



CAO ASSESSMENT REPORT

Complaint Regarding IFC's VEIL II Project (20926)

May 2014

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

About the CAO

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

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

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LIST OF ACRONYMS

CAO	Office of the Compliance Advisor Ombudsman
CIYA	Cambodian Indigenous Youth Association
DCG	Dragon Capital Group
EC	Equitable Cambodia
HA	Highlanders Association
IDI	Inclusive Development International
IFC	International Finance Corporation
IRAM	Indigenous Rights Active Members
MIGA	Multilateral Investment Guarantee Agency

1. OVERVIEW

In February 2014, CAO received a complaint from local members of fifteen villages in the Cambodian Ratanakiri Province (“Complainants”) with the support and assistance of five Cambodian NGOs. The complaint raises concerns about Hoang Anh Gia Lai’s (HAGL) Cambodia operations’ impacts on seventeen local villages, including impacts on water sources and fish resources, loss of land, lack of compensation, lack of information disclosure and engagement with the people, threat to spiritual, cultural and indigenous practices amongst other issues. CAO determined that the complaint met its three eligibility criteria, as per its Operational Guidelines, and began an assessment of the complaint. During the assessment process, the Complainants and HAGL have agreed to engage in a voluntary dispute resolution process facilitated by CAO. This Assessment Report provides an overview of the assessment process, including a description of the project, the complaint, the assessment methodology, and next steps.

2. BACKGROUND

2.1 The Project¹

According to IFC documentation, VEIL (“The Fund”) is an investment fund that has been operating since 1995. The Fund has a capital base of just over US\$500 million and is managed by Dragon Capital Management Ltd, a subsidiary of Dragon Capital Group (DCG). The Fund’s objective is to invest in publicly or privately issued securities of Vietnamese companies, with the aim to provide impetus to the development of Vietnamese capital markets by increasing liquidity of Vietnamese securities.

IFC’s investment into the Fund was made in several disbursements for a total of US\$16.4 million representing 5.5 percent ownership of the Fund. IFC project documentation states that DCG is a reputable investment and advisory firm, which now has over twenty years track record of investing in Vietnam, and has played a dominant role in developing Vietnamese capital markets.

One of the beneficiaries of the Fund is Hoang Anh Gia Lai known as HAGL² (“The Company”), which is headquartered in Vietnam. The Company is active in various industries such as real estate, rubber manufacturing, and energy and mining. HAGL operates rubber plantations through a number of subsidiaries who in turn hold several economic land concessions in Ratanakiri province, Kingdom of Cambodia.

2.2 The Complaint

In February 2014, local members of 15 villages in Ratanakiri Province in Cambodia lodged a complaint with CAO with the support and assistance of five international and Cambodian NGOs – *Inclusive Development International (IDI)*, *Equitable Cambodia (EC)*, *Cambodian Indigenous Youth Association (CIYA)*, *Indigenous Rights Active Members (IRAM)* and *Highlanders Association (HA)*. The complaint raises concern about impacts on 17 villages, and provides detailed information about 13 of these villages. The complaint raises a range of environmental and social concerns about HAGL’s Cambodia operations, including impacts on water sources and fish resources, loss of land, lack of compensation, lack of information

¹ IFC Project Documentation - Summary of Project Information
<http://ifcext.ifc.org/ifcext/spiwebsite1.nsf/651aeb16abd09c1f8525797d006976ba/dfe5879675a79794852576ba000e24f9?opendocument> (Accessed, May, 2, 2014)

² HAGL - <http://www.hagl.com.vn>

disclosure and engagement with the people, threat to spiritual, cultural and indigenous practices, as well as use of child labor. The complaint further alleges non-compliance with IFC policies and procedures and with Cambodian laws. The Complainants requested that CAO keep their identities confidential.

3. ASSESSMENT SUMMARY

The purpose of this CAO assessment is to clarify the issues and concerns raised by the Complainants, to gather information on how other stakeholders see the situation, and to determine whether the Complainants and HAGL would like to pursue a voluntary dispute resolution process under the auspices of CAO Dispute Resolution or if the complaint should be transferred to CAO Compliance for appraisal of IFC's performance (see Annex A for CAO's complaint handling process). The CAO does not gather information to make a judgment on the merits of the complaint during its assessment.

3.1 Assessment Method

CAO's assessment of the complaint consisted of:

- A desk review of project documentation as well as documentation in support of the complaint submitted by the Complainants and supporting NGOs;
- Calls and meetings with Complainants, supporting NGOs, IFC's project team, the Dragon Capital Group, and HAGL; and
- Visits to affected villages.

3.2 Summary of Issues

This section gives a broad overview of the issues as expressed by the Complainants and the Company. It does not comprise a judgment from CAO about the merits of the complaint.

During CAO's assessment, community members highlighted the following areas of concern:

Concerns around impacts on communities' lands:

Community representatives expressed strong concern about the Company's clearance of their land. They note that Company land is not clearly demarcated, and have questions around how close to the village company land should be allowed to stretch. They pointed out that the Company's activities affect community land that is used by them for different purposes, including: farm land that is used by individual families; land that the community holds and manages jointly (communal land); land that the community has set aside to retreat to when their village is flooded during the rainy season (safe land); and land that the communities set aside for future generations.

