immovable property in an area not yet covered by the cadastral index maps, the ownership rights of which have not yet been fully strengthened under this law;</p> <p>...</p>	<p>The complainant communities were collective peaceful holders of immovable property that was not covered by cadastral index maps when HAGL subsidiaries displaced them from large amounts of their lands. The displacement clearly hindered the communities’ peaceful tenure arrangements, an infringement constituting a penal offense.</p>
<p><b>Forestry Law 2002</b></p>	<p>4. ...</p> <p>Consistent with the Cambodian code of forest management and the Environmental Protection and Natural Resources Law, an Environmental and Social Impact Assessment shall be prepared for any major forest ecosystem related activity that may cause adverse impact on society and environment. Document of the Environmental and Social Impact Assessment shall be made available for public comment.</p>	<p>Global Witness (GW) states it has reviewed publicly and privately available documentation relating to HAGL’s subsidiaries, and was unable to find any evidence of an environmental impact assessment prior to operations commencing. (Rubber Barons p. 20). No such assessments were made available for public comment.</p>

<p>...</p> <p>24. Any individual, legal entity or community that intends to harvest timber products and byproducts for commercial purposes shall have a harvest permit issued by the Forest Administration.</p>	<p>According to GW: "Numerous sources stated that [Cambodian tycoon] Try Pheap signed a logging contract with HAGL subsidiary Heng Brothers, a concession within which all the timber has now been cleared, including 2,000ha of forest belonging to one village alone. Under this contract they explained, Heng Brothers cleared the timber, while Try Pheap paid royalties to the Forest Administration, arranged for them to stamp the logs, and then organized for a local businessman to set up a sawmill inside the concession. The tycoon then transported the processed timber to Phnom Penh in trucks, each carrying 35 cubic metres (m<sup>3</sup>) of timber. Village elders estimated that 100m<sup>3</sup> of timber was trucked-out on a daily basis from the Heng Brothers concession through this system." (Rubber Barons p. 19)</p>
<p>29. Unless authorized by Ministry of Agriculture, Forestry and Fisheries for specific exceptions such as weather emergency, trees removed for previously authorized road corridor building or other conditions proposed by the Forest Administration, the harvesting of the following timber products and byproducts anywhere within the Permanent Forest Estate shall be prohibited:</p> <ol style="list-style-type: none"> <li>1. Tree species whose diameter is smaller than the diameter allowed to harvest;</li> <li>2. Rare tree and vegetation species;</li> <li>3. Tree species that local communities have tapped to extract resin for traditional use; and</li> <li>4. Trees that yield high value resin.</li> </ol>	<p>Villagers report that rare and valuable tree species (listed in Prakas no. 089), including Kranhuong, Neang noun, Beng and Thnong, have been cleared. Many trees used by local communities to tap resin have also been cleared by HAGL subsidiaries.</p> <p>According to GW, "Villagers and a worker from one HAGL subsidiary confirmed that rare and specially protected tree species, including Neang Nuon (Burmese rosewood), Kranhuong (Siamese rosewood) and Beng were being cleared and processed through Try Pheap's depot." (Rubber Barons, p. 20)</p>
<p>40. For communities living within or near the Permanent Forest Reserve that do not have their land registered under community title, the State shall recognize and ensure their traditional user rights for the purpose of customary, religious and subsistence use as defined in this Law.</p> <p>45. Ministry of Agriculture, Forestry and Fisheries shall recognize the religious forest of local communities, living within or near the forest, as Protection Forest serving religious,</p>	<p>The activities of HAGL subsidiaries have seriously infringed upon the traditional user rights to forests of affected communities.</p> <p>Under these articles it was illegal for anyone to make commercial use of spirit forests of indigenous communities, yet HAGL obtained ELCs that contain a number of spirit</p>

	<p>cultural or conservation purposes. It is prohibited to harvest any spirit trees ...</p> <p>10.2. Protection Forests shall be maintained primarily for protection of the forest ecosystems and natural resources therein. Protection Forests consist of the following: - Reserve Forests for special ecosystems; - Research forests; - Forests for regulating water sources; - Forests for watershed protection; - Recreation forests; - Botanical gardens; and - Religious forests. Local communities have customary user rights to collect Forest Products &amp; By-products within the Protection Forest with minor impact of the forests.</p>	<p>forests, and destroyed certain of these forests. Now all spirit forests (also called “spirit mountains”) within HAGL’s ELCs are among the subjects of a CAO-mediated process to cut them out of the ELCs.</p> <p>HAGL cut down many spirit trees.</p>
<p><b>Protected Areas Law 2008</b></p>	<p>7. Protected areas are categorized as follows:</p> <ol style="list-style-type: none"> <li>1. National Park</li> <li>2. Wildlife Sanctuary</li> </ol> <p>...</p> <p>11. Issuing land title or permission to use land in this zone shall have prior agreement from the Ministry of Environment...</p> <p>44. To minimize adverse impacts on the environment and to ensure that management objectives of protected areas are satisfied, an Environmental and Social Impact Assessment shall be required on all proposals and investments for development within or adjacent to protected area boundary by the Ministry of Environment with the collaboration from relevant ministries and institutions.</p> <p>59. Offences of the following violations shall receive punishment by transaction fines or pay restoration damages and all evidence of the following offences committed in the protected area shall be confiscated as State property:</p> <ol style="list-style-type: none"> <li>1. Cut, uproot, fell, encroach and clear forest land, prune, strangle, collect, destroy natural resources</li> <li>2. Cause injury or damage to plants and wildlife</li> <li>3. Collect and transport natural resources products and by-products without permit.</li> </ol>	<p>At least three ELCs currently or previously held by HAGL appear to cover Virachey National Park and Lumphat Wildlife Sanctuary.</p> <p>It is unknown whether HAGL subsidiaries obtained permission from the Ministry of Environment.</p> <p>No evidence of an environmental and social impact assessment prior to commencing operations.</p> <p>GW satellite imagery reveals clearance of forested areas within HAGL ELCs inside Lumphat Wildlife Sanctuary.</p>

	<p>62. Those who shall be punished for natural resources offences of the fourth grade with evidence being confiscated as State property are any persons who commit the following offences:</p> <ol style="list-style-type: none"> <li>1. Fell trees, encroach and clear forest land, set forest fire, and bulldoze forestlands to claim ownership.</li> <li>2. Cut, transport and process all kinds of luxurious quality hard wood and Black wood.</li> <li>3. Bring in, or introduce into, store or discharge any type of pollutant or hazardous waste that can damage, or can cause damage to natural resources.</li> </ol>	HAGL subsidiaries may have engaged in these activities in protected areas.
<b>Law on Environmental Protection and Natural Resource Management 1996</b>	<p>6. An environmental impacts assessment shall be carried out on every project and activity of either private or public and shall be examined and evaluated by the Ministry of Environment before it is submitted to the Royal Government for decision.</p>	No evidence of an environmental impact assessment prior to the project commencing.
<b>Labor Code 1997</b>	<p>177.</p> <ol style="list-style-type: none"> <li>1. The allowable minimum age for wage employment is set at fifteen years.</li> <li>...</li> <li>3. ...the Ministry in Charge of Labor can, after having consulted with the Labor Advisory Committee, authorize the generation of occupation or employment for adolescents aged fifteen years and over on the condition that their health, safety, or morality is fully guaranteed and that they receive, in the corresponding area of activity, specific and adequate instruction or vocational training.</li> <li>4. Regardless of the provisions of paragraph 1 above, children from twelve to fifteen years of age can be hired to do light work provided that: <ol style="list-style-type: none"> <li>a) The work is not hazardous to their health or mental and physical development.</li> <li>b) The work will not affect their regular school attendance, their participation in guidance programs or vocational training approved by a competent authority.</li> </ol> </li> </ol>	At least one village reported that children, including under the age of 10, work on the rubber plantations.

	179. All employers must keep a register of children aged less than eighteen years old, whom they employ, indicating their date of birth. This register must be submitted to the Labor Inspector for visa, observation and waning.	It is unknown whether such a register exists.
<b>Sub-decree No. 146 (2005) on Economic Land Concessions</b>	<p>4. An economic land concession may be granted only on land that meets all of the following criteria:</p> <ol style="list-style-type: none"> <li>1. The land has been registered and classified as state private land...</li> <li>...</li> <li>3. Environmental and social impact assessments have been completed with respect to the land use and development plan for economic land concession projects.</li> <li>4. Land that has solutions for resettlement issues, in accordance with the existing legal framework and procedures. ...</li> <li>5. Land for which there have been public consultations, with regard to economic land concession projects or proposals, with territorial authorities and residents of the locality.</li> </ol>	<p>Criteria not met:</p> <p>The land was not registered prior to the issuing of ELCs.</p> <p>No evidence of an environmental and social impact assessment prior to the project commencing.</p> <p>No solution for land acquisition and resettlement in accordance with legal frameworks was in place. For example, the fact that the Land Law reserved to communities their residential and traditional agricultural lands was not addressed.</p> <p>No consultations with residents took place.</p>
<b>Law on Water Resource Management (2007)</b>	11. Every person has the right to use water resources for his/her vital human need including drinking, washing, bathing and other domestic purposes including watering for animal husbandry, fishing and the irrigation of domestic gardens and orchards, in a manner that will not affect other legal right of others ...	The maps attached to HAGL's concession agreements contain 200 meter wide corridors encasing all streams, showing that these streams were outside of the concessions. The streams therefore were and are state property that were to be available for general public use. HAGL extensively damaged these streams and therefore violated this article.

# A HUMAN RIGHTS IMPACT ASSESSMENT



## HOANG ANH GIA LAI ECONOMIC LAND CONCESSIONS IN RATANAKIRI, CAMBODIA





**A Human Rights  
Impact Assessment  
of  
Hoang Anh Gia Lai's  
Economic Land Concessions  
in Ratanakiri, Cambodia**



**អង្គការ សមធម៌កម្ពុជា**  
**equitable cambodia**



**inclusive  
development  
international**

A Human Rights Impact Assessment of Hoang Anh Gia Lai's Economic Land Concessions  
in Ratanakiri, Cambodia

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Equitable Cambodia (EC) is a non-governmental organization based in Cambodia. EC works to transform the national development model into one that respects, protects and progressively fulfills the human rights of the Cambodian people. More information about Equitable Cambodia is available at [www.equitablecambodia.org](http://www.equitablecambodia.org)

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# Executive Summary

This report contains the findings of a human rights impact assessment of four economic land concessions (ELCs) in Ratanakiri province, Cambodia, which are owned by Vietnamese company Hoang Anh Gia Lai (HAGL) through several subsidiaries. HAGL is one of Vietnam's largest private companies and one of the largest concession holders in Ratanakiri. Its agribusiness operations are primarily for the cultivation of rubber plantations. Communities living in close proximity to these concessions have complained for several years of experiencing negative impacts from the company's operations.

Equitable Cambodia and Inclusive Development International undertook this human rights impact assessment in order to assist HAGL, its investors—including Credit Suisse, Deutsche Bank, Dragon Capital Group and the International Finance Corporation—and the Cambodian and Vietnamese governments in meeting their human rights obligations and responsibilities. By documenting the material losses and impacts caused by HAGL's business activities, this report seeks to provide clarity with regard to the precise human rights implications of the concessions, help the duty-bearers to provide full and effective remedies to those impacted, and ensure that further adverse impacts are avoided.

Research was conducted in eighteen villages, which are situated inside or near the boundary of the concessions, which have been affected or are likely to be affected by HAGL's agribusiness operations. The majority of affected people belong to ethnic minority groups—including Kachok, Jarai, Kreung and Tampuon, each with its own language—and identify as indigenous peoples, while some affected people are ethnic Khmer. The data was collected during four trips to Ratanakiri between November 2013 and March 2014 through a range of tools including key informant interviews, participatory community mapping, focus group discussions, including separate women focus groups, and household interviews. In August 2014, the research team visited each village to verify the findings with the communities.

This assessment finds that there have been and will foreseeably be serious adverse impacts on the enjoyment of a range of human rights. No opportunity was provided for the participation of affected communities in decision-making, and in most cases, no notice or information was provided prior to the company commencing operations. No effort was made to seek the free prior and informed consent (FPIC) of indigenous communities, despite the serious and direct effects on their lands, territories and natural resources. Threats and intimidation have precluded the possibility of free expression of opposition to the project. Both the failure to seek FPIC and the confiscation of lands and destruction of forest resources within the communities' customary territories amount to a violation of their right to self-determination.

The confiscation of lands and destruction of forests and other productive resources has resulted in a retrogression in the enjoyment of the right to an adequate standard of living of many affected people. It has meant a loss of sovereignty over their food and livelihood system, which has not been significantly mitigated through employment opportunities on the plantations. In some villages, people have experienced a retrogression in the enjoyment of the right to health, especially due to the reduction in quality of food and the pollution of water sources. Beneficiaries of HAGL's medical program, however, have experienced some positive health impacts.

The confiscation and destruction of spirit forests, burial grounds, forests and reserved cultivation lands have violated the right of communities to practice their cultural and spiritual traditions. The desecration of sacred sites has impeded the ability of communities to hold traditional ceremonies, and the destruction or loss of access to forests and pollution of streams has inhibited traditional activities such as resin tapping, hunting and fishing. The loss of reserved land is also affecting the communities' practice of their traditional form of

shifting cultivation.

Affected communities have been unable to access effective remedies for human rights violations. Complaints to local authorities and the company have often been ignored or met with threats. In some cases, the company has provided compensation for household losses deemed inadequate by the households, who primarily want their land returned. No compensation at all has been provided for communal losses, despite the communities' appeal for the return of their collective territory. Many affected people have not complained, despite their serious grievances, mainly due to fear of retribution and a lack of information.

The data and findings in this report should be used to develop a comprehensive remediation plan that ensures full restitution for losses and human rights violations with full participation of affected communities.

The findings of this report refute the prevailing assertions that investment in agriculture in the form of large-scale agribusiness reduces poverty of local populations such as those in Ratanakiri. Rather, they suggest that the presence of agro-industrial plantations can have the opposite effect among local populations that have some or all of the following characteristics: a customary socio-political organization, including collective land tenure and natural resource management systems; a reliance on land and natural resources for their food and livelihood system and the realization of their economic, social and cultural rights; limited integration into the cash economy; marginalization from decision-making processes; and the experience of systematic *de jure* and/or *de facto* discrimination. Set within a national context of weak rule of law, systemic corruption and other poor governance factors, the likelihood of achieving positive impacts on poverty and living standards of such populations is even more remote.

The experience of the villagers interviewed for this report suggests that the introduction of large-scale agribusiness into such settings can reduce local food security and sovereignty, shrink existing livelihoods while failing to provide appropriate and effective alternatives, and bring about a host of other damaging repercussions on the well-being and human rights of local populations. This effect is not mitigated by the payment of cash compensation, nor by acts of corporate social responsibility such as the provision of small-scale infrastructure, food and intermittent health services. Importantly, the harms were not significantly mitigated by employment opportunities on the plantations. As the current UN Special Rapporteur on the situation of human rights in Cambodia, Professor Subedi, wrote in his September 2012 report to the Human Rights Council:

[T]hroughout my analysis, I struggled to fully comprehend the benefits of many land concessions that the Government has granted. In general, it is not clear to what extent the people of Cambodia have actually benefited from land concessions [...].<sup>1</sup>

The data underscores the urgency of a new development model—in Cambodia's agriculture sector and more broadly—that puts local people at the front and center; leverages and builds upon local systems, knowledge, capacity and opportunities; and fully respects the human rights of local populations.

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<sup>1</sup> UN Doc., A/HRC/21/63/Add.1 (24 September 2012), page 2.

# Recommendations

The governments of Cambodia and Vietnam, HAGL, and its investors all bear a degree of responsibility, of varying natures, to ensure remedies for the human rights violations suffered by the individuals and communities affected by HAGL's operations. These actors also have a responsibility to take steps to prevent further human rights violations. The data and assessment of violations of both human rights obligations and Cambodian law provided in this report should be used to inform the development of a comprehensive remediation plan that ensures restitution, with full participation of affected communities. These recommendations to each actor correspond to their respective human rights obligations and responsibilities as set out in Chapter 2 of this report.

## To the Government of Cambodia:

- Bring concessions into conformity with national law, including by ensuring that:
  - HAGL concession areas do not overlap with the lands of indigenous communities or other land held by peaceful possessors;
  - HAGL concessions do not cover State public property, including State forests;
  - HAGL, as a single legal entity, does not control more than 10,000 hectares through concession agreements;
  - Environmental and social impact assessments are completed and disclosed to affected communities and their representatives;
  - HAGL complies with prohibitions on logging rare tree species, resin trees and spirit forests.
- Ensure effective remedies for human rights violations, including by encouraging and facilitating dialogue between HAGL and the communities through the CAO dispute resolution process, aimed at achieving full restitution for affected people. The government's role should include guaranteeing a secure and safe environment in which community representatives are able to freely express their views, describe their experiences and state their desired outcomes.
- Institute measures to protect against any future human rights violations by HAGL or other third parties, including by conferring security of tenure to all affected communities in a manner that respects customary tenure arrangements over their territory.

## To the Government of Vietnam:

- Institute measures to regulate HAGL's activities in Cambodia and elsewhere. Regulations should require HAGL and other businesses domiciled in Vietnam to conduct due diligence in relation to human rights impacts of their operations in other countries and to redress any violations caused.

## **To Hoang Anh Gia Lai:**

- Immediately cease all activities that are causing adverse impacts to local communities or households, including:
  - Forest clearance that destroys access to natural food and livelihood resources;
  - Confiscation or encroachment of community land, including by planting on disputed lands, or the placing of any form of pressure on households to sell their land;
  - Destruction of spirit forests and other sacred places;
  - Contamination of streams with any type of chemicals;
  - Over-exploitation of fish and other resources;
  - Any threatening or intimidating behavior towards local communities.
- Ensure full redress of human rights violations caused, by engaging in good faith dialogue with all affected communities in a grievance redress process that results in a set of agreed measures that will achieve full restitution and other mutual benefits. Agreed measures should also ensure that all concessions are brought into conformity with national laws and terms of the concession agreements. Thereafter ensure the full and prompt implementation of agreed measures by all subsidiaries.

## **To HAGL's investors, including the IFC, Dragon Capital, Deutsche Bank and Credit Suisse:**

- Use all means and leverage available to ensure that HAGL engages in good faith dialogue with affected communities with the aim of fully redressing human rights violations.
- If HAGL does not demonstrate good faith in ensuring remedies for human rights violations, or has failed to agree on or implement measures to achieve redress in a reasonable time period, divest from the company.



# Introduction

The Cambodian province of Ratanakiri is at once a remote, sleepy wilderness and an important geographic nexus of three rapidly developing countries. Sparsely populated, Ratanakiri is home to eight ethnic minority highlander groups, each of whom have maintained many aspects of their distinct traditions, cultural identity and ways of life through Cambodia's turbulent history.<sup>1</sup> A unifying feature of these groups is their strong connection with and reliance upon the surrounding natural resources for their socio-economic and spiritual well-being. Also distinguishing them from Cambodia's Khmer ethnic majority is their customary system of collective land and resource tenure that governs each village's territory.

Linking Cambodia's northeast to Vietnam and Laos, Ratanakiri is today a hub of cross-border economic activity within the tripartite Development Triangle.<sup>2</sup> Logging, often illicit, dominates trade, with some estimating that tens or even hundreds of thousands of cubic meters of timber have been trucked into Vietnam over the past year.<sup>3</sup> Forest clear-felling is frequently justified as necessary for conversion to industrial plantations and occurs behind a thin veil of legitimacy on land granted to companies by the Cambodian government through concessions, usually for between 70-99 year durations. According to publicly available information, approximately 15 percent of Ratanakiri's landmass is subject to economic land concessions (ELCs),<sup>4</sup> predominantly for rubber plantations, which thrive in the area's red volcanic soils.<sup>5</sup> Intensive logging and cultivation of industrial plantations over the past two decades have visibly transformed the landscape: the dense old-growth and secondary evergreen and tropical forests that once covered much of the province's 12,000 km<sup>2</sup> surface area are in rapid decline. As the forests disappear, the once rich array of wildlife, including the yellow-cheeked gibbon, the gaur, the giant ibis and the Asian elephant are increasingly endangered. This immense loss of natural resources and fauna has had devastating impacts on Ratanakiri's indigenous peoples.

This report contains the findings of a human rights impact assessment of four ELCs in Ratanakiri owned by Vietnamese company, Hoang Anh Gia Lai (HAGL),<sup>6</sup> through several subsidiaries. There are at least three other ELCs in the province that were previously owned by HAGL, but for which current ownership status is unable to be confirmed. In total, these seven concessions cover a non-contiguous area of more than 50,000 hectares, making HAGL one of the largest – if not the largest – single beneficiary of ELCs in Ratanakiri (see Table 1). HAGL's concessions are primarily for the cultivation of rubber plantations but also

1 Ratanakiri's total population was 150,466 in 2008 (official census data), with over half belonging to an ethnic minority (non-ethnic Khmer) group. Moul Phath and Seng Sovathana (2012) 'Country Technical Note on Indigenous People's Issues: Kingdom of Cambodia,' IFAD and AIPP, Table 1, showing populations of Tampoun, Kreung, Jarai, Brao, Kavet, Kachok, Lun and Phnong residing in Ratanakiri.

2 The governments of Cambodia, Laos and Vietnam formed the "Development Triangle" in 2004, approving a master plan for socio-economic cooperation in the areas of, inter alia, transport, trade, electricity and tourism in several bordering provinces in each country. See Nguyen Binh Giang (2012) 'Cambodia-Laos-Vietnam Development Triangle: A View from Vietnam' in *Five Triangle Areas in The Greater Mekong Subregion*, edited by Masami Ishida, BRC Research Report No. 11, Bangkok Research Center, IDE-JETRO, Bangkok, Thailand.

3 Communications with confidential source.

4 This figure is an estimate based on information available on the Open Development Cambodia (ODC) website. ODC lists 26 ELCs covering a total of almost 170,000 hectares, constituting approximately 15 percent of Ratanakiri's total landmass of 1.11 million hectares. Mining licenses listed on ODC cover a total of 156,000 hectares. There may be other concessions that are not publicly listed. It is also possible that some concession areas overlap and that some of the listed concessions are not active. (See, <http://www.opendevdevelopmentcambodia.net/company-profiles/economic-land-concessions/>)

5 Jeff Vize and Manfred Hornung (2013) 'Indigenous Peoples and Land Titling in Cambodia: A Study of Six Villages,' p. 5. Paper prepared for presentation at the 2013 Annual World Bank Conference on Land and Poverty.

6 HAGL is one of Vietnam's largest private companies. As of March 2013, the company was worth US\$258 million. (Global Witness (2013), *Rubber Barons*, endnote 81, referencing Ho Chi Minh Stock Exchange.)

for other crops including oil palm.

Research was conducted in eighteen villages situated inside or near the boundary of the concessions known to be owned by HAGL, and which have been affected or are likely to be affected by HAGL's agribusiness operations.<sup>7</sup> This report provides an assessment of the human rights impacts on thirteen of these villages that have already been directly affected and the anticipated impacts on five villages whose residents expect to be affected in the near future.

The majority of affected people belong to ethnic minority groups,<sup>8</sup> including Kachok, Jarai, Kreung and Tampuan, each with its own language, and identify as indigenous peoples (see Box 1), while some affected people are ethnic Khmer. Some of the affected villages consist entirely of one ethnic group, and others contain a mix of ethnicities, both indigenous and non-indigenous (See Annex 1). The villagers are traditionally animist, and their culture, livelihoods and identities are intimately tied to the land, forests and other natural resources of the region. The communities practice shifting cultivation and rely heavily on forest resources for their livelihoods.

In a meeting between NGOs, including Equitable Cambodia and Inclusive Development International, and HAGL representatives held in Phnom Penh on 13 February 2014, HAGL CEO Mr. Nguyen Van Su stated: "During the time HAGL has implemented business activities [in Ratanakiri], if we made mistakes, we have to correct them." This message was reiterated by the company's Director of Communications, Mr. Nguyen Tan Anh, in a meeting with affected community representatives and NGOs on 6 August 2014. Mr. Tan Anh further stated that HAGL's business activities in Cambodia "not only aim at implementing its business function but also focus on fulfilling the social responsibilities and obligations toward the communities in project areas."

Equitable Cambodia and Inclusive Development International undertook this human rights impact assessment in order to assist HAGL, its investors, and the Cambodian and Vietnamese governments in meeting their human rights obligations and responsibilities. By documenting the material losses and human rights impacts caused by HAGL's business activities, this report seeks to help these duty-bearers to provide full and effective remedies to those impacted and to ensure that further adverse impacts will be avoided. While Equitable Cambodia and Inclusive Development International are working to support the affected communities to secure their right to redress, this assessment was conducted impartially through the use of empirical research methodologies.

The report is set out as follows: Chapter 2 describes the assessment framework used in the report, the human rights assessed and the corresponding human rights duties of State and non-State actors. Chapter 3 explains the research methodology used to gather qualitative and quantitative data. Chapter 4 assesses the impact on the right to self-determination, focusing first on the extent to which a process of seeking free prior and informed consent was undertaken, and then on the extent of losses of lands, territories and natural resources and attendant deprivations of the communities' means of subsistence. Chapters 5 to 7 assess impacts on the right to an adequate standard of living, including food and livelihoods, the right to health, and the right to practice cultural and spiritual traditions. Chapter 8 describes attempts by affected communities to access remedies and the responses they received. Chapter 9 contains conclusions and recommendations for each responsible actor.

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<sup>7</sup> There may be other villages affected by HAGL's concessions.

<sup>8</sup> More than 85% of Cambodia's population is ethnic Khmer.

## Box 1: Indigenous Peoples of Ratanakiri

Concentrated in the highlands of Ratanakiri are some 80,000 members of eight ethnic minority groups.<sup>9</sup> These groups are believed to be among the most ancient of Cambodia's inhabitants, having settled in the area at least 2,000 years ago.<sup>10</sup> Through much of the country's history, indigenous communities have faced human rights abuses, including slave trade exploitation, forced relocation and pressures to assimilate, and they continue to face discrimination vis-à-vis the dominant Khmer society.<sup>11</sup> During the Khmer Rouge period, indigenous communities were forced to work on lowland rice fields with the rest of the population, and many fled to Vietnam and Lao PDR in 1979.<sup>12</sup> After the fall of the Khmer Rouge, most villagers returned to their ancestral land and many resumed their traditional highland agricultural systems.

The highlanders rely on their natural surroundings for survival, including resources from agricultural land, forests and water. Their livelihoods are typically based on shifting cultivation, the collection of timber and non-timber forest products (NTFPs), including resin tapping,<sup>13</sup> hunting, and raising livestock. Customary laws determine use and management of land and natural resources, and include taboos on certain animals, trees, and sacred sites. These rules and practices support the sustainable use of natural resources.<sup>14</sup> The communities' relationship with the land and environment is characterized by a profound spiritual connection. According to Hean Sokhhom and Tiann Monie the "religion and whole mode of existence for centuries" of the indigenous Cambodians "has been founded on their relationship with [the] environment."<sup>15</sup>



9 Phath and Sovathana, op. cit.

10 Jeremy Ironside (2012), *Thinking outside the Fence: Exploring Culture/Land Relationships: A Case Study of Ratanakiri Province Cambodia*. Thesis submitted for the degree of Doctor of Philosophy at the University of Otago Dunedin, New Zealand, p. 118, citing J. White (1995) *Of Spirits and Services: Health and healing amongst the hill tribes of Ratanakiri Province, Cambodia*. Ban Lung: Health Unlimited Integrated Health Programme.

11 See, for example, ADB (2002) 'Indigenous People/ Ethnic Minorities and Poverty Reduction, Cambodia,' pp. 6-7; Ian Baird (2011) 'The Construction of "Indigenous Peoples" in *Alterities in Asia: Reflections on identity and regionalism*, (Leong Yew, ed.), pp. 160-161; and Indigenous People NGO Network (2010) *The Rights of Indigenous Peoples in Cambodia*, submitted to the United Nations Committee on the Elimination of Racial Discrimination (76th Session 2010).

12 Hean Sokhhom and Tiann Monie (2002) 'Indigenous Peoples/Ethnic Minorities and Poverty Reduction: Cambodia,' ADB, Manila, p. 7.

13 Liquid resin from Dipterocarp tree species is harvested across Cambodia and used for lighting, paints and varnish (Global Witness, op cit., p. 19, citing Tom Evans, et al., 'A study of resin-tapping and livelihoods in southern Mondulakiri, Cambodia, with implications for conservation and forest management,' Wildlife Conservation Society, 2003, p. 6.)

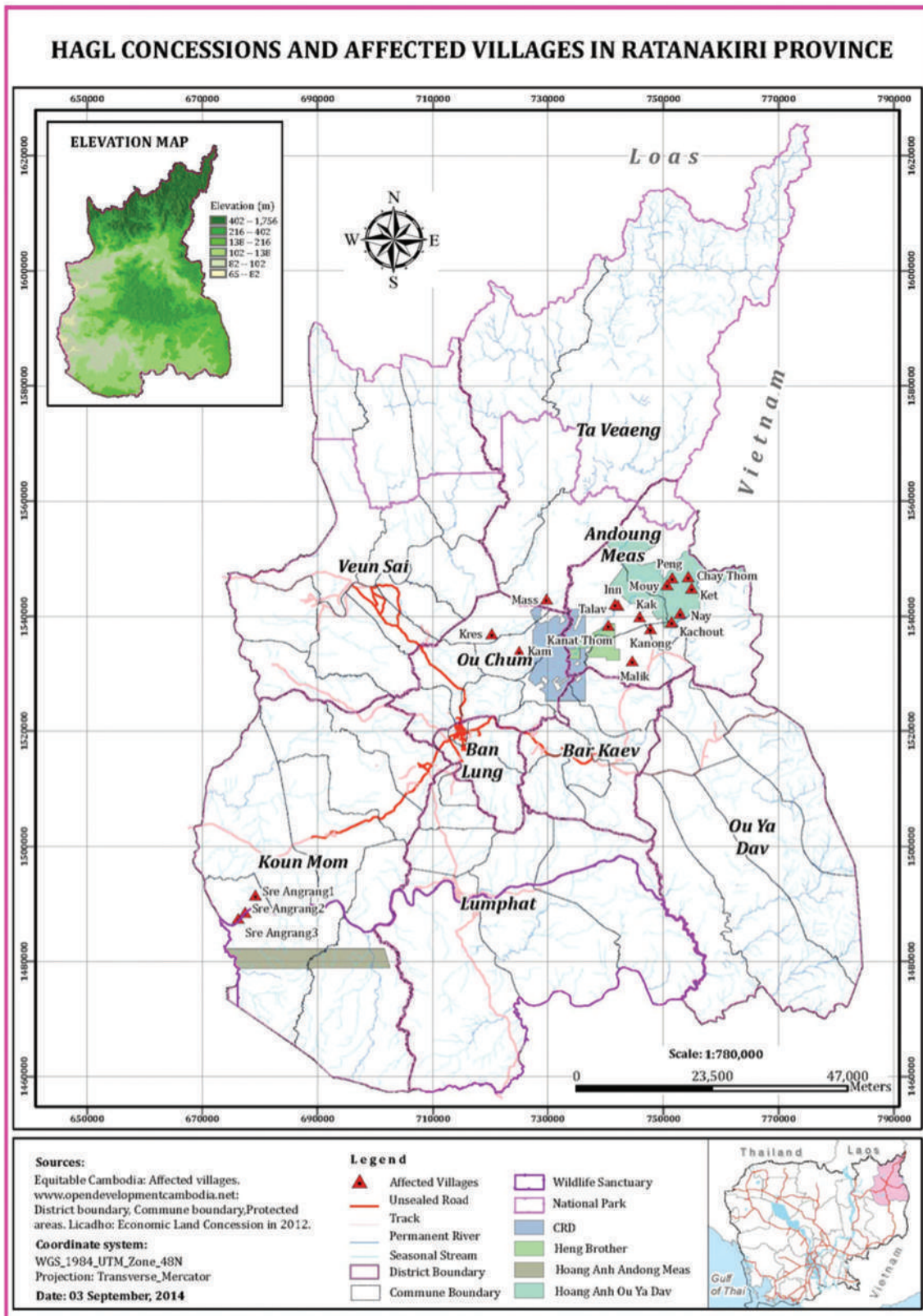
14 Phath and Sovathana, op. cit., p. 5.

15 Sokhhom and Monie op. cit. The authors note that the generic and vague term 'indigenous' "is used to designate a mosaic of groups that are both heterogeneous—given some aspects of their material and social life—and alike, in the sense that most of them belong to the same cultural substratum, which is usually called Proto-Indo-Chinese civilization." (p. 3.)

Table 1: HAGL Concessions

	Concessionaire	District	Size (ha)	Contract date	Duration of Contract	Affected Villages (already impacted)	Affected villages (anticipated impacts)
OWNERSHIP BY HAGL CONFIRMED	<b>Heng Brother Co. Ltd.</b> Director: Nguyen Tuan Linh	Andong Meas	2361	31 Jul 2009	70 years	•Kanat Thom •Malik	
	<b>CRD Co. Ltd.</b> Representative: Nguyen Van Minh	O'Chum, Andong Meas, Bor Keo	7591	25 Mar 2011	70 years	•Kresh •Kam •Mass	
	<b>Hoang Anh Oyadav Co. Ltd.</b> Director or representative unknown	Andong Meas	9000 original size, later reduced to 5305	22 Sep 2011	Duration unknown	•Inn •Kak •Muy •Peng •Talao	•Kachout Leur •Kanong •Ket •Nay •Chay
	<b>Hoang Anh Andong Meas (Lumphat)</b> Representative: Nguyen Van Thu	Koun Mom	9470	17 Nov 2011	70 years	•Srae Angkrong 1 •Srae Angkrong 2 •Srae Angkrong 3	
OWNERSHIP STATUS UNCLEAR	<b>Hoang Anh Lumphat</b> Previously owned by HAGL, but company claims it was sold to Daun Penh Agrico.	Lumphat Wildlife Sanctuary	9173	9 Feb 2012	70 years	•Srae Chhouk •Thmey	•Srae Pok Thom
	<b>Hoang Anh Andong Meas (Virachey)</b> Previously owned by HAGL but company claims concession was cancelled.	Ta Veaeng, Virachey National Park	9775	15 Mar 2011	Duration unknown		
	<b>Hoang Anh Mang Yang K</b> Previously joint venture between HAGL and VRG, but HAGL sold its shares to VRG in 2012	Vensai	6891	25 Sep 2009	70 years		
Sources: Open Development Cambodia; Global Witness, <i>Rubber Barons</i> ; Correspondence with Global Witness for updated information; and Interviews with village representatives							

Map 1



# Assessment Framework

This report uses international human rights law as the normative framework for assessment. A number of actors bear human rights obligations and responsibilities for the impacts of the activities in question, namely, the Royal Government of Cambodia, the Government of the Socialist Republic of Vietnam, HAGL and its investors. The nature of the human rights duties of each of these actors varies, and is explained in this chapter, followed by a description of the main human rights affected. The report also assesses compliance with provisions of Cambodian law and legal agreements between the Cambodian government and concessionaires that give effect, in whole or in part, to the affected human rights. The relevant Cambodian law and concession agreement provisions are described below.

## 2.1 International Human Rights Law

### 2.1.1 Source and nature of obligations of responsible actors

All of the human rights assessed in the report are recognized in or derived from legally binding treaties, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention on the Rights of the Child (CRC), which have been ratified by both Cambodia and Vietnam. The meaning and components of the right to self-determination and other rights of indigenous peoples are elaborated upon in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the General Assembly by a majority of 144 states in favor, including Cambodia and Vietnam.

**Cambodia** acceded to the ICCPR, ICESCR and CRC in 1992 and as such is legally bound by their provisions. The Government of Cambodia has the primary obligation to respect, protect, and fulfill the human rights enshrined in these instruments for those people affected by HAGL's operations in Cambodia. The obligation to respect requires the government to refrain from interfering with or curtailing, directly or indirectly, the enjoyment of human rights. The obligation to protect requires the government to take steps to prevent human rights abuses by third parties, including companies such as HAGL. The obligation to fulfill requires States parties to take appropriate, positive legislative, administrative, judicial, budgetary, promotional and other measures aimed at the full realization of human rights.<sup>16</sup>

Under international law, a retrogression in the enjoyment of human rights as a result of a deliberate act or failure of the State, including a failure to take appropriate protective measures, amounts to a violation of treaty obligations. The Government of Cambodia is obliged to ensure that a retrogression in the enjoyment of human rights does not occur either as a result of its own acts or omissions, or the activities of third parties such as HAGL.

The Cambodian government also has the primary obligation to ensure access to remedies, both procedurally and substantively, for human rights violations. As part of its duty to protect against business-related human rights abuse, the State must take appropriate steps

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<sup>16</sup> See CESCR General Comments No. 13 (1990), paras. 46 and 47, No. 14 (2000), para. 33, No. 17 (2005), para. 28, No. 18 (2005), para. 22 and No. 21, para. 48. See also the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, para. 6.

to ensure, through judicial, administrative, legislative and other means that, when such abuses occur, those affected have access to effective remedies.<sup>17</sup>

**Vietnam** acceded to the ICCPR and ICESCR in 1982 and ratified the CRC in 1990. The adverse impacts on human rights described in this report occurred outside the territory of Vietnam, in a neighboring country. International law recognizes that a State is obliged to abide by its international legal obligations extraterritorially in certain circumstances.<sup>18</sup> United Nations treaty bodies have affirmed that the obligation of States to protect against abuses of human rights extends to a duty to regulate the overseas conduct of businesses registered in their territory.<sup>19</sup> The Committee on the Rights of the Child states, for example, that home States have obligations to protect against human rights abuses in the context of businesses' extraterritorial operations, "provided that there is a reasonable link between the State and the conduct." Such a link exists when "a business enterprise has its centre of activity, is registered or domiciled or has its main place of business or substantial business activities in the State concerned."<sup>20</sup>

HAGL is registered in and has its center of activity in Vietnam. The Government of Vietnam thus has a duty to regulate HAGL's activities in Cambodia and elsewhere, with a view to improving its accountability and transparency and preventing and redressing human rights violations caused or contributed to through its conduct.

**HAGL and its investors, including Credit Suisse, Deutsche Bank, Dragon Capital and the International Finance Corporation** (see Box 2), have a responsibility to respect human rights. The Guiding Principles on Business and Human Rights, endorsed by the Human Rights Council, affirmed that while States have the primary obligations under international human rights law, this does not absolve other parties, including business enterprises of responsibility.<sup>21</sup>

Business enterprises are required to avoid causing or contributing to retrogressions in the enjoyment of human rights, and to address such impacts when they occur.<sup>22</sup> Business enterprises must seek to prevent or mitigate adverse impacts on human rights that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts themselves.<sup>23</sup> As part of their responsibility to carry out human rights due diligence,<sup>24</sup> businesses should assess on a regular basis their impact, and the impact of their business relationships, on human rights, paying special attention to those who may be at heightened risk of vulnerability.

The United Nations Special Rapporteur on adequate housing elaborated on the responsibilities of business enterprises with regard to security of land tenure.<sup>25</sup> Business enterprises should take all relevant steps to ensure that there are no adverse impacts on security of tenure as a result of or in connection with their activities or business relationships; and that any adverse impacts are addressed, including through the provision of remedies to affected persons. Business enterprises should ensure transparent, free and fair negotiations regarding any transfer or modification of tenure rights with full respect for the right of

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17 Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, A/HRC/8/5, at para 25.

18 *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion) [2004] ICJ Rep 136, p. 180.

19 See, for example, CRC/C/BHR/CO/2-3 paras. 20, 21; CERD/C/CAN/CO/19-20 para 14; CERD/C/CAN/CO/18 para. 17; CERD/C/AUS/CO/15-17 para 13; E/C.12/AUT/CO/4, para. 12.

20 CRC/C/GC/16 para. 43.

21 Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, A/HRC/8/5, endorsed by the Human Rights Council in resol. 17/4 of 16 June 2011.

22 Ibid, 13(a).

23 Ibid, 13(b).

24 Ibid, 17(b).

25 Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik, A/HRC/25/54, Guiding principles on security of tenure for the urban poor, acknowledged with appreciation by the Human Rights Council in resol. 25/17 of 26 March 2014.

people or communities to accept or reject offers.<sup>26</sup> In the case of indigenous peoples, free prior and informed consent must be obtained prior to any interference with rights over their territory and resources.

If a business enterprise causes or contributes to adverse impacts on human rights, including through its business relationships, it should immediately take all relevant steps to address them. If an adverse impact is current or ongoing, the business enterprise should immediately cease the activity causing it. If a violation has already occurred, the business enterprise should provide remediation through legitimate processes and in consultation with the affected individuals or groups to ensure that the remedy is comprehensive and legitimate in their view. When people have been forcibly evicted or displaced, the remedy should, wherever possible, include return of the land and resources to the victims and compensation for any material losses.<sup>27</sup>

## 2.1.2 The human rights assessed in the report

HAGL's operations in Ratanakiri have affected a range of human rights. With limited resources available, the assessors decided to focus the assessment on the human rights most affected. As such, this report assesses impacts on the right of indigenous peoples to self-determination; the right to an adequate standard of living; the right to the highest attainable standard of health; the right to practice cultural and spiritual traditions, and the right to an effective remedy. It also assesses particular impacts on women's enjoyment of these rights. These human rights were selected during the screening phase of the impact assessment, which involved preliminary analysis through discussions with affected communities and background desk research. Interview questions were designed to gather quantitative and qualitative data on the impacts on these rights (see research methodology in chapter 3).

### THE RIGHT OF SELF-DETERMINATION

The right of peoples to self-determination and to pursue their own economic, social and cultural development is recognized in identical first articles of the ICCPR and the ICESCR.<sup>28</sup> The UNDRIP affirms that the right of self-determination is a foundational right of indigenous peoples, from which other collective procedural and substantive rights are derived.<sup>29</sup>

An integral component of the right of self-determination is the freedom of a people to dispose of their natural wealth and resources.<sup>30</sup> Relatedly, a people must not be deprived of its own means of subsistence.<sup>31</sup> The collective exercise of self-determination by a people therefore implies a high degree of autonomy to govern the use, management and development of their territory and productive resources. The UNDRIP recognizes the right of indigenous peoples to "own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired."<sup>32</sup>

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<sup>26</sup> Ibid, Guiding Principle 7.

<sup>27</sup> Ibid, Commentary to Principle 7, para. 69.

<sup>28</sup> ICCPR and ICESCR, article 1.

<sup>29</sup> UNDRIP, chapeau articles 3, 4.

<sup>30</sup> ICCPR and ICESCR, article 1(1).

<sup>31</sup> ICCPR and ICESCR, article 1(2).

<sup>32</sup> UNDRIP, article 26(2).



## Box 2: HAGL's Investors

### Credit Suisse

According to HAGL's 13 June 2013 Report on Major Shareholders, Credit Suisse bought 73,309,446 shares, equivalent to 11.3% of outstanding shares in the company, on 28 May 2013.

According to its website, Credit Suisse has environmental and social policies anchored in its Code of Conduct and Statement on Sustainability and adheres to, inter alia, the ICCPR and ICESCR, the UN Guiding Principles on Business and Human Rights and the Equator Principles.

### Deutsche Bank

Deutsche Bank's exposure to HAGL has fluctuated over time. In April 2013, Global Witness reported in its report *Rubber Barons* that Deutsche Bank held 3.4 million shares (through DWS Vietnam Fund) worth approximately USD 4.5 million. Following the publication of *Rubber Barons* and Global Witness's call for divestiture, Deutsche Bank did just that. However, between June and November 2013, Deutsche Bank London bought nearly seven million shares in HAGL through its Exchange Tracker Fund (ETF) Vietnam – a passive investment fund – taking Deutsche Bank's total share in HAGL to just under five per cent.

According to its website, Deutsche Bank has signed the UN Global Compact and other agreements that explicitly require respect for human rights.