Concerns around loss of identity and culture

Community representatives expressed how their identities and culture are intrinsically linked to their land. Their traditional livelihoods are based on land through income generating activities such as the collection and use of non-timber forest products, basket weaving, and *chamkar vilchum* (rotational swidden farming). Further, the communities note that some of their *prey araks* (sacred spirit forests) and graveyards have been affected or completely erased by the Company's land clearances.

Additional impacts on community livelihoods

Community members note that the Company filled in streams and ponds that the community used, decreasing their access to water. Further, they talked of adverse impacts on human

and livestock health from pesticide use in the plantation. In one village alone, some 300 animals are reported to have died in a year since the plantations were established.

Concerns about the conduct of Company workers

Community members expressed concern about the conduct of Company workers, who, they claim, use electricity to fish in the local streams, thereby depleting fish stock that the communities use for sustenance. The communities also shared with CAO that there were two instances of sexual assault by Company workers, resulting not only in individual duress, but also impacting how women in the village go about their daily activities to avoid potential harm.

A lack of trust

Community members shared with CAO their experiences whereby Company promises were later not kept, which has undermined the communities' trust in the Company. In one village, for example, they note that Company workers had offered to clear land for the community to use. Once the land was cleared, however, this land got incorporated into the plantation rather than being left for the community to use as promised. Further, community members spoke of instances of intimidation by security forces after they protested clearance activities on their land.

The Company's perspective

HAGL maintains that throughout its investment process in Cambodia, it has always complied with host country laws and regulations. The company expressed the desire to address the communities' concerns pro-actively, and said that in pursuing a resolution to these concerns, they would put the communities' interests first. The Company shared its vision that the communities surrounding its plantations be significantly better off as a result of the Company's presence, and that the communities should feel the benefit of their presence soon. The Company recognizes that it had not put greater focus on developmental opportunities for local communities earlier in the development of their operations. Finally, the Company declared a moratorium on further land clearance activities in the area of 13 communities that are listed by name in the complaint.

Areas of agreement

During this early engagement around the assessment of the complaint, a few areas of agreement are starting to emerge from both the Company and the Complainants:

- Both the Company and the Complainants are willing to engage in a dispute resolution process facilitated by CAO.
- Both the Company and the Complainants seek to find solutions in keeping with Cambodian laws and regulations.
- The Company and the Complainant representatives are eager to see the concerns resolved in a timely manner.
- The Company recognizes the importance of halting land clearance activities that are affecting the communities to allow for fruitful dialogue.

4. NEXT STEPS

The Complainants and HAGL have agreed to engage in a voluntary dispute resolution process. CAO will facilitate this process and, as a preliminary step, will engage with the Complainants, their larger communities and NGO advisors, and with the Company, on establishing ground rules to guide the process. This will include agreement regarding, among other issues: where and how meetings take place; questions of representation; and confidentiality. The parties will also need to agree on the issues that they would like the dispute resolution process to address.

ANNEX A. CAO COMPLAINTS HANDLING PROCESS

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

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

This document is a preliminary record of the views heard by the CAO team, and explanations of next steps depending on whether the parties choose to pursue a Dispute Resolution process or prefer a CAO Compliance process. *This report does not make any judgment on the merits of the complaint.*

As per CAO's Operational Guidelines,³ the following steps are typically followed in response to a complaint that is received:

- Step 1: **Acknowledgement** of receipt of the complaint
- Step 2: **Eligibility:** Determination of the complaint's eligibility for assessment under the mandate of the CAO (no more than 15 working days)
- Step 3: **CAO assessment:** "Assessment of the issues and provide support to stakeholders in understanding and determining whether they would like to pursue a consensual solution through a collaborative process convened by CAO's Dispute Resolution function, or whether the case should be handled by CAO's Compliance function to review IFC's/MIGA's environmental and social due diligence. The assessment time can take up to a maximum of 120 working days."
- Step 4: **Facilitating settlement:** If the parties choose to pursue a collaborative process, CAO's dispute resolution function is initiated. The dispute resolution process is typically based or initiated by a Memorandum of Understanding and/or a mutually agreed upon ground rules between the parties. It may involve facilitation/mediation, joint fact-finding, or other agreed resolution approaches leading to a settlement agreement or other mutually agreed and appropriate goal. The major objective of these types of problem-solving approaches will be to address the issues raised in the complaint, and any other significant issues relevant to the complaint that were identified during the assessment or the dispute resolution process, in a way that is acceptable to the parties affected⁴.

OR

³ For more details on the role and work of CAO, please refer to the full Operational Guidelines: http://www.cao-ombudsman.org/documents/CAOOperationalGuidelines_2013.pdf

⁴ Where stakeholders are unable to resolve the issues through a collaborative process within an agreed time frame, CAO Dispute Resolution will first seek to assist the stakeholders in breaking through impasse(s). If this is not possible, the Dispute Resolution team will inform the stakeholders, including IFC/MIGA staff, the President and Board of the World Bank Group, and the public, that CAO Dispute Resolution has closed the complaint and transferred it to CAO Compliance for appraisal.

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

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

Step 6: **Conclusion**/Case closure