### Dragon Capital Group and VEIL

Dragon Capital Group Ltd, a Vietnam-based investment group, and Vietnamese Enterprise Investments Ltd (VEIL), which is managed and owned by Dragon Capital, are HAGL shareholders. Collectively, these groups reportedly hold 6% equity in HAGL.

As clients of the International Finance Corporation (IFC), Dragon Capital Group and VEIL are obliged to comply with IFC's environmental and social safeguard standards that were in force at the time that IFC's investments were made.

### International Finance Corporation, World Bank Group

The IFC, the private sector arm of the World Bank Group, is indirectly exposed to HAGL through financial intermediaries Dragon Capital Group and VEIL. IFC's Summary Project Information states that it invested USD 12 million in Dragon Capital/VEIL in 2002 and USD 8 million in 2003.

IFC's policies require the IFC to ensure that its financial intermediary clients comply with its environmental and social standards.

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#### Sources:

Credit Suisse Report on Major Shareholders, 4 June 2013; [www.credit-suisse.com/ch/en/about-us/corporate-responsibility/banking/due-diligence/human-rights.html](http://www.credit-suisse.com/ch/en/about-us/corporate-responsibility/banking/due-diligence/human-rights.html) [www.db.com/cr/en/positions/human\\_rights.htm](http://www.db.com/cr/en/positions/human_rights.htm); Report on ownership by major shareholders, Deutsche Bank AG, 6 December 2013; Global Witness, *Rubber Barons*, 2013; [www.ifc.org/sustainabilityframework](http://www.ifc.org/sustainabilityframework); <http://ifcext.ifc.org/ifcext/spiwebsite1.nsf/ProjectDisplay/SPI10740>; <http://ifcext.ifc.org/ifcext/spiwebsite1.nsf/ProjectDisplay/SPI20926>

The collective right of indigenous peoples to participate in decision-making in matters that affect their rights, and to give or withhold their free prior and informed consent (FPIC) for any project affecting their lands, territories or other resources, is thus essential to the exercise of self-determination.<sup>33</sup> The confiscation or deliberate destruction without consent of a people's lands and resources by the State or a third party is a violation of the right of self-determination.

It must be noted here that four of the affected villages included in this study are non-indigenous communities, with predominantly Khmer and Lao ethnic populations. Members of these villagers, and indeed the community as a whole, nonetheless have a right to informed participation in decision-making regarding matters that profoundly affect their land and resources and their human rights and well-being. Participation and access to information on such matters are universally recognized as core human rights principles.

## **THE RIGHT TO AN ADEQUATE STANDARD OF LIVING**

The right of everyone to an adequate standard of living, including adequate food, clothing and housing, is recognized in article 11 of the ICESCR and article 27 of the CRC. The ICESCR recognizes a right to the continuous improvement of living conditions, which requires adequate livelihood opportunities for all households. The UN Special Rapporteur on the Right to Food has articulated that States are acting in violation of the human right to food if, by leasing land to investors, they are depriving the local populations from access to productive resources indispensable to their livelihoods.<sup>34</sup>

## **THE RIGHT TO HEALTH**

The right to the enjoyment of the highest attainable standard of physical and mental health is recognized in article 12 of the ICESCR and article 24 of the CRC. The right to health is closely related to and dependent upon the realization of the right to an adequate standard of living as well as other human rights. It is also intimately connected to the natural environment, especially for people who derive their food, water and medicines directly from their natural surroundings. The UNDRIP recognizes the right of indigenous peoples to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants.<sup>35</sup>

## **THE RIGHT TO ENJOY CULTURE AND PRACTICE TRADITIONS**

The ICCPR, in article 27, enshrines the right of persons belonging to ethnic or religious minorities, in community with the other members of their group, not to be denied the enjoyment of their own culture or the practice of their own religion. A similar right of children of minority or indigenous origin is recognized in the CRC.<sup>36</sup> The UNDRIP affirms the right of indigenous peoples to practice their cultural traditions and customs, and to manifest and practice their spiritual and religious traditions, customs and ceremonies.<sup>37</sup>

The Human Rights Committee has observed in relation to article 27 of the ICCPR that culture manifests itself in many forms, including a particular way of life and traditional activities associated with the use of land resources, including fishing or hunting, especially

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33 Ibid, article 18, 19 and 32.

34 Report of the Special Rapporteur on the right to food, Olivier De Schutter, 2009, A/HRC/13/33.Add.2, para 15.

35 UNDRIP, article 24.

36 CRC, article 30.

37 UNDRIP, article 11 and 12.

in the case of indigenous peoples.<sup>38</sup> The confiscation or destruction of these resources by others therefore denies members of the minority group their right to enjoy their own culture.

## THE RIGHT TO AN EFFECTIVE REMEDY

The right to an effective remedy of any person whose human rights are violated is enshrined in article 2(3) of the ICCPR.<sup>39</sup> States Parties to the Covenant undertake to ensure that any person claiming a remedy for violation for their human rights can access a competent judicial, administrative or legislative authority to adjudicate their claim and that competent authorities enforce remedies when granted.<sup>40</sup>

Access to remedy is a pillar of the 2011 UN Guiding Principles on Business and Human Rights. According to the Guiding Principles, while States bear the primary obligation for ensuring effective remedies for human rights violations, businesses complicit in violations also have a role to play. Business enterprises should establish or participate in effective operational-level grievance mechanisms that ensure that outcomes and remedies accord with internationally recognized human rights.<sup>41</sup>

## 2.2 Cambodian Law

The Kingdom of Cambodia is constitutionally bound to recognize and respect the human rights enshrined in international law covenants.<sup>42</sup> In addition, a number of pertinent laws and regulations of Cambodia, if respected and implemented, would serve to give effect to the human rights assessed in this report. These legal provisions place requirements on various governmental agencies and other actors to perform certain actions, or prohibit them from undertaking certain acts, for the purpose of protecting people and the environment.

The customary tenure of Cambodia's indigenous communities is recognized under the Land Law. Article 25 defines the lands of indigenous communities as including residential areas as well as lands currently used for and reserved for agriculture. A subsequent sub-decree clarifies that such lands also include spirit and other sacred forests and burial grounds.<sup>43</sup> The law and sub-decree provide a legal basis and procedures for registering community land. While a number of villages covered by this study are at various stages in the process of preparing their applications, none have received collective title. This is not unusual: collective titles have been issued to only eight indigenous communities out of an estimated total of 455 throughout Cambodia, mainly due to slow bureaucratic processes and, as some observers have argued, a lack of political will.<sup>44</sup>

Under article 23 of the Land Law, the communities are entitled to interim protection that allows them to continue to manage their lands according to custom even before they are granted collective title.<sup>45</sup> The Law prohibits any authority outside the community from acquiring any rights to immovable properties belonging to an indigenous community.<sup>46</sup> The

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38 Human Rights Committee, General Comment 23, Article 27 (Fiftieth session, 1994), para. 7.

39 While the right in article 2(3) as articulated applies to human rights and freedoms contained in the ICCPR, numerous international law authorities have affirmed that the right to a remedy pertains to all violations of human rights.

40 ICCPR, article 2(3).

41 Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie: Guiding Principles on Business and Human Rights (2011), para 31.

42 Constitution of the Kingdom of Cambodia, article 31.

43 Sub decree on procedures of registration of land of indigenous communities (2009), article 4.

44 Vize and Hornung, *op. cit.*, p. 2.

45 Land Law (2001), article 23, 24.

46 Land Law, article 28.

Land Law also makes “any act or conduct that hinders the peaceful holder or possessor of immovable property in an area not yet covered by the cadastral index maps” a penal offense.<sup>47</sup> None of the relevant areas in Ratanakiri are covered by cadastral index maps. This provision should therefore serve to protect the communities as collective peaceful possessors until their claims to the land are adjudicated. These legislative provisions, by implication, confer protections analogous to FPIC, as an act that interferes with the communities’ peaceful possession and customary management of their lands without their consent would be in breach of the law. The same protection applies to individual peaceful holders of land, including the residents in non-indigenous villages affected by HAGL.

The more recent Civil Code affirms these protections for occupiers of land that is “legally capable of being occupied by a private person.”<sup>48</sup> This excludes those occupying State public property, which cannot be legally occupied.<sup>49</sup> Forestland relied upon by the communities may be classified as State public property under the statute;<sup>50</sup> however, statutory classification of forests as State public property does not prohibit communities from accessing its resources. The Forestry Law gives communities living within or near permanent forest reserves the right to continue their traditional user rights for customary, religious and subsistence purposes.<sup>51</sup>

Economic Land Concessions granted over either indigenous community’s land or State public property are unlawful.<sup>52</sup> The Land Law also places limitations on the size of ELCs with the aim of protecting against the concentration of landholdings and the monopolization of arable lands.<sup>53</sup>

ELCs are further regulated by sub-decree no. 146 (2005), which imposes a number of criteria meant to protect against adverse social and environmental impacts, including a requirement to conduct environmental and social impact assessments.<sup>54</sup> The sub-decree also requires public consultations “with regards to projects or proposals, with territorial authorities and residents of the locality.”<sup>55</sup>

The Land Law, the Forestry Law (2002), the Protected Areas Law (2008) and the Law on Environmental Protection and Natural Resource Management (1996) all contain provisions protecting many of the natural resources that the affected communities rely upon for their socio-economic and spiritual well-being. While by no means comprehensive, these laws contain a number of procedural and substantive protections against destruction of natural resources by, inter alia, business activities, in some cases criminalizing destructive acts.<sup>56</sup> For example, article 29 of the Forestry Law prohibits the harvesting of tree species that local communities tap to extract resin for traditional use. A permit from the Forest Administration is required for the harvesting of timber products or NTFPs for commercial purposes.<sup>57</sup> The Land Law prohibits ELC operations that cause destruction or pollution of water reserves used by people in their daily lives.<sup>58</sup>

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47 Land Law, art 248.

48 Civil Code (2007) , article 243(1).

49 Ibid.

50 Land Law, article 15.

51 Forestry Law, article 40.

52 See Land Law, article 15 and 58; and Sub-decree No. 146 (2005) on Economic Land Concessions, article 4(1).

53 Ibid, article 59.

54 Sub-decree No 146 (2005) on Economic Land Concessions, article 4.

55 Sub-decree on ELCs, article 4 (1).

56 For example, Forestry Law (2005), article 4, 24, 40 and 45; Protected Areas Law (2008), article 44, 59 and 62; and the Law on Environmental Protection and Natural Resource Management (1996), article 6.

57 Forestry Law, article 24.

58 Land Law, article 58.

## 2.3 Concession agreements

HAGL's subsidiaries have been granted a number of ELCs in Ratanakiri. Due to a lack of information disclosure by the company and the Cambodian government, it is unclear precisely how many concessions have been and are currently owned by HAGL (see Table 1). Concession contracts are not routinely disclosed to the public; however, the authors of this report were able to obtain the contracts for three concessions: CRD Co., Hoang Anh Lumphat Co. Ltd,<sup>59</sup> and Hoang Anh Andong Meas Co. Ltd.

The three concession contracts contain similar clauses vesting rights and responsibilities in the government and the company. In each case, the handover of land subject to the ELC is made provisional on the company fulfilling a number of preconditions.<sup>60</sup> Under the terms of the contracts, within three months of the agreement coming into effect, the company is required to cooperate with relevant authorities to conduct studies and surveys to identify protected forests, mountains and water bodies as well as “areas which cannot be negotiated with the legitimate owners such as the areas where citizens are deriving benefits” within the concession boundaries.<sup>61</sup> These areas are to be cut out of the provisional total land area defined in the concession contract.<sup>62</sup>

The company is also obliged under the contract to ensure “that people living in the development investment project location will get appropriate advantages” such as “roads, schools, health centres and employment opportunities...including agricultural integration of former families into the development investment project.”<sup>63</sup> The company is also required to be responsible for preserving and protecting the natural forest that has been excised from the concession area.<sup>64</sup> Finally it must comply “with the laws and provisions in force in a stringent manner.”<sup>65</sup>

The government has the right to suspend or terminate the contract if applicable laws and contract terms are breached.<sup>66</sup>

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59 According to information from Global Witness, this concession was previously owned by HAGL and later sold.

60 Concession Contracts by and between the Royal Government of Cambodia and Hoang Anh Andong Meas Co., Ltd, Hoang Anh Lumphat Co., Ltd, and CRD Company, respectively, article 3.

61 Ibid, article 2. (Quote from Hoang Anh Andong Meas Co and Hoang Anh Lumphat Co., Ltd contracts.)

62 Ibid.

63 Ibid, article 6.2. (Quote from Hoang Anh Andong Meas Co and Hoang Anh Lumphat Co., Ltd contracts.)

64 Ibid.

65 Ibid.

66 Ibid, articles 5.1, 12 and 13.

# Research Methodology

## 3.1 Study site description

The study covers villages in Ratanakiri that have been or are expected to be affected by ELCs owned by subsidiaries of HAGL. In total, the research team visited 25 villages in the three districts of Andoung Meas (Talao, Nhang, and Malik communes), Ou Chum (Lak and Poey communes), and Koun Mom (Seri Mongkol, Chey Oddom, and Srae Angkrong communes). These villages were chosen because they appear to be inside or near the boundary of HAGL concessions on available maps or because of reports from other NGOs or nearby villagers that they are affected. Site visits and interviews were conducted in all 25 villages to confirm whether they have been or expect to be affected by a known HAGL subsidiary. The results were as follows:

- Thirteen villages reported to have been directly affected by CRD, Heng Brother, Hoang Anh Andong Meas (Lumphat), and Hoang Anh Oyadav. HAGL has confirmed that it owns these four companies.<sup>67</sup> These thirteen villages were therefore included in all aspects of the impact assessment.
- Five villages reported that they expect to be directly affected by HAGL (Hoang Anh Oyadav) in the future. Villagers thought that the company might commence its project in the area in 2014. Since the villages had not experienced losses or direct impacts from company activities at the time of interview, data from these villages were included only in the analysis of free prior and informed consent, with anticipated losses described separately in Chapter 4. Anticipated impacts were difficult to measure due to the dearth of information about the concessions and their precise boundaries and are thus not included, although many of the villagers anticipate similar impacts on food, livelihoods, health and traditions as villages that have already been affected.
- Three of the villages (Srae Pok Thom, Srae Chhouk, and Thmey) reported that they are affected by Hoang Anh Lumphat. While this company was apparently once owned by HAGL, its current ownership status is unclear. We have not included these villages in the impact assessment.
- Four of the villages (Nhang, Dal, Neang Die, and Srae Pok Touch) appear to be affected by other concessions, not owned by HAGL. Although it is possible that they are affected by HAGL but are misinformed about the names or ownership of the concessions, these villagers were excluded from the study.

## 3.2 Methods of data collection

Both primary and secondary data collection methods were applied. Desk research was used to gather background information about the concessions and villages as well as information on relevant laws and policies. The primary data was collected during four trips to Ratanakiri between November 2013 and March 2014 through a range of tools including key informant interviews, participatory community mapping, focus group discussions, including separate

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<sup>67</sup> Global Witness, *op. cit.*; and HAGL Group, Report of Environmental and Community Development Program in Laos and Cambodia, 2013.

women focus groups, and household interviews. The full set of primary data collection tools were applied in the eighteen villages already affected or expected to be affected by concessions known to be owned by HAGL, as well as in the three villages affected by Hoang Anh Lumphat.

As shown in Table 2 below, thirteen out of the eighteen villages reported the presence of only the HAGL concession in their village. Several of these villages (Kachout Leu, Kak, Kam and Muy) reported that there are also smaller rubber plantations in the area. However, in five out of the eighteen villages, respondents reported that there is more than one ELC inside their territory. In such cases, it was sometimes difficult to attribute impacts to HAGL's operations as opposed to other companies' activities. To deal with this issue, the research team facilitated a participatory community mapping exercise prior to applying the other tools of data collection in each village. At least five persons in the village who are familiar with local geography and are most knowledgeable about the concessions participated in the mapping process. They were asked to mark on the map all types of land use patterns (eg. farmland, reserved land, forest including community forest, streams/rivers, grazing land, burial ground, spirit forests and residential areas) and infrastructure (eg. wells, school, road, and community center) in the village. They were also asked to point out the location and area of each concession affecting their village.

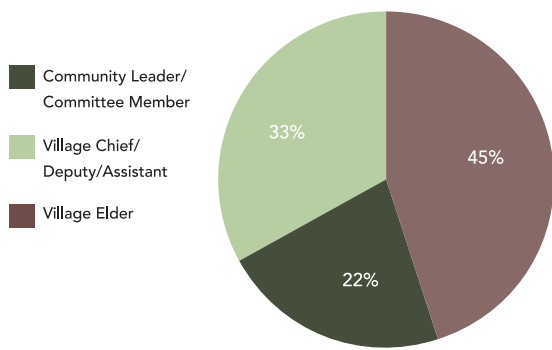
Besides helping to understand the land use patterns and important infrastructure in each village, community mapping provided clarity, albeit imprecise, about the location of HAGL's concessions vis-à-vis the various parts of the village. It also helped participants and interviewers differentiate losses and impacts caused by HAGL as opposed to other companies. Interviewers used the maps to explain to respondents that they should focus on HAGL's concession when answering questions related to losses and impacts during interviews. Respondents were able to confidently attribute losses to HAGL as opposed to other companies, but due to the cumulative nature of the impacts on food, livelihoods, health and culture from all the large-scale agribusiness activity in the area, it is not always possible for these to be clearly attributed to a single source.

Key informant interviews were conducted to understand the overall situation and existing issues in each village and to gather data that ordinary villagers may not be able to provide. To identify key persons in each village, villagers were asked who they thought was the most knowledgeable about important events and issues including problems related to ELCs. The majority of key informants were village elders who are well known and highly respected among villagers. In other cases, a village chief (or the chief's deputy) or a community leader or committee member was identified. Key informant interviews focused on community livelihoods, land tenure, communal and household losses and impacts, compensation, consultation, work on the plantation, perceived benefits from the company, complaints, remedies sought, and future concerns about the company's operations. Each interview lasted approximately two hours. In total, eighteen key informant interviews were conducted

Table 2: Number of concessions in each village

Number of concessions	Names of villages	Number of Villages
1	Inn, Nay, Peng, Kanong, Kam, Chay Thom, Muy, Kak, Kresh, Kachout Leu, Srae Angkrong 1, 2 and 3	13
2	Mass, Talao, Malik	3
3	Kanat Thom	1
4	Ket	1
Total		18

Figure 1: Proportion of Key Persons

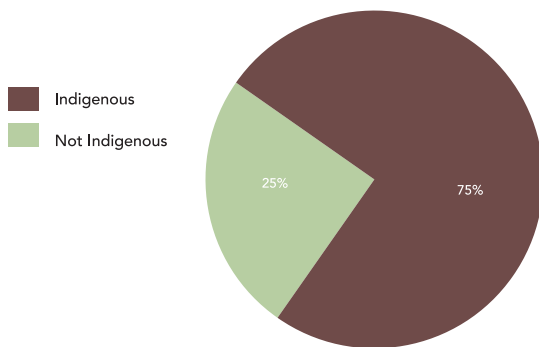


during the research.

Household interviews were conducted mainly to collect data on household losses and impacts in affected villages. In total, 87 households were interviewed in the thirteen affected villages. Three-quarters of the household respondents identify as indigenous. The majority of indigenous respondents are Kachok followed by Jarai, Kreung, and Tampoun.

Of the 87 households interviewed, 69 reported that they have lost individual property to HAGL. Only these households were included in the analysis of individual household losses and impacts. Households were identified by village chiefs, village elders, community leaders, or community committees. On average, households consisted of seven members, including three children.

Figure 2: Proportion of Households that Identify as Indigenous



Due to challenges in accessing villages and conducting interviews (see below), the research team was unable to interview a consistent number of households in each village. For example, the team was able to interview as many as eleven households in Kanat Thom, but only two in Inn village. On average, the team interviewed five to six households in the thirteen affected villages.

Focus group discussions were conducted with the participation of five to ten people in each village, with the facilitation of village elders, village chiefs or community leaders. The discussion focused on impacts of HAGL's activities, changes in each village after the operations commenced in the concession, and people's perception about the presence of HAGL inside their village. In addition to the group discussions that involved both men and women, separate women's focus groups were held to explore specific impacts on women and children on livelihoods and workload, daily life, food consumption, women's health and well-being, children's health and study, and safety and security in the village.

Figure 3: Proportion of Households Belonging to Each Indigenous Group

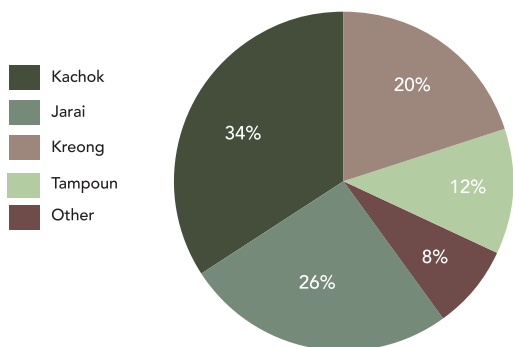




Table 3: Primary research tools used in each village

District	Commune	Village	No.	Number of Interviews				
				Key Informant	Mapping	FGD (Community)	FGD (Women)	Household
Andong Meas	Malik	Malik	1	1	1	1	1	7
	Talao	Khanat Thom	2	1	1	1	1	11
OuChum	L'ak	Kam	3	1	1	1	1	5
	Poey	Kresh	4	1	1	1	1	4
		Mass	5	1	1	1	1	4
Angdong Meas	Talao	Kak	6	1	1	1	1	4
		Inn	7	1	1	1	1	2
		Talao	8	1	1	1	1	5
		Kanong	9	1	1	1	1	1
		Key	10	1	1	1	1	3
		Muy	11	1	1	1	1	4
		Peng	12	1	1	1	1	6
		Nay	13	1	1	1	1	4
		Chay	14	1	1	1	1	3
		Kachout Leu	15	1	1	1	1	3
Koun Mom	Srae Angkrong	Srae Angkrong 1	16	1	1	1	1	7
		Srae Angkrong 2	17	1		1	1	6
		Srae Angkrong 3	18	1		1	1	8
				18	16	18	18	87

### 3.3 Data verification

Between August 3 and 24, 2014 the research team visited each village to present and verify the data and information used in this report. At least 20 people from each village participated in the verification sessions, except for the sessions held in Srae Angkrong commune because the villages were flooding at the time, making it difficult for villagers to attend. Information that remained unclear was checked and clarified. Additional and updated information was also obtained.

### 3.4 Challenges faced

Ratanakiri is a remote province about ten hours drive from Phnom Penh, often along poor-quality roads. With limited resources, the research team had to plan for each research trip to be conducted as efficiently as possible. Within the province, some of the villages were difficult to access due to very poor road conditions. This delayed some of the research.

In some villages, village chiefs (the local authority designated by the government in each village in Cambodia) did not cooperate with the research team because they were suspicious that the activities were oppositional towards the government. Thus, the team had to work with the community leader, committee, or affected households without the support of the village chief, which made arranging group discussions more difficult and may have limited the amount of information obtained. In a few villages, the team was told that local authorities did not allow research to be conducted, so the research team had to arrange meetings with affected households and key persons outside of the village. Although the team was able to conduct interviews with residents of these villages, the number of people interviewed was limited and there was no opportunity to see what was happening on the ground.

Language was another obstacle to communication. Five different languages are spoken across the affected villages and, in some villages, only a few people can speak Khmer. Interpreters were used as much as possible in an effort to ensure that not only the Khmer speakers, who are mostly men, could participate. Women were often not as fluent in Khmer and communications were challenging even with the use of interpreters. Despite efforts to increase the involvement of women, females represent only about one quarter of total household respondents. Female focus group discussions were thus particularly important to documenting the perspectives of women.

In some villages, only village chiefs are aware of information about ELCs. Often information is not well shared amongst villagers, and in some cases people did not even know the name of the company affecting their village. People's lack of knowledge about the concession posed a further obstacle to data collection.

## CHAPTER 4:

# Impacts on the Right of Self-Determination

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development... All peoples may, for their own ends, freely dispose of their natural wealth and resources... In no circumstances may a people be deprived of its own means of subsistence.

*-International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights, Article 1*

Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

*-United Nations Declaration on the Rights of Indigenous Peoples, Article 26(2)*

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

*-United Nations Declaration on the Rights of Indigenous Peoples, Article 32(2)*

## 4.1 Free Prior and Informed Consent

### What is FPIC?

The United Nations Expert Mechanism on the Rights of Indigenous Peoples has affirmed that the UNDRIP requires that the free, prior and informed consent of indigenous peoples be obtained in matters of fundamental importance for their rights, survival, dignity and well-being. It explained that:

- “free” implies no coercion, intimidation or manipulation;
- “prior” implies that consent is obtained in advance of the activity associated with the decision being made, and includes the time necessary to allow indigenous peoples to undertake their own decision-making processes;
- “informed” implies that indigenous peoples have been provided all information relating to the activity and that that information is objective, accurate and presented in a manner and form understandable to indigenous peoples; and
- “consent” implies that indigenous peoples have agreed to the activity that is the subject of the relevant decision, which may also be subject to conditions.<sup>68</sup>

The first time most affected people learned about HAGL’s operations in the area was either through rumors from other community members or by witnessing workers begin clearing their land and forests. Almost half of the key informants (ie. village elders or community leaders) learned of the project from a local authority such as a commune or district official, however in all cases this occurred only after the concession contract was already signed. In Nay village, for example, the commune and village chiefs were invited by a district official to a meeting in 2012 where they were told about the concession boundary that cut across part of their village. They were informed by a local authority that they had to stop clearing and farming the land inside the concession area. Almost no one interviewed said they were provided with notice before the company took control of the land.

None of the village elders or other key informants felt they were consulted prior to the concession being granted or before the company began operations. There was no attempt to seek their consent. Neither government authorities nor HAGL conducted community meetings in any of the villages about the project prior to commencing operations.

“We lost land to the company because there was no information provided prior to the start of rubber plantation operation.”

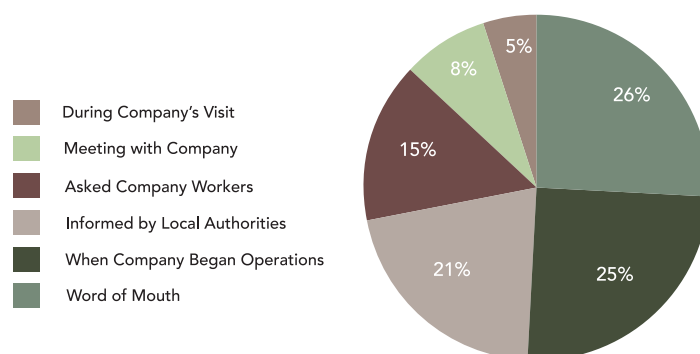
--Villager, Kresh Village <sup>69</sup>

The company held meetings in nine of the villages at some point after workers began operations. Of the approximately 40 percent of household respondents that attended a meeting with the company, more than 90 percent felt that they were not consulted at all

68 Report to the Human Rights Council of the Expert Mechanism on the Rights of Indigenous Peoples. A/HRC/EMRIP/2011/2, Annex: Expert Mechanism advice No. 2 (2011): Indigenous peoples and the right to participate in decision-making, para. 26.

69 Names have been removed from all quotes in order to protect individuals from possible reprisals.

Figure 4: Manner in which Households First Found Out About the Company's Activities



during these meetings. People said they were provided with only scant information about HAGL's concession and activities in the area. They were not provided with information about potential adverse impacts of HAGL's activities and were not shown any environmental and social impact assessments. Rather, during the meetings, communities were told that the project was legal and that it would benefit them in several ways, including by providing job opportunities and community development. In some meetings, the company described the boundaries of the concession or the areas now under its control.

“The company came to the village and invited villagers to a talk about land issue between the company and villagers. The company did not say anything while district chief took the lead in speaking... Villagers felt loss of hope because [they] could not talk with the company... They kept saying that the land belongs to the company, so we should not demand anymore... [A villager] requested that the company leave a large area along the bank of the stream available for raising cattle... A bodyguard of the district chief asked [the villager] if he has ever known prison.”

--Villager, Srae Angkrong 3

None of the villages were provided with any documentation about HAGL's concession or operations. Some people in six of the villages were shown a map of the concession, but it was difficult for them to read and understand the map.

In most villages, armed police or military police hired as security guards protect the concessions, preventing villagers from entering into areas now under company control. There is an implicit and sometimes explicit threat of force and violence if villagers attempt to do so. In Kak village, when a community member went to collect timber for housing materials in the area, he was briefly detained by a military police hired as a company guard. In Kanat Thom village, after community members confronted a bulldozer operator who was destroying their sprit forest, a policeman fired warning shots in their direction as they were returning to their village.



Kanat Thom community confront the company's bulldozer to protect their spirit forest



## 4.2 Loss of control over and access to lands, territories and resources

“This forest is a part of Kanat Village because it is a place we used to earn a living, extract resources for household use, and collect vine and rattan... When the company came, it said this land is state private land granted to the company.”

--Villager, Kanat Thom

### 4.2.1 Communal losses

Communal losses include collectively held and used lands and resources usually governed under a customary tenure system (see Box 3). These include grazing land; reserved land for future generations and shifting cultivation; spirit forest, burial grounds or other sacred places; resin trees; water sources and fish resources; community forest; and access to state forest and the resources previously sourced there. In most villages, respondents do not know the precise size of communal lands taken.

Before [the concession], villagers could collect vegetables and other resources from the forest. Presently, the area where we could collect forest products is very much reduced because of the company’s forest clearance activity.

--Villager, Talao Village

Loss of access to common property resources for household use and income generation due to HAGLs activities has been dramatic. Villages have lost access to forest products, including timber and a range of NTFPs. Before the company was granted the concession, more than four-fifths of the respondents collected timber for household use or income generation. This figure had dropped dramatically to 30 percent at the time of interview, because the company had cleared forests and/or blocked access to forested areas. Prior to the company’s operations, 80 percent of respondents collected resin for either household consumption, usually as a source of energy, or income generation, or both. Access to this vital livelihood resource has reduced dramatically, with only four percent of respondents saying that they were still able to access some amount of resin.

### Box 3: Ratanakiri's Indigenous Peoples' Customary Land Tenure

The majority of communities interviewed practice a customary form of tenure over their lands which differs from the dominant, individualized tenure system throughout most of Cambodia.<sup>70</sup> Under this system of tenure, much community land is managed and used collectively, including residential areas, grazing land, community forest, reserved land, forest, spirit forest, and burial grounds. In general, natural resource management is governed by elders, who allocate use rights over various resources based on sustainability and equity considerations. In most villages, parcels of land within the community's territory are allocated to individual households for farming, including of rice and other small-scale crop plantations (chamka). In some cases, reserved fallow land is also "owned" by individual households.

The components of a community's territory are not necessarily contiguous and the community will typically refer to natural landmarks to describe its boundaries. Although communities do not have precise boundary demarcations, they regard places that they have lived or used for various purposes in the past as part of their territory.

Unlike the more permanent Khmer villages, the indigenous communities interviewed intermittently move their villages to different locations within the broader territory. Communities interviewed provided various reasons for this rotation, including that a village should not settle in one place for more than 10 to 20 years; the village moves to be closer to land newly selected for shifting cultivation or to areas richer in natural resources; a natural disaster, especially flooding, will prompt the village to move; or the death of many people in one location will indicate that the village should move on to a more auspicious location.

For more information about the land tenure of affected villages, see Annex 1.

The concept of collective ownership over their territory and resources is central to the communities' identity. Traditionally, the communities have regarded their lands as inalienable, but in some villages, external factors have begun to erode this customary norm.



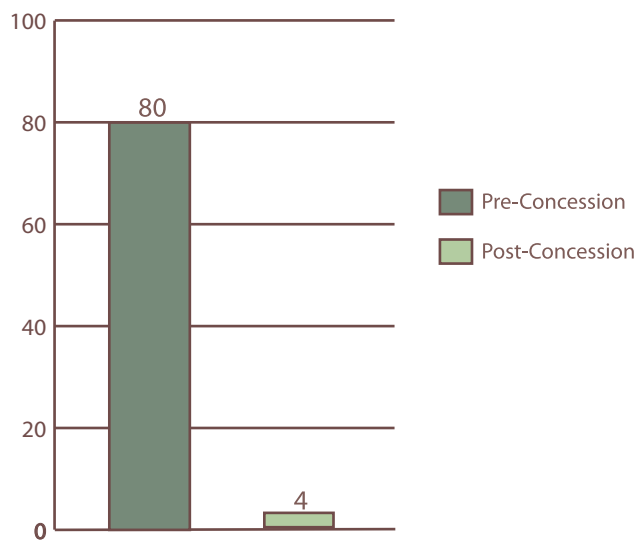
<sup>70</sup> Several villages, mostly those that are predominantly Khmer, do not practice a customary form of tenure.



“My family was very active in resin collection. [Before the concession] we could collect 30 containers per month selling it at 15,000 riel per container... We kept one of the 30 containers for household use... If we have resin, we do not have to buy kerosene, do not have to use electric generator, and we do not have to use kerosene for making fire... The company cleared all of them [resin trees].”

--Villager, Talao Village

Figure 5: Resin Collection (Percentage of Households)



Before the concession, almost all respondents (97 percent) collected a diverse range of NTFPs such as rattan, vine, wild vegetables, fruit, animals, honey, traditional medicines, and firewood. Although at the time of interview, around 60 percent of respondents said that they still collect NTFPs, the quantity and diversity is extremely limited. Respondents also said they now need to travel further to gather NTFPs. Most households said that loss of access was due to industrial forest clearance.

Almost all respondents said that prior to the company’s operations, fishing for food consumption and/or income was a daily household activity. Post-concession, just over half of these households continue to fish. Half of the households that no longer fish say that they have lost access to the fishing area (streams or ponds). In addition, the majority of households report that fish stock are considerably depleted and attribute this reduction to the company’s operations.

Figure 6: Change of NTFP Collection By Households

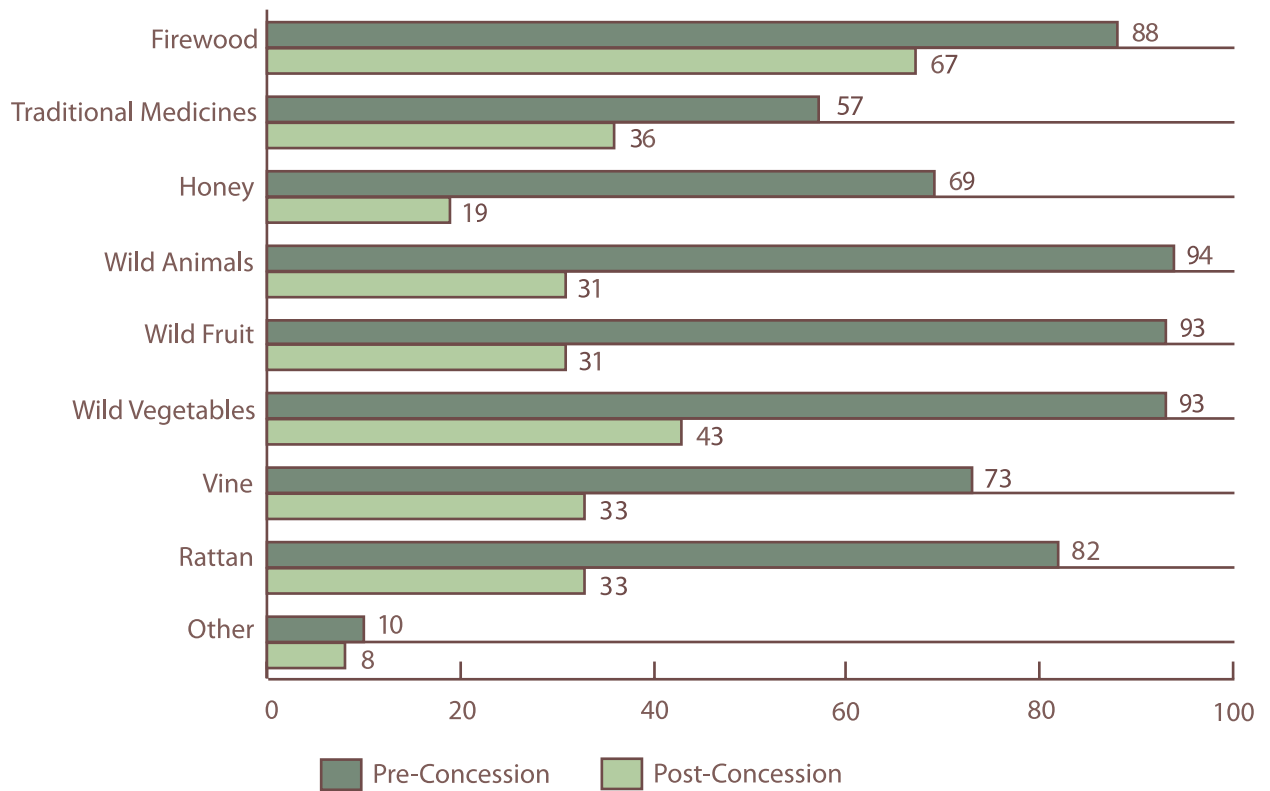


Figure 7: Reported Causes of Fish Stock Depletion

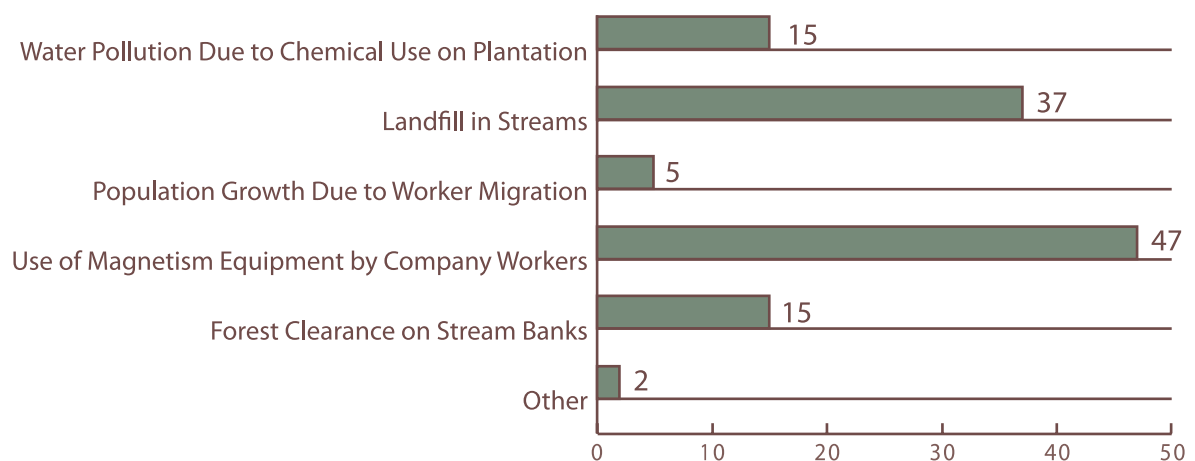
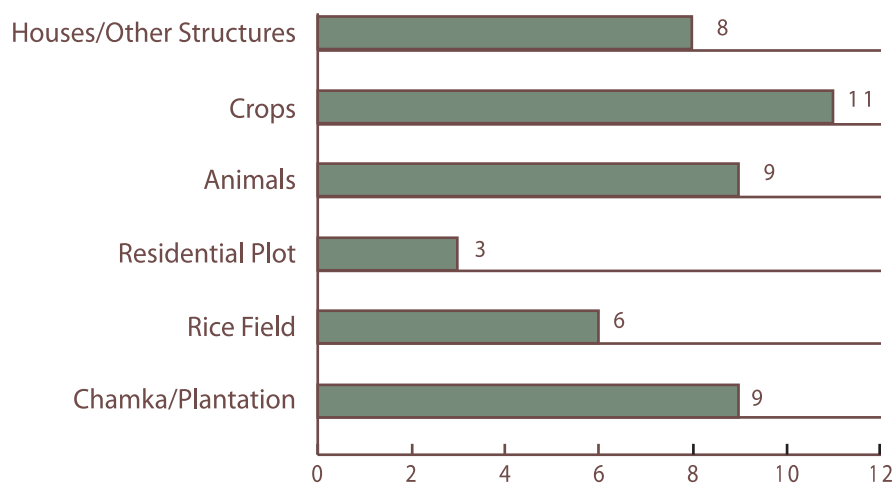


Table 4: Types of Communal Losses Experienced by Each Village

Village	Grazing land	Communal forest	Access to state forest	Water source/ access	Resin trees	Spirit Forest	Burial Ground	Other Sacred Space	Reserved Land/ Forest	Chrob <sup>71</sup>	Chrab <sup>72</sup>	Other Communal Resources
Inn												
Kak												
Kam												
Kanat Thom												
Kresh												
Malik												
Mass												
Muy												
Peng												
Srae Angkrong 1												
Srae Angkrong 2												
Srae Angkrong 3												
Talao												
Total Number of Villages	8	2	13	11	9	7	6	2	10	10	8	9

Figure 8: Types of Household Losses



71 Chrob is a floating mass of debris that resembles soil. Villagers can find vegetables, rattan and vine. People also farm (usually rice) in chrob because the soil is fertile.

72 Chrab is an area of salty soil that is a source of food for birds. Villagers often go hunting there. The area is also believed to be inhabited by spirits.

## 4.2.2 Household Losses

Household losses include residential plots, rice fields and chamka (orchard/farming land), and crops. In some cases, houses or other shelters have been destroyed by the company. Animals have also reportedly been killed or stolen by company workers.

According to key informants and focus groups in each village, a total of 164 households in the thirteen affected villages have lost residential plots and/or individually held farmland (chamka or rice fields) to the company, and the farmland of at least 30 additional households was being encroached upon at the time of interview.

In many of these cases, the households sold their land to the company under duress (see discussion of compensation below). Of those households interviewed that lost rice fields, more than 40 percent lost more than two hectares, with one household in Srae Ankrong 1 village losing more than four hectares. The vast majority of households that lost chamka - almost 90 percent - lost more than one hectare. At least one household, a family in Kanat Thom village, lost six hectares of chamka. On average, households lost 2.7 hectares of land altogether.

More than half of respondents in villages already affected reported losing crops, usually including banana and cashews, but also vegetables, papaya, pineapple, cassava and rice because of HAGL's activities. The losses occurred because the company destroyed the crops while clearing land, because the crops were on land taken or purchased by the company, or because the crops were stolen by company workers. In Kam village, several households lost cashew trees when a fire spread from the company's plantation. For some households, the estimated value of lost crops was over USD 1000. Others said that the loss of crops meant hundreds of dollars of lost income.

Figure 9: Size of Lost Rice Field

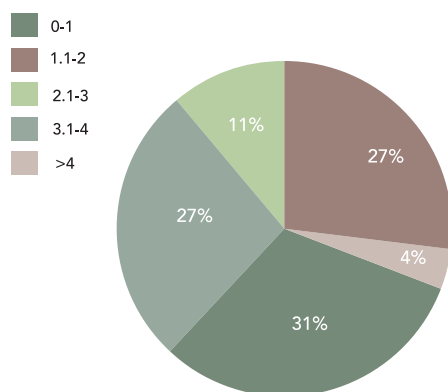


Figure 10: Size of Lost Chamka

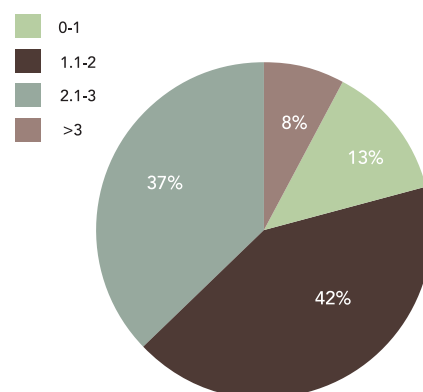


Figure 11: Size of Rice Field Before and After Concession:  
Proportion of Households that Lost Rice Field

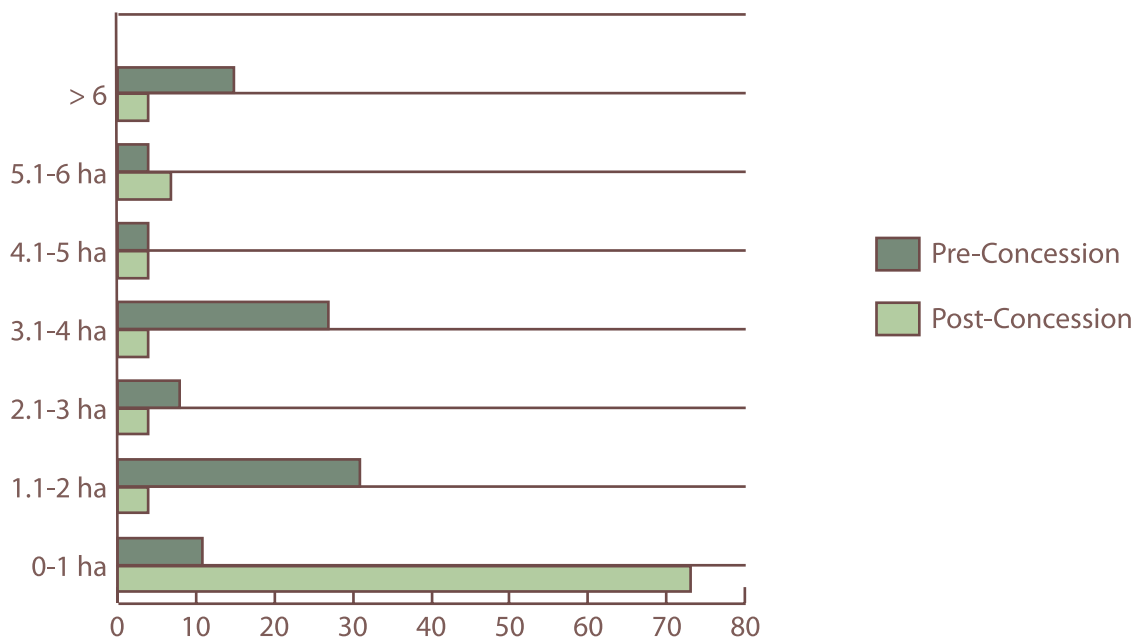
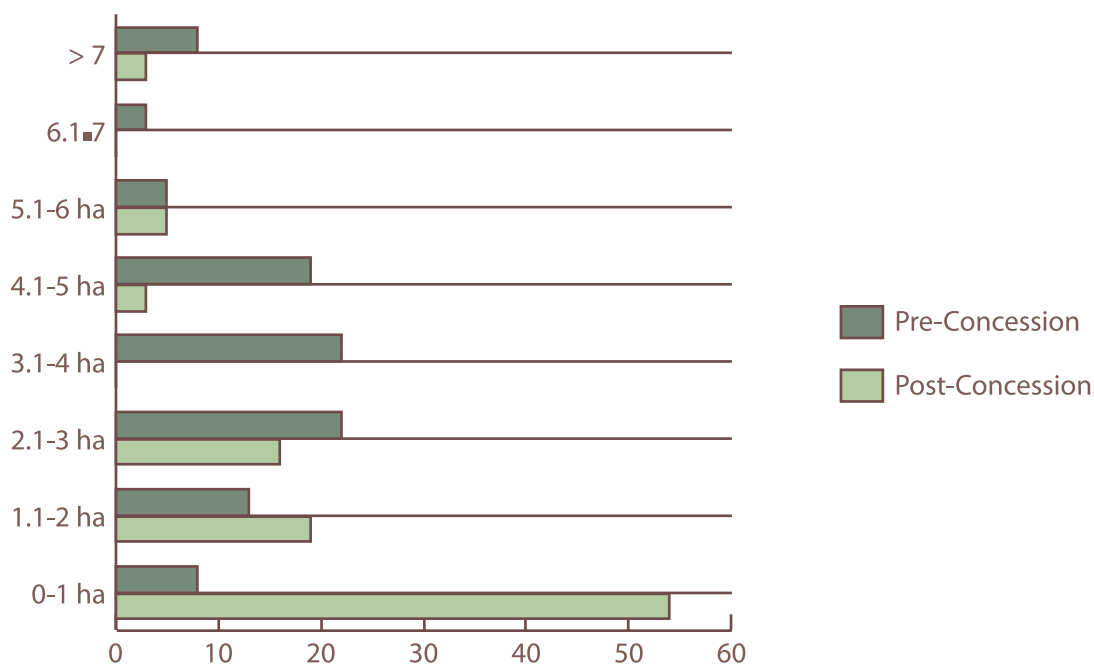


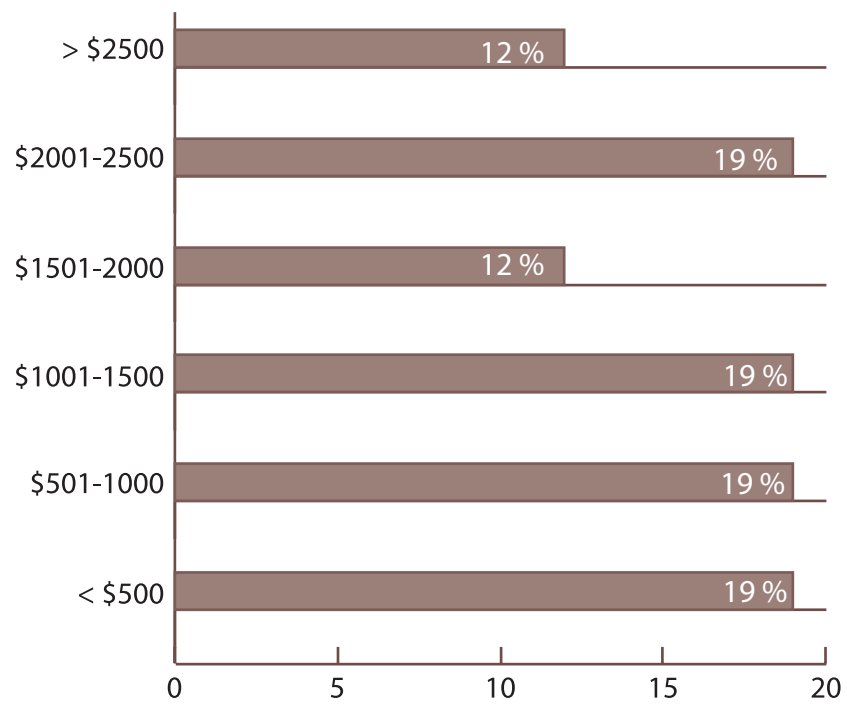
Figure 12: Size of Chamka Before and After Concession:  
Proportion of Households that Lost Chamka





Cashew orchids were destroyed in Kam village after a fire spread from the HAGL plantation

Figure 13: Estimated Value of Animals Lost (in USD)





Cleared Chamka in Inn Village

Around 30 percent of respondents said that they have lost animals, mostly buffalo, but also ducks, chicken, pigs and cows. Two-thirds of these respondents either knew or presumed that their animals were killed by company workers. In most cases, this occurred because the animal strayed into the plantation and/or were killed for their meat. In other cases, respondents believed their animals died due to chemical use on plantations or had fallen into a trench dug by the company around the plantation. Ten percent of these households had decided to sell their animals after losing grazing land.

### Case Study: A Household in Peng Village

A ten-member household, seven of them children, had five hectares of chamka that they had began cultivating in 1993. They had also built a cottage on the land. In 2011, without notice or the payment of compensation, the company seized the land and cleared all the crops. The father tried to get the land back by making a verbal complaint to a company worker. In response, he was shown the concession map and told that his chamka was State land and lay within the concession boundaries. The family estimates that the lost crops alone were worth USD 2000.

## Case Study: Kam Village

The ethnic Kreung village of Kam in Ou Chum district relies on farming, NTFPs and raising livestock for its sustenance and livelihood. Land and natural resources are central to the community's way of life and well-being. In 2011, villagers were shocked when they saw a bulldozer clearing trees in an area they regard as being within their village boundary. When they questioned the bulldozer operator, he told them he worked for a company called "CRD". He assured them that no big trees would be cut down and that the community's chamka were safe.

The community was not able to access any more information until a few meetings were held with the company in 2012 and 2013. At the meetings, the company representatives told villagers not to complain because its activities are legal. The company showed them a concession map that the community could not understand. The community complained several times to commune and district officials, but to no avail. The officials retorted that the company's activities are legal and that community opposition is futile.

Today, the community estimates that thousands of hectares of community land have been cleared by the company. Rare and precious tree species, including resin trees, *Neang Nourn*, *Beng*, *Thnong* and *Kranhoung* (rosewood) have been logged despite being protected under the Forestry Law. The villagers have lost access to vital resources for household consumption and income generation, including timber and NTFPs such as vine, wild fruit, vegetables, resin, and traditional medicines.

In addition, the community lost grazing land and must now monitor their cattle at all times to prevent them from destroying the company's rubber trees and being killed or confiscated by company workers. More than 20 streams have been affected. Some streams have been filled with tree residue from logging or turned shallow and muddy, while others have been contaminated by chemicals used on the plantation.

The community has also lost a forest and wildlife protected area of almost 1000 hectares established by the Forestry Administration in 2008. The community invested both their time and labor in protecting this area through forest patrols in the years prior to HAGL's presence in the area.

The community is very disturbed by the destruction of two of their spirit forests, which play an important role in their beliefs and culture. Community mapping shows the loss of two spirit forests, measuring approximately seven hectares in total, to the concession.

Finally, Kam village has lost 150 hectares of reserved land for shifting cultivation and for the survival of the next generation. The community's sophisticated and careful customary system of tenure that had allowed them to equitably and sustainably control the management and use of their land and resources has been torn apart.





## 4.3 Compensation

“The company did not provide compensation for our communal losses such as forest and streams we depended on, [because they] explained to us that it is state-owned land granted to the company.”

-- Villager, Kresh Village

According to respondents, neither the company nor the government provided compensation to any of the villages for communal losses. According to key informants and focus groups, three villages - Kresh, Mass and Peng - received no compensation at all for either communal or household losses.

Of the 164 households that lost residential plots and/or individually held farmland to the company, 101 received cash compensation for seized land. The rate of compensation differed from village to village, with the vast majority of households reporting that they received less than USD 300 in total.

Most of the households that were offered compensation had their chamka or rice fields cut out of HAGL's concessions and returned to them through a nation-wide Prime Ministerial program ostensibly aimed at curbing and reversing land seizures connected to ELCs. The compensation was, in these cases, a purchase “offer” by the company in order to reestablish control of the plots. (See Box 4 on Directive 01BB below). In other cases, households in Kak, Kanat Thom, Malik, and Talao were reportedly told by company representatives that they were being compensated for the labor they invested in clearing the land, and not for the land itself, because it was State property.

Twenty-seven households in Inn, Talao, Kak and Muy accepted replacement land offered by the company. At least five of these households claimed that the replacement land is smaller than the land that was taken from them. In Inn and Muy, the company cleared people's land before negotiating and offering alternative land.

Thirty-six households in affected villages did not receive compensation of any kind for seized land.

Only in a few cases (in Kam village and one household in Talao) did households report receiving compensation for lost crops. The company reportedly did not provide any compensation for structures that were destroyed or animals that were killed.

Almost 90 percent of the households that received compensation said they took it even though they were not happy about it. Respondents gave the following reasons for accepting compensation despite being unsatisfied:

- They were warned that they would lose their land anyway.
- They were told by the company that their land is surrounded by the company's concession, and that they would be fined if they caused damage to the company's rubber trees while cultivating their land.
- They were told by the company and local authorities that their land is located inside the concession area and that it has been legally granted to the company by the government.
- They felt this was their only chance to get something.
- The company kept expanding the boundary of its operations, and the villagers were afraid of confronting the company.

In addition to many respondents believing that the amount of compensation was inadequate to make up for the losses, many also expressed sadness at losing their land, as it is their main source of livelihood and an enduring resource. For them, cash - a short-term asset - cannot compensate for loss of land.

“We do not want cash compensation. We would like to have our land back because we never rely on money for living based on our tradition. Unlike land, money could not feed us and our next generations in the long-term.”

-- Villager, Kanat Thom Village

HAGL has provided all villages except Kresh and Mass with “gifts” such as rice (50kgs per household), salt and sugar (2kgs of each per household), and small amounts of cash. However, the communities do not regard this as compensation for losses. Other contributions from the company, such as roads, wells, a community center and medical examinations and assistance by a Vietnamese doctor, were appreciated, but were not regarded as compensation for losses of land and natural resources. Eighty percent of respondents said they received such benefits, but almost all of these said that these do not make up for the losses they have experienced. Some villagers described these as gifts to persuade them not to make complaints against the company.

“The benefits the community received from the company were even smaller than a nail compared to the loss of land. We could produce three to four tons of rice on a hectare of land per year but what we received from the company was 50 kilograms of rice per household.”

-- Villager, Kanat Thom Village



HAGL upgraded the "road" and paid for the community center in Kanat Thom

### Case Study: A Household in Malik Village

One ethnic Tampuan household in Malik village had a three-hectare plot of land on which they grew cashew, banana, mango and jackfruit crops that generated about USD 3,000 for the family of four per year. They had also built a 4m x 5m wooden cottage on the land.

In 2010, the family decided that they had no choice but to sell the land - crops and cottage included - to HAGL's subsidiary, Heng Brother, for USD 250. The husband and wife made the decision to sell for a number of reasons. They were told their plot was State land granted to the company, and thus the company would take the plot even if they refused the compensation. They were also told that the plot would soon be surrounded by the company's rubber trees and they would be fined USD 100 for causing damage to a rubber tree. They were afraid of rejecting the offer because local authorities, from village to district levels, accompanied the company to its meetings with affected households. Some 20 households in Malik have reported losing their farmland and crops to HAGL.

#### Box 4: Prime Ministerial Directive 01BB

In May 2012, Prime Minister Hun Sen issued an instruction known as Directive 01BB, which ordered a review of economic land concessions in response to growing public outrage about land seizures throughout the country. As part of the implementation of the directive, the Prime Minister announced a land titling campaign involving the rapid measurement of plots by student volunteers and the issuance of land titles to individual households whose land was located inside economic land concessions.

Under this program, many households in villages affected by HAGL received titles (or receipts) to their chamka and rice fields inside the boundaries of the company's concessions. (See map of Hoang Anh Oyadav concession opposite). As a consequence, significant parts of HAGL concessions were cut out and returned to households, but in many cases this return of land turned out to be temporary. In some of the villages, households were arbitrarily excluded from receiving titles, despite their fields being located inside HAGL concessions. These exclusions usually occurred at the direction of the company because it had already planted rubber trees on the plots.

"In 2011, the company cleared five hectares of my chamka... I complained and insisted the student volunteers measure that land... The company representative followed me when I was accompanying students to measure the land... [and] said, 'If you want to measure the land that we already grew rubber trees on, we do not allow. If you measure this land and cause damage to rubber trees, you have to pay a fine'... The students said rubber trees have been grown on the land so they did not dare to measure."

-- Villager, Peng Village

Some people interviewed expressed satisfaction with the Directive 01BB process and the individual security of tenure they perceive the titles to provide. However, in the vast majority of villages, people accepted the individual titles only because they feared that they would otherwise permanently lose their chamka and rice fields. These communities are deeply concerned about the impacts of Directive 01BB on their customary tenure and their right to communal title over their entire territory, including community and spirit forests and grazing and reserved land that are critical community resources. While several of the villages were somewhere along the process of applying for communal title, none had received one. In at least five villages, elders and community leaders interviewed said that since the distribution of individual titles in their village, people no longer regard the land as communally owned. The Prime Minister's directive, coupled with other exogenous factors, has had the effect of rapidly eroding traditional tenure systems.

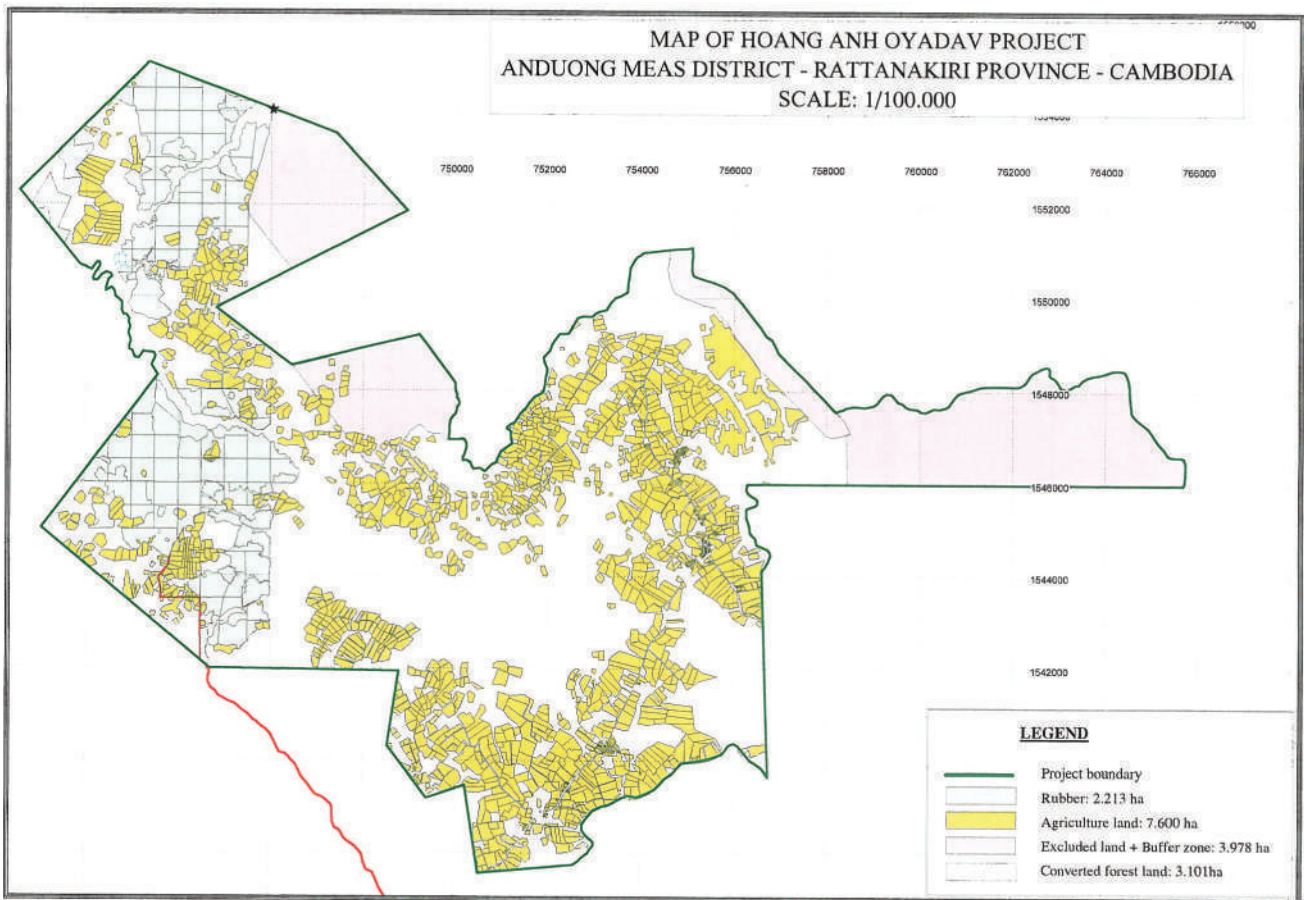
"Now there is land title for farming plots. I am not happy with it. Before, if the land is not fertile, we could clear another piece of land... there was no problem if someone cleared my fallow plot or if I cleared their plot. With title, if we take someone's land - even a little parcel - there will be conflict..."

--Villager, Kanat Thom Village

Soon after the implementation of Directive 01BB in the area, it became apparent that the titles issued would not provide any real tenure security in the face of a powerful actor coveting the land. In most cases, the practical "benefit" of the titles was to compel the company to "buy" the land back, using various forms of duress, rather than simply seizing it. In some cases, the company pressured people to sell their plots because it had already planted rubber trees before the land was returned to the households. In these cases, the company threatened to charge the landowners for the value of the trees if they did not sell their land to the company. The amount offered to "purchase" the plots was in all cases regarded by households to be inadequate, but they felt they had no choice but to acquiesce.

In some villages, despite titles being issued to households, the company has reportedly encroached upon chamka or rice land without paying compensation, rendering the Directive 01BB titles effectively worthless.

Map 2



## Case Study: A Household in Talao Village

Nine households in Talao Village had houses and farmland that were eventually surrounded by HAGL's rubber plantations. The company and village chief asked the families to move and offered alternative land. Three out of the nine households agreed to relocate in 2013.

We interviewed a member of one of these households. He told us that he was not happy with the alternative land but agreed to move in April 2013, despite having just received title to his land through the Directive 01BB program. He agreed after he was warned by a company worker that he might not get anything if he refused to accept the replacement land. The company was already encroaching, little by little, onto his land. He was also afraid that company workers would harm or steal his animals.

His family lost three hectares of chamka, crops worth about USD 1000, and four hectares of paddy field. Nevertheless, the company offered him only five and a half hectares of replacement land, to which there is no road access; he has to drive by motorbike through forest to reach it. The new chamka itself used to be forested land, which the company cleared, but they left tree stumps and residue everywhere. This has made cultivation very difficult. The family planted cassava, but the yield was very low. The household used to generate around two tons of rice per year, but now there is no land for paddy.

The family also lost their house. When they agreed to accept alternative land, they were told to move their house to the new site. They refused to move during rainy season and said they would move it as soon as dry season came. The company destroyed their house without notification. To date, his family of eight, including three small children, is homeless and currently staying at his mother-in-law's house.

Exacerbating these household losses, like the rest of the village, the family has lost access to critical forest resources. Forest clearance has resulted in the loss of access to many types of common property resources, such as resin, wild animals, rattan, wild vegetables, wild fruit, and honey. The household, which previously earned approximately USD 180 per month from resin collection and the sale of other NTFPs, now earns no income at all from these sources.

Before the concession, the family used to fish regularly, but now the streams have been partially buried because of the company's forest clearance activities. Since the company commenced operations, there is almost no area available for cattle to graze. The company has also encroached into an area of community land reserved as a resettlement site in case of serious flooding and landslides, predicted due to the construction of hydropower dams in the area.



Effects of a landslide in Talao village, showing the need for reserved land for resettlement

## 4.4 Anticipated losses in five villages

Five villages – Chay, Kachout Leur, Kanong, Key and Nay - anticipate future losses due to the apparent boundary of the Hoang Anh O'Yadav concession. Key informants and other villagers identified the boundary of the concession based on the red spray-paint the company used for demarcation and information obtained from commune chiefs and student volunteers of the Directive 01BB titling program. Villagers expect to experience both communal and household losses and anticipated that company activities causing these losses and related impacts would begin sometime in 2014.

All villages expect to lose access to forests that they depend upon and forest resources used for household consumption and income generation. A key informant in Kanong village reported, for example, that Hoang Anh Oyadav has demarcated an area rich in natural resources. Villagers said they currently rely heavily on hunting wild animals, collecting wild vegetables, tapping resin, and extracting wood for house construction. At the time of interview, villagers were still allowed to access NTFPs in the area, but cultivation of reserved land in these areas was prohibited. Some communities anticipated other communal losses include grazing land, spirit forests, burial grounds, water and fish sources (streams and ponds), chrob, resin trees, reserved land and communal forest.

Besides communal losses, the five villages are also concerned about losing individual property. Four of the five villages noted some households might lose residential plots, chamka, crops, animals and houses and other structures because of the concession. Two out of the five villagers anticipated losing houses and crops.

Table 5: Anticipated Losses in Five Villages

	Grazing land	Access to Forest	Spirit Forest	Burial Ground	Stream/Pond	Resin Trees	Reserved Land	Community Forest	Sacred Place	Chrob	Residential Plot	Livestock	Houses/Other Structures	Farmland
Chay														
Kachout Leur														
Kanong														
Ket														
Nay														

## Impacts on the Right to Self-Determination—

### KEY FINDINGS:

There has been a failure on the part of all responsible actors to respect the right of affected indigenous communities to self-determination, which also amounts to violations of Cambodian law. In particular:

- No opportunity was provided for community participation in decision-making on issues affecting them. In most cases, no notice or information was provided prior to the company commencing operations, and when meetings did occur, the communities were not accurately or fully informed about the project or its impacts. In the few cases that documents and maps were presented, these were not in a form accessible to the communities.
- No effort was made to consult communities about the decision of the government to grant the concessions or about HAGL's business activities, and no attempt was made by any actor to seek their free prior and informed consent for a project with serious and direct effects on their lands, territories and natural resources. The failure to consult or negotiate with local residents also amounts to non-compliance with the requirements of Cambodian Sub-decree No. 146 and the concession agreements.
- The use of police and military as security guards intimidated people and precluded their free expression of opposition to the project. In some cases, threats of violence and other forms of retribution for attempts to enter concession boundaries or to oppose the company's activities have been more explicit, infringing several other human rights, including the right to security of person recognized in article 9 of the ICCPR.
- The confiscation of lands and destruction of forest resources within the communities' customary territory is a serious violation of their right of self-determination, and to control and pursue their own economic, social and cultural development. These actions also violate Cambodian Land and Forestry Laws as well as the terms of concession agreements.
- The communal and household losses, including the loss of access to productive resources, has meant a fundamental deprivation of the communities' means of subsistence.

These acts and omissions contravene Article 1 of the ICCPR and the ICESCR, as well as several articles of UNDRIP, including 26(2) and 32(2).



# Impacts on the Right to an Adequate Standard of Living

**The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living...including adequate food, clothing and housing, and to the continuous improvement of living conditions...**

*International Covenant on Economic, Social and Cultural Rights, Article 11(1)*

**Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources.**

- *United Nations Declaration on the Rights of Indigenous Peoples, Article 29(1)*

The loss of productive land and natural resources described in the previous chapter has meant that living standards have been impacted in several ways. Most starkly, there have been considerable impacts on access to food and livelihood resources in villages affected by HAGLs concessions.

## 5.1 Impacts on the right to food

Key informants from all of the thirteen villages affected by HAGLs concessions reported an adverse change in the quantity, quality and type of food available in their village as a result of the company's activities. In particular, these changes were attributed to loss of productive land, streams and access to forests, which were the main source of people's food prior to the company's presence in the area. People collected a range of foods from these sources, including fruit, vegetables, meat and fish, and felt they had a high level of self-sufficiency for household food supply. In contrast, according to key informants, the communities now are unable to collect sufficient amounts and varieties of foods from their natural surroundings and face challenges feeding their families.

While the impacts on food are most serious for households that lost chamka and rice fields, other households have also experienced a reduction in access to food due to the losses of communal resources, especially in the dry season when crops are not harvested. Prior to the company's presence, over 90 percent of households interviewed accessed a full range of food, including wild fruit, vegetables and animals, from the forest for household consumption. However, this has dropped significantly post-concession with less than one-third of households still accessing the full range of these 'wild' foods. Households said that fishing is very important for their food security, and almost all reported fishing on a regular basis for household consumption prior to the company's operations. This figure had dropped by 40 percent by the time of interview.

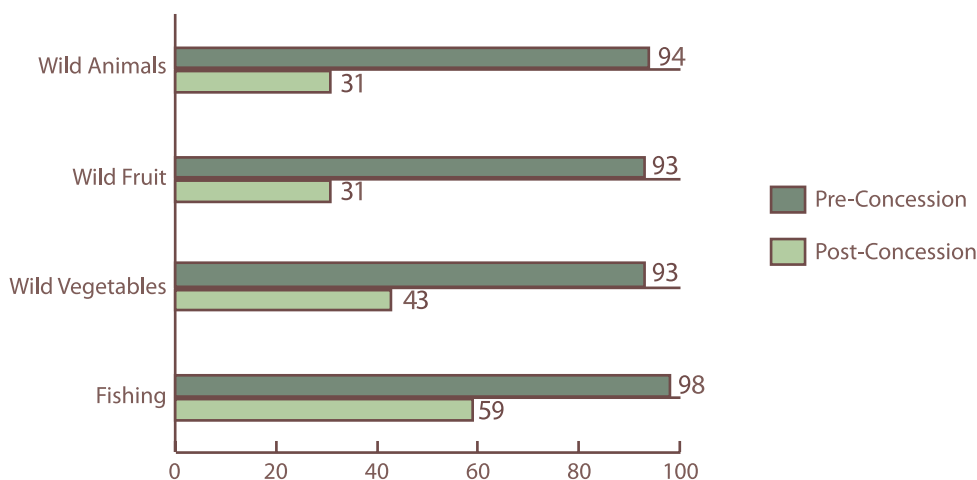
“My family used to have enough food to eat because we could collect wild food such as wild animals... Now we only have self-produced food from our chamka, which is insufficient for food consumption.”

-- Villager, Kam Village

“Since the presence of the company in this village, it is very difficult. We cannot find anything. We cannot find mushroom... pangolin, and monitor lizard... everywhere is rubber forest.”

-- Villager, Talao Village

**Figure 14: Access to Wild Food for Household Consumption (Percentage of Households)**



Households now need to purchase more food from the market because of the reduced access to natural sources of food. Most households say they prefer food from natural sources because it is fresher, tastier and chemical-free, but they increasingly have no choice. At the same time, household purchasing power has decreased due to the reduced access to resources previously relied upon for income, such as timber, resin and a range of other NTFPs. (See below for impacts on income.)

Thus, while most families still eat three meals a day, more than half of respondents said they often or sometimes consume less in a day than before the concession, and almost 85 percent said there has been a drop in the quality of food that their household consumes. More than 90 percent of respondents said that their household is able to store less food now than they could prior to the company’s operations.

### Change in Food Sources in Kam village

The once abundant forests and streams in Kam village used to provide the community with ample food, including fruit, vegetables, meat and fish. But since thousands of hectares of forest were cleared to make way for the rubber plantation, the community's food system has been dramatically affected. Wild animals for hunting have become rare, and villagers now have to buy meat from vendors who come to the village by motorbike. At the same time, however, the loss of natural resources has also affected household income, making the need to purchase food a significant strain.

Fish stock, an important source of nutrition for Kam families, has also declined significantly. More than twenty streams in the village that used to be rich in fish stock have been lost due to land clearance and landfill activities. Only one stream, O'Chrel, remains usable because its head is located outside the concession area. However, even in this stream, fish numbers have declined due to the use of high-tech fishing equipment by company workers.

#### 5.1.1 Women's perspectives on impacts on the right to food

In some villages, including Inn, Kak, Muy and Peng, women said they eat less than before because of reduced access to NTFPs. Some women pointed out that, by tradition, they eat less than men because "men work harder than women" and might get angry if they do not have enough food. This suggests that women are more likely to absorb reductions in quantity and variety of food into their diet, in order to provide their husbands full meals. Women in several villages said they also prioritize their children's meals above their own. In Inn, Kak and Kanat Thom, women said that the quality and variety of food now depends on the amount of money they have, and that sometimes, when they do not have money to buy food, they eat only rice with salt.

"We work very hard now... we do not have enough food to eat since the concession... when there is insufficient food we keep food for our kids and husband... it does not mean we do not eat, but we eat less than them."

--Women's focus group discussion in Kak

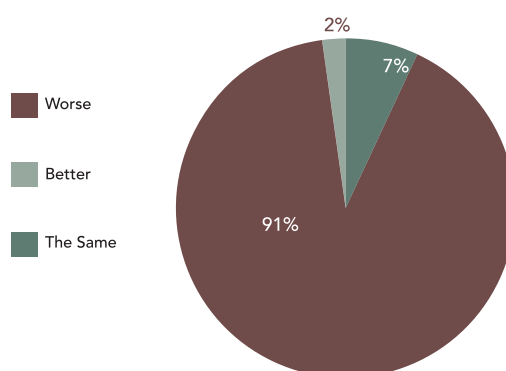
## 5.2 Impacts on livelihoods

“We do not have a main source of income at present... since we lost land. Our forest that we depend on is also cleared. We have nowhere to depend on for living, other than little parcels of chamka... and rice field that is not so productive.”

-- Villager, Kanat Thom village

According to key informants, eleven out of thirteen of the villages already affected by the company’s activities have faced negative impacts on their livelihoods. More than 90 percent of household respondents reported a drop in income. Reduced incomes are attributed to the loss of livelihood resources, namely livestock (due to loss of grazing land and fear of being fined if animals stray into the plantation), timber and NTFPs (due to destruction and loss of access to forest), fish (due to loss of streams and reduction in fish stock), and crops (due to loss of chamka).

Figure 15: Household Change in Income



In Kresh and Peng villages, coping mechanisms include the increased exploitation of the remaining accessible forest areas. In Talao and Peng, households that lost land are clearing community land for household farming, while in Malik and Srae Angkrong 3, households are using their relatives’ land. Half of all respondents said they have sought alternative or additional jobs in order to feed their family, including work on the rubber plantations (see Box 5 below).

“When we lost our forest that we depended on because of the company’s land clearance activity, we had no choice but to extract more resources from spirit forest and to travel further to seek an alternative source of forest products.”

-- Villager, Peng Village

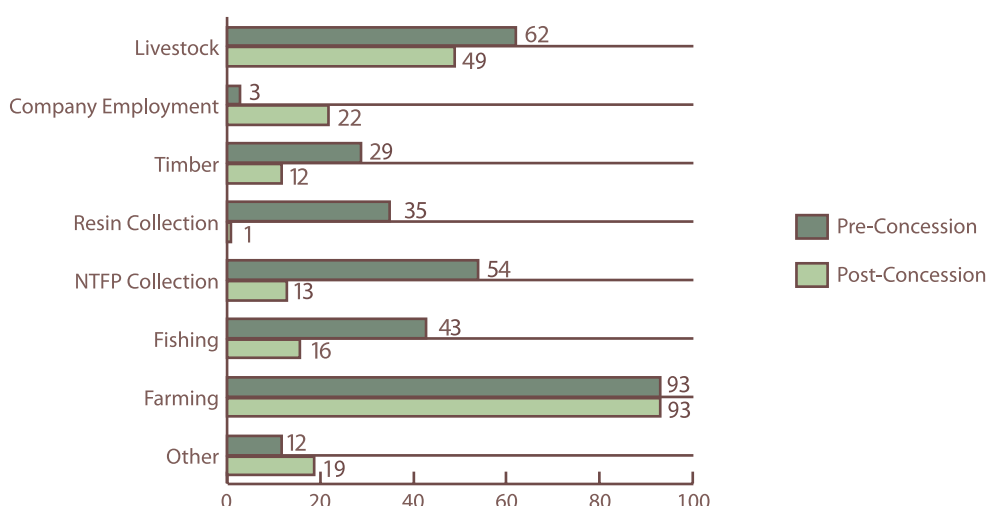
In Srae Angkrong 1, key informants thought that the company’s presence was having both a positive and negative impact on their community’s income. While HAGL’s activities have

destroyed forests and fisheries - important sources of income - respondents also noted that many people in their village now work on the rubber plantation, mostly as part-time laborers. However, many of those who have sought work on the plantation have done so because of reduced access to their original sources of food and income.

In addition to being important sources of income, households use timber, resin and other NTFPs to satisfy a variety of needs. While previously the vast majority of households collected timber for shelter construction, now only one third of households are able to access timber for household use. While 75 percent of households previously collected resin to use as fuel, now very few households are able to do so. Similarly, while almost all households previously collected other NTFPs for a variety of purposes, including food, tools and traditional medicines, now just over half of households are able to access these resources.

Most key informants reported that their villages had experienced further impacts on livelihood sources due to changes in climate, which they attribute to the destruction of local forests. Key informants and/or focus groups in eleven villages reported an increase in irregular rainfall, drought, strong winds, storms or flooding since the company commenced its operations in the area. For example, Kak village is experiencing irregular rainfall believed to be due to rapid deforestation, and floods have become more common due to forest clearance on the banks of streams.

**Figure 16: Household Change in Income Source  
(Percentage of Household Respondents)**

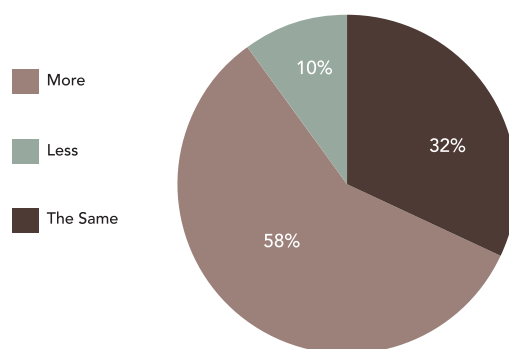


### Depleted Fish Stock in Srae Angkrong 3

A villager in Srae Angkrong 3 reported that while he previously fished regularly for both household consumption and income generation, now it is difficult to find enough fish just to feed his family. Instead, they have to buy fish from the market. Hoang Anh Andong Meas has filled streams and four big ponds and used chemicals that have polluted the streams. There are also too many people living in the area now, mainly due to the influx of company workers, placing a heavy strain on local resources. Workers for the company use high-tech equipment to catch fish, causing rapid depletion. He estimates that the availability of fish has declined by about 90 percent.

The drop in income combined with decreased access to natural sources of food and other resources has resulted in increased debt among affected households. According to key informants, the residents of six of the thirteen affected villages have a higher incidence of debt as a result of HAGL's impacts. According to household interviews, while one-fifth of households were previously in debt, that figure has increased to one-third. Most of the households that reported being in debt said the amount of debt has increased since the concession.

Figure 17: Change in Amount of Debt Since HAGL Began Operations



### 5.2.1 Impacts on women's livelihoods

In women's focus group discussions, participants described their various roles in the villages as including raising livestock, collecting water and firewood, gathering NTFPs, weeding in the chamka, working in the rice fields, cooking, caring for their children, and doing laundry and other housework. Women in Kresh village also produce wine and weave clothes and blankets for both household use and to sell. In some villages, women also earn income from working on the farms of other villagers.

Due to the loss of natural resources, women have faced challenges in fulfilling their daily tasks. For example, in Muy village, the group explained how women have experienced particular hardships due to the loss of forests, grazing land and sources of water. Women from eight villages said that it is now harder to collect firewood or that they need to travel further to do so because the company has blocked access to some areas. In most villages, women said they now have to tend to their cattle more carefully to prevent them from straying onto the plantation, where they might be confiscated or shot. This challenge is exacerbated by the reduction in available areas for grazing. In Kanat Thom, some children have stopped going to school in order to oversee the family's livestock. Women in Kak said they spend more time clearing land to show that they are using it, in the hope that this will prevent the company from taking it.

The changes to women's livelihoods are placing new stresses on their families and community. The extra work is making it harder for some women to take care of their children. Women in Kanat Thom described how, because of the polluted local water sources, they no longer walk to the stream together to collect water and they miss the social interaction of that activity. Women in Peng said that nowadays they argue with their husbands more due to the stress of reduced livelihoods and having less food to eat.

## Box 5: Working on the Rubber Plantation

While in most affected villages people do not work on HAGL's plantations, some villagers from Inn, Talao and Srae Angkrong 1, 2 and 3 have decided to work for the company as an alternative or supplemental income source.

In late 2013, we interviewed Inn village elder, Pen Vicheth<sup>73</sup> about his community's experience. Mr. Pen explained that previously the forest was a primary source of food for the village, so they have been hit hard by the clearance of so much forest by the company. The loss of wild foods from the forest is particularly difficult during the dry season when there is not enough water to cultivate their farming plots. As a result, many people started working on the plantation in order to feed their families as they became more reliant on purchasing food to survive. This transition was challenging, particularly because, as ethnic Kachok, the villagers traditionally work their own land and gather forest resources as a part of their self-sufficient food and livelihood system. Engagement in wage labor for outsiders is antithetical to their custom.

Most villagers in Inn, as well as in Talao and Srae Angkrong 1, 2 and 3, who work on the plantation are part-time or seasonal laborers, generally paid about USD 6.25 per day to plant seedlings, weed, spread fertilizer and water the trees, among other tasks. Working hours are between 7:00am and 5:00pm, with a two-hour break. Children work on the plantation when they have free time. A few are reportedly under the age of 12, which is in breach of Cambodia's Labor Law and ILO Convention No. 138.<sup>74</sup> The younger children are usually tasked with weeding. Villagers in Srae Angkrong 1, 2 and 3 said the working conditions vary depending on the foreman. Some have experienced delays in payment and underpayment, and others complained that breaks during work hours were prohibited.

Almost all respondents, including those who are ethnic Khmer (non-indigenous), said that they prefer working on their own farm than the company's plantation. The reasons provided reflect a discontent with the loss of control over their own livelihood sources and systems. Most said working on their own farms is more convenient and flexible. Many also said they could derive greater benefits from their own farm. Other reasons include perceived difficult job conditions on the plantation, especially strict working hours and other rules, which they are not used to; not being comfortable working for someone else; and the perception that working on the plantation is not a sustainable source of income.

When we returned to Inn village in August 2014, we were told that most people had stopped working for the company. The villagers gave several reasons for this, including disputes over payment, which they said was less than the agreed amount; competition from 'outside' laborers, who the company had started importing; and a perceived need among the villagers to spend their time clearing their own fields to prevent the company from taking more community land.



From HAGL's website: [http://www.hagl.com.vn/Group\\_Images/DetailImages/57](http://www.hagl.com.vn/Group_Images/DetailImages/57)

73 Not his real name.

74 Labor Code (1997), article 177(4); and ILO Minimum Age Convention, 1973 (No. 138), article 7 (ratified by Cambodia in 1999 and Vietnam in 2003).

## Case Study: Kanat Thom Village

Kanat Thom is affected by three economic land concessions, including one owned by Heng Brother, a subsidiary of HAGL. The village is surrounded by concessions.

The clear-felling of forests has meant that people have lost access to wild food, including fruit such as samrong, kuy and saomao prey, vegetables like bamboo shoots and mushrooms, and animals such as pangolin, monitor lizard and snake, which they used to eat. In addition, the loss of some streams and ponds have meant reduced fish stock. Moreover, the area claimed by Heng Brother includes what was once the farming land of 30 households in the village. The land was previously used for growing cassava, cashew, rice and pineapple, among other crops. Some reserved land for shifting cultivation was also lost to the concession. These areas were the most fertile lands in the village. Villagers now have no choice but to farm less fertile plots including fields that have become vulnerable to flooding and drought because of changes to nearby streams. Company workers from surrounding concessions sometimes steal vegetables that the villagers manage to grow.

Families are now facing reduced income and food insecurity.

Pek Rachana's<sup>75</sup> household lost four hectares of old farming land to Heng Brother. She explained that her household used to have a good rice yield, but the yield has dropped to just ten sacks per year since they lost their land. In addition, she complained about the loss of wild food including vegetables, fruit, animals and fish since the concessions became active. The cumulative effect of these losses is that Rachana's family does not have enough food to eat. They rarely eat meat and vegetables because they cannot afford to purchase them. They often borrow food or rely on help from relatives. Sometimes they eat only rice with salt and chili.

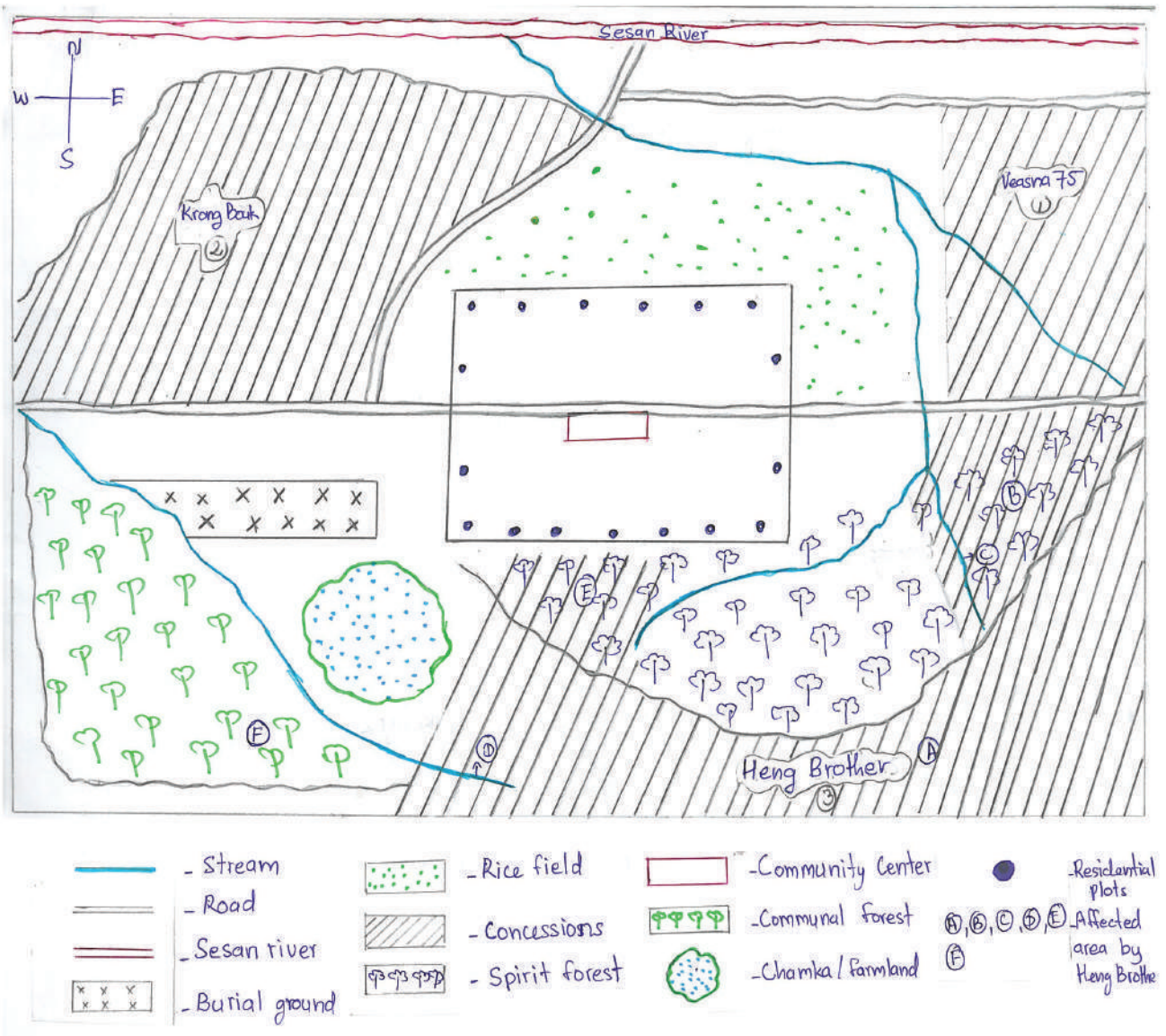
Rachana and her community fear that things will only get worse: they have been told that the concession granted to Heng Brother covers half of their village.

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<sup>75</sup> Not her real name.



Map 3: Community Map of Kanat Thom



Produced through community participatory mapping exercise

## Impacts on the Right to an Adequate Standard of Living—

### KEY FINDINGS:

The confiscation of lands and destruction of forests and other productive resources has resulted in a retrogression in the enjoyment of the right to an adequate standard of living of affected people, and violated Cambodian law. In particular:

- The loss of access to household and communal resources, including farming and grazing land, animals, fruit and vegetables sourced from the forest, and fish from streams has meant a reduction in food resources available for household consumption. Loss of reserved lands for rotational agriculture further poses a risk to future food security. The confiscation and destruction of these productive resources for present and future use has also meant a loss of sovereignty of affected communities over their food system, which people felt had successfully provided them with healthy and culturally appropriate food in a sustainable manner.
- Households that lost chamka and/or rice fields have suffered from the most serious impacts on their right to food.
- Loss of livelihood sources, for both income generation and household consumption, including lost livestock, access to timber, resin, other NTFPs, fish stock and crops, has affected various aspects of living standards. The logging of resin trees tapped by the communities as a part of their traditional livelihood system violates Cambodia's Forestry Law.
- The cumulative effect of the loss of access to wild/natural food and drop in income has meant that some people are facing challenges adequately feeding their family, with a range of coping mechanisms used, including increased debt. Women in some villages are bearing the brunt of reduced food quantity and/or quality. While most households continue to eat three meals per day, should further loss of land and resources occur there is a risk of serious food insecurity and deprivations of the right to food.
- Employment on rubber plantations of some affected people has only partly mitigated income losses for those households and has in no way compensated for lost control over food and livelihood sources and systems.

The acts and omissions that caused these impacts amount to a violation of article 11(1) of the ICESCR.

# Impacts on the Right to Health

**The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.**

*- International Covenant on Economic, Social and Cultural Rights, Article 12*

**Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.**

*- United Nations Declaration on the Rights of Indigenous Peoples, Article 24(1)*

Not surprisingly, given the adverse impacts on the environment and natural resources, some affected people have reported changes in their physical health and to their system of health care. Moreover, the sudden loss of resources for basic needs and abrupt changes in the village due to the company's presence has provoked feelings of stress and anxiety, affecting the mental health of some, especially women.

## 6.1 General impacts on health

Key informants from ten of the thirteen villages already affected thought that their community's health had been impacted by HAGL's operations. Approximately 40 percent of all household respondents said that their family's health has been affected, most of them rating family health as "good" prior to the company's presence and "poor" at the time of interview.

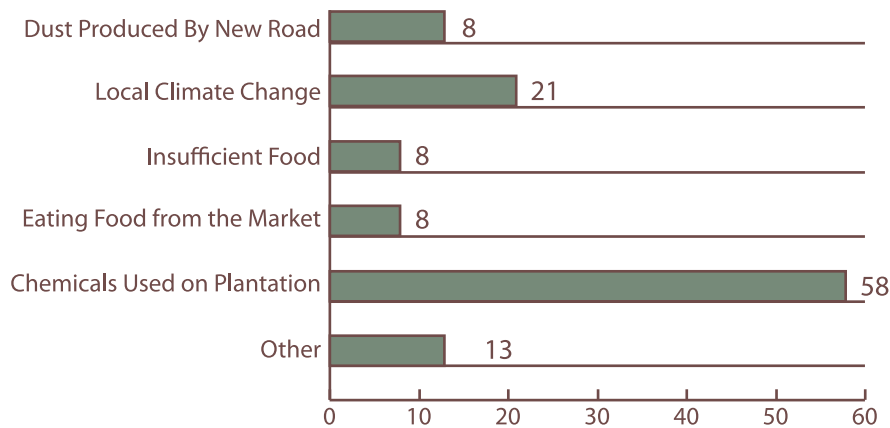
Impacts on health were variously attributed to chemicals used on the plantation; changes in climate; dust produced from the new road; insufficient food consumption; and consumption of market-bought food, which people believe to be treated with chemicals and of poorer quality than food they collect or grow themselves.

Women in Muy said their health has worsened because they eat less and work harder than before. Similarly, in Inn, Kanat Thom and Kak villages, women said their health has been affected by the reduction in food intake and quality. Some women reported getting headaches and dizziness that they correlated with not eating enough.

“Our health has become worse because we have a lot more work to do and consume less food than before the concession.”

--Women’s group discussion in Muy village

Figure 18: Perceived Causes of Impact on Family Health (Proportion of Households)



According to key informants, the water quality in streams has been affected in ten villages. The company’s activities, including forest clearance along streams, use of chemical substances on the plantation upstream, and washing of chemical containers in streams, have caused the streams to become muddy, shallow and polluted. Key informants reported that community health has been affected where streams are used as a household water source. In almost half of the affected villages, the women’s group reported that use of polluted water had caused skin irritations and/or diarrhea, especially amongst children.

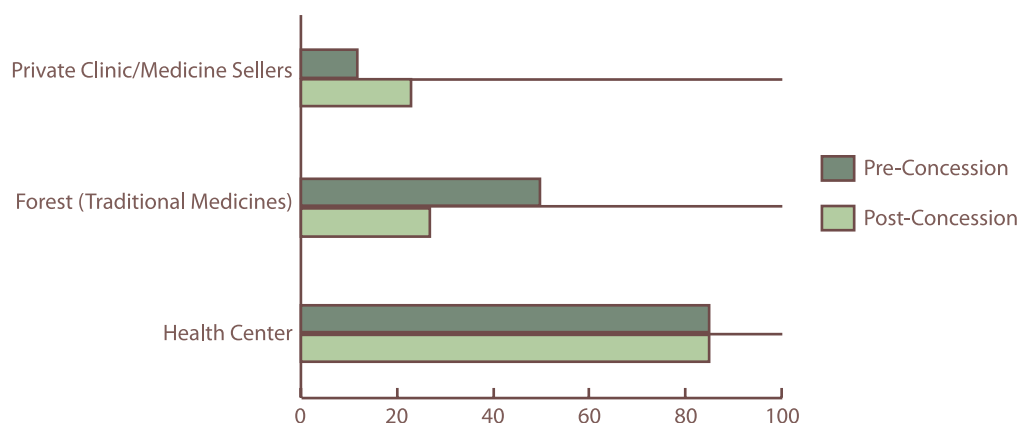
“The stream has become more shallow and muddy since the concession. Some villagers have skin irritation when using water from the stream... [the company] cleaned everything at upper-stream and we use water at lower stream.”

-- Villager, Peng Village

“The company uses chemical fertilizer and pesticide... in rainy season, it flows into the stream. There were villagers who drank water from the stream who sometimes had diarrhea... fever or skin irritation, which never happened before. That is why we assume that the stream contains chemical substances.”

-- Villager, Srae Angkrong 3

Figure 19: Methods of Healthcare (Proportions of Households)



Most people said that when people get sick they visit the health center, use traditional medicines and make offerings to spirits in order to recover. In three of the villages, the area for collecting traditional medicines has been lost to the concession. Fewer households access traditional medicines since the company commenced operations, but several more are using the services of a private clinic when they get sick.

### HAGL's Medical Program

Under its "investment for community development" program, HAGL has offered free medical check-ups and treatment in 18 villages in Ratanakiri since June 2013. According to HAGL's website, on at least three occasions, a team of medical specialists provided free medical examinations, diagnoses and treatments, including medications, to people in 18 communities.<sup>76</sup> HAGL states that "the main purpose of this program is to help the people living in HAGL's project areas overcome disease and poverty, [and] improve their physical and mental lives step by step."<sup>77</sup>

Among other treatments, HAGL reports that it has taken 30 visually impaired people with their family members to HAGL Medicine and Pharmacy University Hospital in Gia Lai, Vietnam for eye surgery.<sup>78</sup>



Photo from HAGL's website: <http://www.hagl.com.vn/Group/News/55>

76 See, <http://www.hagl.com.vn/Group/News/55>

77 HAGL provides free medical examinations to all of 18 communities at the project areas in Cambodia, available at: [http://www.hagl.com.vn/Group\\_Posts/DetailPost/201311271443494349](http://www.hagl.com.vn/Group_Posts/DetailPost/201311271443494349)

78 See, [http://www.hagl.com.vn/Group\\_Posts/DetailPost/201311271443494349](http://www.hagl.com.vn/Group_Posts/DetailPost/201311271443494349); and [http://www.hagl.com.vn/Group\\_Posts/DetailPost/201405261644394439](http://www.hagl.com.vn/Group_Posts/DetailPost/201405261644394439)

## 6.2 Impacts on the mental health of women

According to women's focus groups, there is much for women to worry about these days. Women from many of the villages said that they are upset and stressed about their loss of natural resources and are anxious about their household livelihood. They also worry that there will be no land or forest left for the next generation.

Also provoking considerable anxiety is the influx of foreign workers into the area. Women in almost all villages said that they feel insecure because of the many company workers that pass through their village. In some villages, women will now only travel in groups to work on the chamka or go to the forest. Many women said that they watch over their children and especially their daughters more vigilantly because of the many strangers that come into the village. In Malik and Kak, the women's group said that they do not allow their teenage daughters to walk alone. In Kak village, women are particularly nervous about their security because women in their village have been raped by workers of another company that previously operated in the area.

In Kanat Thom, Talao and Kak villages, women said that company workers sometimes steal vegetables from their home gardens. In Malik, the women's group reported that company workers have stolen chickens, ducks and fruit.



## Impacts on the Right to Health—

### KEY FINDINGS:

In some villages, people have experienced a retrogression in the enjoyment of the right to health, but some people have also had improved access to medical care:

- Adverse health impacts are mainly perceived to be due to pollution and destruction of the local environment and, relatedly, deterioration in the quantity and/or quality of food. Pollution of streams is viewed as a major cause of health issues.
- Women, in particular, are reporting health impacts due to changes in food consumption.
- Women are experiencing higher levels of stress and anxiety due to livelihood concerns and security issues, with potential implications for their mental health.
- HAGL's medical program has provided much needed services to communities, with notable positive impacts for those who have received treatment for visual impairment and eye disease.

The activities that are directly or indirectly causing adverse impacts on health amount to a violation of Article 12 of the ICESCR. At the same time, HAGL's medical program has had positive impacts, and the provision of regular ongoing free medical services would contribute to the progressive realization of the right to health.

## CHAPTER 7:

# Impacts on the Right to Practice Cultural and Spiritual Traditions

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

*- International Covenant on Economic, Social and Cultural Rights, Article 27*

Indigenous peoples have the right to practise and revitalize their cultural traditions and customs.

Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

*- United Nations Declaration on the Rights of Indigenous Peoples, Articles 11 and 12*



A Burial Ground in a Ratanakiri Village



The loss of spirit forests, burial grounds and other sacred sites, as well as forests and reserved lands for shifting cultivation, has affected the customs and cultural practices of affected communities.

## 7.1 Sacred sites

There are important traditional or spiritual places in every village, whether indigenous or Khmer. In Khmer villages, communities have a pagoda, animist sacred places, and burial grounds. In indigenous villages, communities have spirit forests and mountains, burial grounds, and sacred streams, ponds and fields.

In ten of the thirteen affected villages, key informants and/or focus groups said that their community's cultural and spiritual traditions have been adversely affected by HAGL's activities. Loss of spirit forests, burial grounds and other sacred places was the most commonly cited cause of these adverse impacts.

Table 6: Sacred Sites Affected

Village	Spirit Forest	Burial Ground	Chrab	Other Sacred Place
Inn				
Kak				
Kam				
Kanat Thom				
Kresh				
Malik				
Mass				
Muy				
Peng				
Srae Angkrong 3				

In Kanat Thom, villagers estimate that approximately 80 hectares of the community's spirit forest has been cleared by Heng Brother. In late 2013, the company cleared the forest until the community resisted. The villagers consider the spirit forest to be integral to their Kachok indigenous identity. Villagers regularly make offerings to the spirits to ensure the well-being of the whole community, to obtain a high crop yield and for other traditional ceremonies. The community is concerned that the destruction of spirit forest will lead to the loss of their community's identity, and in turn, the waning of community solidarity. In addition to the loss of spirit forest, two old burial grounds, full of their ancestors' graves, were cleared by the company.

In Muy village, many villagers have recently fallen ill. The ethnic Jarai villagers attribute this unusual affliction to the destruction of large trees on the nearby mountain by Hoang Anh Oyadav Company. They believe this has provoked the ire of the spirits that live there. The company has also cleared an old burial ground with many graves of villagers' ancestors. Two households received USD 1,000 compensation after complaining to the company about the desecration of their families' graves. Other victims did not get compensation because they did not dare to complain.

## Spirit forests of Ratanakiri

Spirit forests are central to the identity of indigenous communities of Ratanakiri. They play an important role in traditional ceremonies. Communities believe that their ability to protect spirit forests determines community happiness, peace, safety, health and satisfaction of needs. If they are unable to protect the "home" of the spirits, villagers believe they will be punished through disease or natural disasters, such as drought or storms, that could lead to the death of community members. People make offerings to the spirits for high crop yields, good health, the resolution of intra-community disputes, and on a host of other occasions.

As spirits are believed to inhabit big trees and rocks, dense forest and some mountains are usually respected as spirit forest. To avoid making the spirits angry, villagers are prohibited from felling big trees and cultivating areas inside spirit forests, but they are allowed to collect some NTFPs such as rattan, vine, and traditional medicines as such activities are not believed to disturb the spirits. Villagers know the location and boundaries of their spirit forest even when there is no physical demarcation.



Affected spirit forest in Kanat Thom



Cleared spirit forest in Inn village

In Inn village, a few people have died in unusual ways since the company cut down their spirit forest on a nearby mountain. Villagers described seeing fire flying from the mountain as it was being cleared and descending near their rice fields. They believed this unusual phenomenon occurred because of the spirits' anger and feared impending disaster in their community. Soon afterwards, two people died in car accidents, one person hanged himself and another person attempted suicide by cutting his throat. Villagers believe they were being punished because they failed to protect the spirits' home. The community says they have never before experienced such tragedy.

Villages consisting of Khmer populations also complained of the destruction of sacred sites. In Srae Angkrong 3, a village elder, whose main duty was to look after a small shrine dedicated to spirits, died after the company destroyed the shrine. His death was believed to have been caused by the angry spirits. Others also became ill, so the villagers made offerings to the spirits, built a new shrine, and asked the spirits to forgive them for failing to protect their home. Although people recovered after that, the villagers do not have a strong spiritual attachment to the new shrine and do not believe that the spirits will stay there.

## 7.2 Traditional activities and livelihood practices

The loss of access to forests has impeded the collection of NTFPs, including resin and hunting, which many regard as an important part of their customary way of life. People also expressed concern about losing areas reserved for shifting cultivation, which will mean that future generations will not be able to practice this traditional form of agriculture.

In Kak village, for example, the company has taken control of the forestland that villagers used for collecting NTFPs and shifting cultivation. At the time of interview, the company was clearing land that had been reserved by the community for multiple purposes, including the next generation's cultivation needs. The community expressed great concern about having no land left for their children.

Some people commented on the alternative form of livelihoods that company and government representatives say will be available to them in the future and how these are discordant with their traditional livelihood practices (See Box 5 on working on the plantation above).

“I am personally concerned that the population is growing, but land is reducing... The company has caused losses of land and forest... The company said: do not be afraid of the issue of landlessness. In the future, when the plantation is ready for operation, our kids and grandchildren can harvest rubber. The company will provide us with income... The company said this frivolously.”

-- Villager, Muy Village

## The Tradition of Shifting Cultivation

Shifting cultivation is part of the traditional way of life of Ratanakiri's indigenous communities. Many have been practicing this form of agriculture from time immemorial. We asked village elders to describe the practice of shifting cultivation in their village.

Traditionally, there is no limit on the size of land a household can clear, so the size of the farming area will depend on the household's labor capacity. On average, a household is able to clear one to two hectares per year, although a large family may be able to clear up to three hectares. Because they use traditional equipment for land clearance, it is rare for them to clear dense forest for cultivation. If the soil is fertile, the household will cultivate a plot for three to five years, usually growing rice with some vegetables and fruit trees, before moving on. They will then leave the plot fallow for six to ten years, to allow trees to regenerate so the soil can regain fertility. In each village, land is reserved for cultivation by the next generation.

The many agro-industrial plantations developed in and around these villages have severely encroached upon the reserved land still available for shifting cultivation. At the same time, government programs to individualize ownership of cultivation plots is having devastating effects on this traditional form of agriculture. (See Box 4 above on PM Directive 01BB.) The rotational nature of shifting cultivation means that control over and access to land is communal and flexible, even if use rights are temporarily granted to individual households. For the system of shifting cultivation to work, the land tenure must be flexible and the land itself must be inalienable, or the cycle will be broken.

Nowadays, villagers are clearing land to protect it from being seized, rather than as a part of their traditional rotational agriculture system. In at least one village, there is now conflict over land amongst villagers, who are fighting for control over the remaining farming land.



## 7.3 Influence of “outsiders”

“Now, since the presence of the company in Kak village, young people do not follow our advice. They follow outsiders... it has never happened before. They used to listen to parents, village elders, the chief and the committee. Now they no longer do that, they do what they want to... they no longer have solidarity with the village elder, chief and committee.”

-- Villager, Kak Village

Some village elders and leaders lament the sudden influx of Khmer migrant workers because of the bad influence they are reportedly having on their youth. They consider these influences to be contrary to their traditions and the community's interests.

Women in several villages elaborated on these concerns. In predominantly ethnic Jarai Peng village, women said they are concerned about migrants bringing “bad culture” into the area, such as consuming alcohol. In Muy, Jarai women said they fear that their sons will be influenced by these outsiders and drink alcohol and become gangsters, and that their daughters will run away with company workers.

In Inn village, the women said they are concerned about losing their Kachok identity because there are so many outsiders working on the plantation who come to their village and bring alcohol and karaoke – a contrast to their traditional music and dancing. They believe these influences have caused youth to become more aggressive. They are concerned about their sons being influenced to engage in immoral and illegal activities, such as consuming alcohol and stealing. The women also said they argue more often with their husbands these days because the men spend money on alcohol.

“Some families have arguments since the concession. If the husbands drink alcohol, the couples often have arguments because wives want the husbands to spend time clearing more land to claim it for farming [to protect it from being] taken by the company.”

--Women's group discussion in Kak village

## Impacts on Cultural Rights—

### KEY FINDINGS:

The confiscation and destruction of spirit forests, burial grounds, forests and reserved cultivation lands have violated the right of communities to practice their cultural and spiritual traditions, as well as Cambodian Land and Forestry laws.

- The destruction of spirit forests is deeply offensive to the affected communities and affects their ability to hold traditional ceremonies and practice their spiritual customs.
- The destruction of forests and pollution of streams has impeded communities' traditional activities including resin tapping, hunting and fishing.
- The loss of reserved lands for shifting cultivation has impeded the communities' traditional agricultural practices and way of life.
- The influx of Khmer migrant workers into the villages is having a deleterious effect on local culture and customs.

The acts and omissions that are impeding the enjoyment and practice of custom and culture of communities amount to violations of Article 27 of the ICCPR, Article 30 of the CRC and Articles 11 and 12 of UNDRIP.

# Access to Remedy

Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

- *International Covenant on Economic, Social and Cultural Rights, Article 27*

Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.

- *UN Guiding Principles on Business and Human Rights, Operational principle 22*

Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

*United Nations Declaration on the Rights of Indigenous Peoples, Article 28*

“To get our land back, we made countless complaints with thumbprints to local authorities. The complaint to commune office was rejected. Then, we submitted complaint to district office, but the district authority said they did not have ability to resolve the problem. When our complaint reached provincial level, we were told that land was granted to the company and shown some legal document.”

- Villager, Srey Angkong 3 village

Despite the fear of retribution for expressing opposition to the project, eleven out of the thirteen affected villages have submitted complaints about the concession and the company's activities in an effort to reclaim their land. Most of these communities have submitted at least one petition and/or made at least one verbal complaint to local authorities, usually at the commune and district levels. In some cases, villagers complained verbally to company workers.

None of the key informants thought that their villages had received an adequate response to their complaints or a resolution of their grievances. Most of the complaints, both verbal and written, have been ignored. For example, Kam village submitted a petition with approximately 150 thumbprints to the Ministry of Agriculture, Forestry and Fisheries, but received no response. The village later filed another complaint, through the Cambodian NGO Adhoc, that was reported in the media, but still received no resolution. In other cases, complaints resulted in a 'take it or leave it' offer of compensation from the company, with the amount offered perceived as inadequate by affected people. After villagers from Malik protested outside the provincial government office, some of the affected households received cash compensation for encroachment onto their cashew plantations, at an amount set by the company without negotiation. In Srae Angkrong 1, 2 and 3, community members verbally complained to the commune office, and Srae Angkrong 3 villagers also submitted several written complaints to commune and district offices. When they did not receive a response, they submitted a complaint through Adhoc. As a result, the company provided cash compensation to households that had lost chamka and rice fields in these villages. The households believe the compensation to be inadequate.

Approximately half of the household respondents said that they had been involved in filing a complaint against the company, usually to commune authorities. Of these respondents, about 40 percent said that after submitting the complaint they received cash compensation of an amount set by the company for individual household losses. While the vast majority of these households were not satisfied, usually because they wanted their land back, they believed that they had relinquished any rights to claim further remedies when they accepted compensation.

Household respondents who have not complained gave various reasons. One obstacle is limited education and knowledge about how and to whom to file a complaint. Women in Mass village, for example, said that their village has never complained to the company and they do not know how to do so. Another obstacle is fear of the company, which people perceive as too rich and powerful to challenge. The government and company's messaging to the villages that the concession is legal has also dissuaded some from protesting. These obstacles are also likely to explain why none of the villages or affected households has filed a complaint with the Court.

"I complained [verbally] to the village and commune [chiefs]... They responded that they could not resolve the problem... [For complaint to the court] I do not know how to do it. We are afraid if we skip [some steps], they would bring us to prison..."

-- Villager, Srae Ankrong 1 Village



# Effective Remedy in Cambodia

*Excerpts from Report of the Special Rapporteur on the situation of human rights in Cambodia, Surya Subedi, to the Human Rights Council in 2012:*

“[T]here are several non-judicial and quasi-judicial mechanisms for [land] dispute resolution, including the various levels of the cadastral system. However, the time-consuming administrative and procedural burden, financial costs associated with submitting a complaint (there are not official fees, as with courts, but transportation, lost wages, and seeking legal assistance, are costly for individuals), and a lack of faith in the system amounts to these mechanisms being used inconsistently. Complainants report that decisions by such bodies are inconsistent, irregular and subject to political interference.”<sup>79</sup>

“[A]lthough the Constitution of Cambodia provides for the separation of powers between the three main organs of the State, in practice the distinction between these organs is blurred and the executive branch dominates the judiciary, whether by providing resources to the judiciary or in making appointments to various judicial positions or by other means. This remains a key challenge for the country in implementing the rule of law and in promoting and protecting people’s rights. Given the interest that the Government has in the granting and management of economic and other land concessions, the judiciary is significantly hampered to adjudicate land disputes. In addition, when pitted against powerful landholding individuals or companies, communities report feeling marginalized due to bribery and political interference, resulting in a complete lack of faith in the system.”<sup>80</sup>

“First, I was threatened by police. Then there were three soldiers threatening me... They threatened me that whether I agree or disagree to give the land, it will be cleared anyway... One of the soldiers told me I should accept the cash compensation.”

-- Villager, Kanat Thom Village

One quarter of household respondents said that they were threatened when they tried to get their land back. Some said they were warned by local authorities not to make any complaints against the company. Others said the company threatened not to give them any compensation at all if they refused to accept their offer. Villagers from Srae Angkrong 1, 2, and 3 were threatened with imprisonment by local authorities if they complained.

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79 UN Doc. A/HRC/21/63/Add.1 (24 September 2012), para 177.

80 Ibid, para 181.

## Efforts to Seek a Remedy by Srae Angkrong Villagers

Srae Angkrong 1 and 2, effectively one large village, lie on one side of the Srae Pok river, while Srae Angkrong 3 is situated on the opposite bank. The villages are affected by Hoang Anh Andong Meas (Lumphat), having lost rice fields, resin trees, and access to State forest. They have suffered significant impacts on their livelihoods as a result, and many people now work on the rubber plantation.

Members of one of the villages complained against the company in 2012, but were warned by a commune authority that others who have complained against companies have been arrested and imprisoned. In another of the villages, at a 2012 meeting, a community member made a request to the company to allow the community to leave 50 meters on both sides of the stream for the community so they would have an area to raise their cattle. Suddenly, a bodyguard of the district chief pointed to the man's face and asked whether he "knew prison." The villages have been told that the concession is legal and they have no right to complain.

Despite this intimidation, nineteen households from the three villages submitted three complaints to HAGL between February and April 2013, with the help of Cambodian NGO, Adhoc. According to Adhoc, the villagers have lost a total of 34 hectares of rice field.

In May 2013, representatives of the IFC, Deutsche Bank, Dragon Capital and Hoang Anh Andong Meas met with village representatives and Adhoc to seek a resolution for these communities. The affected households were compensated for loss of their rice fields. Households received between USD 100 and 250 per hectare, but no compensation for losses of crops, cottages or fences. The households are not satisfied since they have lost their main source of livelihood and want alternative productive land, but they do not dare complain further.

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In February 2014, 15 villages submitted a complaint to the International Finance Corporation's (IFC) internal accountability mechanism, the Compliance Advisory Ombudsman, with the support of a number of NGOs, including Equitable Cambodia and Inclusive Development International. The complaint highlighted IFC's financing of HAGL through a financial intermediary, VEIL/Dragon Capital. At the time of writing, the communities were preparing to engage in negotiations with HAGL with the support of the CAO dispute resolution function.

Key informants from most affected villages said their communities want their land returned to them, regardless of whether the company has already planted rubber trees on that land. They believe that alternative land is not an adequate remedy, because there is no productive land available inside or nearby the village. Villages also seek cash compensation for losses of crops, animals, structures and their investment in clearing and preparing land that was grabbed. Other remedies sought include clear boundary demarcation between the community's land and the concession area as mutually agreed.

“The most important thing that I want back is land. It is for feeding our next generations in the future. If we sell land to the company, how can our next generations survive?”

-- Villager, Peng Village

“We want our land even though the company has already planted rubber trees on that land... land is important for our survival.”

-- Villager Kresh Village

“If we are poor, it is because of the land. If we are rich, it is because of the land. If we die, it is because of the land. If we humans survive, it is because of the land.”

--Villager, Kanat Thom Village

## Access to effective remedy—

### KEY FINDINGS:

Despite the violation of a number of their human rights, affected people have been unable to access an effective remedy.

- While many communities and households have submitted complaints to local authorities and the company, these have either been ignored, met with threats or addressed through offers of inadequate compensation without negotiation.
- No communities or households have attempted to bring a lawsuit through Cambodia's court system, despite strong grounds under Cambodian law.
- Prior to their joint complaint to the CAO, a considerable proportion of households had not formally complained about the company's activities due to, inter alia, information and knowledge barriers, fear and threats, a perception that challenging a powerful company is futile, and misinformation about the legality of the concession.

The failure of the Cambodian government to ensure access to remedies for human rights violations suffered by the affected persons amounts to a violation of Article 2(3) of the ICCPR. Intimidation and threats of violence or imprisonment amount to a violation of several other human rights including, the right to freedom of expression in Article 19 and the right to security of person in Article 9 of the ICCPR.

HAGL has agreed to enter into negotiations to remediate adverse impacts through legitimate processes in line with its human rights law responsibilities. As this process is at its early stages, it is premature to make findings on whether HAGL and its investors will satisfy their human rights law responsibilities in accordance with the Guiding Principles on Business and Human Rights, and provide, inter alia, land-based redress in accordance with the UNDRIP and the wishes of affected communities.

# Conclusion

“[T]he complaints of villages concerning non-consultation, the use of armed guards, the presentation for signature of an unexplained contract, the shooting of cows which wander onto concession areas and the feared endangerment of village survival and security of traditional sites of grave, pasture and farming land [should] be resolved without delay justly and according to the law.”<sup>81</sup>

This recommendation was made by the first Special Representative of the UN Secretary General for Human Rights in Cambodia, Michael Kirby, after he visited a plantation concession in Ratanakiri in January 1996. Almost two decades on, the Cambodian government has done little to curb the ongoing human rights violations caused by economic land concessions. Communities, including those affected by HAGL, continue to struggle to stave off these threats to their survival.

This assessment finds that there have been and will foreseeably be serious adverse impacts on the enjoyment of a range of human rights in all villages interviewed. No opportunity was provided for the participation of affected communities in decision-making, and in most cases, no notice or information was provided prior to the company commencing operations. No effort was made to seek the free prior and informed consent of indigenous communities despite the serious and direct effects on their lands, territories and natural resources. Threats and intimidation have precluded the possibility of free expression of opposition to the project. Both the failure to seek FPIC and the confiscation of lands and destruction of forest resources within the communities’ customary territories amount to a violation of their right of self-determination.

The confiscation of lands and destruction of forests and other productive resources has resulted in a retrogression in the enjoyment of the right to an adequate standard of living of many affected people. It has meant a loss of sovereignty over their food and livelihood system, which has not been significantly mitigated through employment opportunities on the plantations. In some villages, people have experienced a retrogression in the enjoyment of the right to health, especially due to the reduction in quality of food and the pollution of water sources. Beneficiaries of HAGL’s medical program, however, have experienced some positive health impacts.

The confiscation and destruction of spirit forests, burial grounds, forests and reserved cultivation lands have violated the right of communities to practice their cultural and spiritual traditions. The desecration of sacred sites has impeded the ability of communities to hold traditional ceremonies, and the destruction or loss of access to forests and pollution of streams has inhibited traditional activities such as resin tapping, hunting and fishing. The loss of reserved land is also affecting the communities’ practice of their traditional form of shifting cultivation.

Affected communities have been unable to access effective remedies for these human rights violations. Complaints to local authorities and the company have often been ignored or met with threats. In some cases, the company has provided compensation for household losses, deemed inadequate by the households, who primarily want their land returned. No compensation at all has been provided for communal losses, despite the communities’ appeal for the return of their collective territory. Many affected people have not complained despite their serious grievances, mainly due to fear of retribution and a lack of information.

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81 UN Doc., E/CN.4/1996/93 (26 February 1996), para. 84.

The data and findings in this report should be used to develop a comprehensive remediation plan that ensures full restitution for all losses and human rights violations, with full participation of affected communities.



Beyond their importance for achieving remediation in the case at hand, the findings of this report refute the prevailing assertions that investment in agriculture in the form of large-scale agribusiness reduce poverty of local populations such as those in Ratanakiri. Rather, they suggest that the presence of agro-industrial plantations can have the opposite effect among local populations that have some or all of the following characteristics: a customary socio-political organization, including collective land tenure and natural resource management systems; a reliance on land and natural resources for their food and livelihood system and the realization of their economic, social and cultural rights; limited integration into the cash economy; marginalization from decision-making processes; and the experience of systematic de jure and/or de facto discrimination. Set within a national context of weak rule of law, systemic corruption and other poor governance factors, the likelihood of achieving positive impacts on poverty and living standards of such populations is even more remote.

The experiences of the villagers interviewed for this report suggest that the introduction of large-scale agribusiness into such settings can reduce local food security and sovereignty, shrink existing livelihoods while failing to provide appropriate and effective alternatives, and bring about a host of other damaging repercussions on the well-being and human rights of local populations. This effect is not mitigated by the payment of cash compensation, nor by acts of corporate social responsibility such as the provision of small-scale infrastructure, food and intermittent health services. Importantly, the harms were not significantly mitigated by employment opportunities on the plantations. As the current UN Special Rapporteur on the situation of human rights in Cambodia, Professor Subedi, wrote in his September 2012 report to the Human Rights Council:

[T]hroughout my analysis, I struggled to fully comprehend the benefits of many land concessions that the Government has granted. In general, it is not clear to what extent the people of Cambodia have actually benefited from land concessions [...].<sup>82</sup>

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82 UN Doc., A/HRC/21/63/Add.1 (24 September 2012), page 2.

The data in this reports underscores the urgency of a new development model – in Cambodia’s agriculture sector and more broadly - that puts local people at the front and center; leverages and builds upon local systems, knowledge, capacity and opportunities; and fully respects the human rights of local populations.

Fundamentally, there must be a transformation in the attitude of government and its development partners towards indigenous peoples and their way of life. As Vize and Hornung observe, “[t]here is a prevalent perception among Cambodian authorities and decision-makers in the capital that indigenous peoples “waste” precious land that could be used to further the country’s economic development.”<sup>83</sup>

Ratanakiri’s indigenous peoples have survived pre-colonial slave trade exploitation, French colonial rule, and forced relocation and other pressures to assimilate into Khmer society under Sihanouk’s post-independence Cambodia. They survived intense bombing of the region during the US-Indochina War followed by the brutal Khmer Rouge rule, through which they were initially revered and thereafter victimized. Through all of this, indigenous communities have maintained their identity, customs and connection to their land and forests. Yet, despite this resilience, it is difficult to imagine how indigenous culture and livelihood practices will withstand the current onslaught of land privatization and confiscation, and corporate-led agro-industrial development that is devastating their natural resources.

Unless there are fundamental shifts in approach to development and attitudes towards indigenous peoples, the situation on the ground is set to deteriorate rapidly. Of communities affected by HAGL, nine of the thirteen villages said they are concerned about losing even more land and forests and are anxious about how they will sustain themselves. Other communities affected by ELCs in Ratanakiri and other provinces echo such concerns in the ubiquitous media reports in Cambodia’s newspapers.

All responsible actors must begin to take their human rights responsibilities seriously and reverse these damaging trends now.

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83 Vize and Hornung, *op. cit.*, p. 6.

## Annex: Village Characteristics

Village Name	Location	No. of HHs	Ethnic Group(s)	Main Livelihood Sources <sup>#</sup>	Land Tenure
Affected Villages:					
1. Inn	Talao commune, Andoung Meas district	78	Kachok (majority), Tampoun, Lao, Vietnamese, Prao, and Khmer	Farming	Lived in current location since 1980* No communal title (but regard community forest, burial ground, spirit forest and grazing land as collectively owned) Approx. 40 HHs have receipts for farming plots and rice fields through D01BB (They accepted because they were told by student volunteers that individual title could protect their land from being taken.)
2. Kak	Talao commune, Andoung Meas district	92	Kachok (majority) and Khmer (a few HHs)	Farming	Lived in current location since 1998 No communal title but has begun application process HHs with cashew plantation plots close to the concession area have title through D01BB. (Do not want individual title but afraid would lose land.)
3. Kam	L'ak Commune, Ou Chum District	212	Kreung (majority) , some Tampoun, Jarai, and Khmer	Farming, fishing and raising livestock	Lived in current location since 1989 No communal title but has begun process and recognized as indigenous community in 2011 (forest, burial ground, spirit forest, bamboo forest and settlement area regarded as collectively owned). 108 HHs have received title for farming plots through D01BB.
4. Kanat Thom	Talao commune, Andoung Meas district	168	Kachok (majority), Jarai, Tampoun, Khmer, Lao, Kreung, and Vietnamese	Farming, raising livestock and NTFPs	Lived in current location since 2000 No communal title but has begun process and recognized as Kachok indigenous community in 2010. Most HHs have title over farming plots through D01BB. (Do not want individual title but accepted because were told by company and student volunteers that it could prevent the land from being taken.)
5. Kresh	Poey commune, Ou Chum district	73	Kreung (Majority), some Tampoun and Prao	Farming, hunting, raising livestock, fishing, weaving for tourists (women)	Lived in current location since 1990 No communal title but have begun process and recognized as indigenous community (regard all land as collectively owned) No other land tenure documentation
6. Malik	Malik commune, Andoung Meas district	218	Tampoun (majority), Khmer, Jarai, Phnong, Kavet, and Kachok	Farming	Lived in current location since 1986 No communal title (but regard community forest, reserved forest, spirit forest and burial ground as collectively owned) Most HHs have title for their farming plots through D01BB.



Village Name	Location	No. of HHs	Ethnic Group(s)	Main Livelihood Sources <sup>#</sup>	Land Tenure
Affected Villages:					
7. Mass <sup>1</sup>	Poey Commune, Ou Chum district	67	Kreung	Farming (rice and cashew orchids) and raising livestock	Lived in current location since 1994 Some HHs received title for farming plots through D01BB No communal title (has not started process but agreed to regard land as collectively owned except for farming plots) Total village size prior to all concessions was 2,350ha.
8. Mouy	Nhang commune, Andoung Meas district	100	Jarai (majority), Kachok, and Khmer	Farming, fishing, raising livestock, NTFPs	Lived in current location since 1996 No communal title (has not started process but agreed to keep spirit forest, burial ground and communal forest as collective). HHs have receipts for rice fields and farming plots through D01BB.
9. Peng	Nhang commune, Andoung Meas district	64	Jarai (majority) and Khmer (2 HHs)	Farming, raising livestock, hunting and collection of forest products	Lived in current location since 1997 No communal title (have not started process but residential land, spirit forest, burial ground regarded as collective). Most HHs have title to farming plots and rice fields through D01BB. (Do not want individual title but afraid would lose land.)
10. Srae Angkrong 1	Srae Angkrong commune, Koun Morn district	157	Khmer	Farming, fishing, raising livestock and working on plantation	Lived in current location "for a long time" Srae Angkrong was one village until 1993 (became SA 1,2,3) Some HHs have receipts to residential and farming plots and rice fields verified by commune/district offices
11. Srae Angkrong 2	Srae Angkrong commune, Koun Morn district	152	Khmer	Farming, fishing, raising livestock and working on plantation	Lived in current location "for a long time" Divided into Srae Angkrong 2 in 1993 Some households have residential and farming plots verified by commune/district offices
12. Srae Angkrong 3	Srae Angkrong commune, Koun Morn district	154	Khmer	Fishing, farming, raising livestock and working on plantation	Lived in current location "for a long time" Divided into Srae Angkrong 3 in 1993 HHs have receipts to residential areas, rice fields and farming plots verified by commune/district offices
13. Talao	Talao commune, Andoung Meas district	137	Lao (majority), Kachok, Jarai and Khmer	Farming, fishing, raising livestock	Lived in current location "for a long time" No communal title (have not yet started the process) 46 HHs have titles to rice field and farming plots through D01BB. Some have receipts from the commune chief.

1 Villagers told interviewer that village is located in Poey Commune, Ou Chum District, but on map appears to be located in Ta Vaeng Leu Commune, Ta Vaeng District.

Village Name	Location	No. of HHs	Ethnic Group(s)	Main Livelihood Sources <sup>#</sup>	Land Tenure
Villages Anticipating Impacts:					
1. Chay Thom	Nhang commune, Andoung Meas district	99	Jarai (majority) and Khmer (2 HHs)	Farming and raising livestock	Lived in current location since 1992 Most HHs have receipts to farming plots and residential land through D01BB In process of registering community forestland (approx. 1400 ha). No communal land title
2. Kachout Leu	Nhang commune, Andoung Meas district	101	Kachok (majority), Khmer, Cham, Lao, Tampoun, Jarai, Kreung, and Vietnamese	Farming, raising livestock, aquaculture, selling timber, selling wild animals	Lived in current location since 1999 No communal title (regards residential area, burial ground and protected forest as collectively owned, although not under customary tenure) Most HHs have receipts for their farming and residential plots through D01BB
3. Kanong (also called Tanong)	Talao commune, Andoung Meas district	78	Kachok (majority), Jarai, Tampoun, Prao, and Khmer	Farming, raising livestock, hunting, and logging	Lived in current location since 2001 No communal title (regard burial ground, sacred pond and reserved land etc. as collectively owned but attempts to register reserved land was rejected) Some HHs have receipts for farming plots through D01BB. (Do not want communal title anymore because communal resources are no longer available due to concession.)
4. Ket	Nhang commune, Andoung Meas district	200	Jarai (majority), Kachok, Tampoun, Prao, Vietnamese, and Khmer	Farming, raising livestock, paid labor, and transporting timber	Lived in current location since 1999 Do not have system of customary/collective land tenure Some HHs have receipts for rice field, farming and residential plots through D01BB.
5. Nay	Nhang commune, Andoung Meas district	102	Kachok (majority), Khmer, Jarai, Tampoun, and Kreung	Farming, raising livestock, logging hunting, paid labor, and fishing	Lived in current location since 1999 No communal title (tried to register communal forest but rejected by district authorities because inside HA Oyaday concession area). Some HHs have title for farming plots through D01BB. All HHs received title for residential plots through D01BB.

<sup>#</sup> Listed are the main livelihood sources practiced traditionally prior to the confiscation of their lands and destruction of their forests. Many of these have been seriously impaired, or are under threat, as a result of the concessions.

<sup>\*</sup> Villagers from time to time move their homes to various locations within the area subject to their customary tenure system. Villages move for a range of reasons such as shifting cultivation, climate conditions, and illness and death in the community prompting relocation to move away from bad spirits. Recorded in the matrix is the year villagers settled in their current location. They have accessed, used and managed the area under their customary tenure system since the time of their ancestors. Displacement from ancestral lands may have occurred during the rule of the Pol Pot regime.







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equitable cambodia



inclusive  
development  
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