

Towards equitable and secure access to land and natural resources for family farmers in the Mekong region

Capitalization Note



អង្គការ សមធម៌កម្ពុជា
equitable cambodia

July 2016

INNOVATIVE APPROACH TO LAND CONFLICT TRANSFORMATION

***Lessons learned from the HAGL/
indigenous communities' mediation
process in Ratanakiri, Cambodia***



Equitable Cambodia and Inclusive Development International

Mekong Region Land Governance

Capitalization Note

Written by Courtney WORK

In cooperation with the project Steering Committee consisting of Christian CASTELLANET, David PRED, Natalie BUGALSKI, EANG Vuthy, Mark GRIMSDITCH, and Jean-Christophe DIEPART.

For more information, contact

David PRED at Inclusive Development International: david@inclusivedevelopment.net

EANG Vuthy at Equitable Cambodia: vuthy@equitablecambodia.org

DAM Chanthy at Highlanders Association: haratanakiri@gmail.com

NGACH Samin at Cambodian Indigenous Youth Organisation: ngsamin@gmail.com

MOEUN Vuthy at Indigenous Rights Active Members: vuthymoeun.ip@gmail.com

Suggested citation:

Work, C. (2016). *Innovative approach to land conflict transformation. Lessons learned from the HAGL/ indigenous communities' mediation process in Ratanakiri, Cambodia*. MRLG Capitalization Note Series #1. Vientiane & Phnom Penh: Mekong Region Land Governance, Equitable Cambodia and Inclusive Development International.



This work is licensed under a [Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International License](https://creativecommons.org/licenses/by-nc-sa/4.0/)

Table of contents

Executive summary	ii
Background information	1
Description of the conflict transformation process	3
Main results/outputs	7
Grassroots capacity building	7
<i>Training sessions attended by community and NGO representatives</i>	7
<i>Village-level activities</i>	7
Mediation meetings and company commitments	8
Tools and resources produced and used	9
Dissemination	10
Setting precedents for international investors	10
Lessons learned	11
Relationships of unequal power	11
Community commitment	11
Time and persistence is needed	12
Community mapping	12
NGO coordination and communication	12
Follow the Money works	13
Negotiation with local and national authorities	13
Conditions for replication	14
Conclusion	15
References	16
Annexes	17

Executive summary

Background information

Communities in Cambodia continue to suffer poverty and displacement from large-scale land deals designed to increase agricultural production and decrease poverty. As of late 2014, Cambodia has granted about 490 economic concessions, including mining concessions, totalling 4.5 million hectares (ha), about 25 per cent of the territory (Messerli et al., 2015). Much of this land was converted from dense forest into plantations by Economic Land Concessions (ELC). In 2009, these dramatic land use changes began to impact indigenous communities in Ratanakiri Province in north-western Cambodia. An investigation by Global Witness (GW) on rubber production in Cambodia and Laos (2012) revealed that several rubber plantations in Ratanakiri were subsidiaries of one of Vietnam's largest private companies, Hoang Anh Gia Lai (HAGL). This company enjoys close ties to political and business elites in Cambodia who have allowed them to violate local customs with impunity and shrouded their deals in secrecy. At the outset of their concession agreement, HAGL was bankrolled by international finance such as Deutsche Bank, Credit Swiss, and the World Bank's private sector arm, the International Finance Corporation (IFC).

HAGL corporation's rubber plantations in Ratanakiri have severely impacted at least 14 indigenous communities who lost forest lands, community farms, burial grounds, spirit forests, fishing grounds, and lands reserved for future generations. GW enlisted Inclusive Development International (IDI) to assess whether the IFC's policies on financial intermediaries had been breached, and whether a complaint to the IFC's accountability mechanism, the Compliance Advisory Ombudsman (CAO) was feasible. At that point, IDI contracted a national-level NGO, Equitable Cambodia (EC), to see if affected communities wished to try to seek redress from HAGL. After over 27 months of advocacy and negotiations, at the time of this writing, the process is not yet complete. Nonetheless, an unprecedented breakthrough was achieved. HAGL representatives confirmed the company's commitment not to carry out any further clearance or development of its concessions and return to the community the remaining undeveloped land and forests. HAGL's Hoang Anh Oyadav ELC was reduced by provincial authorities by 13,720 ha (from 16,849 hectares to 3,129 ha).

The Joint Statements are available here:

<http://www.inclusivedevelopment.net/wp-content/uploads/2015/09/Joint-Statement-Villages-Group-2-16-Sept-2015-EngKh4clean-SS-1.pdf>

<http://www.inclusivedevelopment.net/wp-content/uploads/2015/09/Joint-Statement-Villages-Group-3-19-Sept-2015-Eng.pdf>

Lessons and challenges:

- ⇒ The cornerstone of this initiative was mediating and negotiating relationships of unequal power. It is essential to have a highly qualified mediator who understands power imbalances and for the supporting organizations to establish roots and spend some time in the affected communities to be able to understand their point of view.
- ⇒ Working with the traditional leaders is essential in such a process. If younger people are needed to facilitate communication with the outside world, they should remain under the authority of (and report to) the elders.

Executive summary

- ⇒ This was a complicated initiative with multiple stakeholders, detailed technical data collection, and delicate negotiation requirements, which occurred in periods of intense activities punctuated by long months of waiting. Provision of community support, including intensive retraining efforts required to document resources and make maps, strained NGO staff and budgets.
- ⇒ Although it is important to have organizations cooperating at the international, national, and regional levels, their number should be limited. Further, strong coordination must be insured at the field level through the presence of the national lead organization.
- ⇒ Without the financial pressure created by direct contact with the financial backers, the process would never have gone forward. However, this is an expensive and time consuming process.
- ⇒ Negotiation with national and provincial authorities is vital as soon as the mediation process begins. For the first steps of mobilizing villages, interface with local level officials may or may not diffuse tensions.

Conditions for replication:

- ⇒ The company has to be sufficiently vulnerable to their investors.
 - Companies with state backing or deep connections to their national governments are more difficult to pressure.
 - If at least one strong pressure point can be found, the strategy is worth pursuing. However, multiple pressure points are most effective.
 - The strategy is least effective with very small private investors.
- ⇒ The investors and company shareholders must be willing to support the advocacy campaign and put pressure on the company.
- ⇒ Organizations with different sets of contacts and influences are necessary. This intervention requires organizations with international, national, and field-level expertise.
- ⇒ The instigating organization(s) must have sufficient monetary and human capital to enter into the process.
 - EC alone spent over \$100,000 USD over the course of 27 months and there is still much work to be done
 - Intensive workshops and trainings must be conducted with communities and grassroots partners
 - ◆ Grassroots NGO may need significant capacity building at all stages
 - Follow-up assistance and staff time will be required at inconsistent intervals.
 - ◆ The organization must have adequate human resources for this kind of flexibility
- ⇒ The community must be invested in the process, have strong solidarity, and be given the tools they need to articulate their needs to the company. Without the community, this is an NGO problem and has no weight.
- ⇒ The security risks in every situation must be assessed to determine whether this strategy is worth pursuing in a given case.

Background information

Communities in Cambodia continue to suffer poverty and displacement from large-scale land deals designed to increase agricultural production and decrease poverty. As of late 2014, Cambodia has granted about 490 concessions for 4.5 million ha, including mining concessions, accounting for about 25 per cent of the territory (Messerli et al. 2015, 141). Much of this land has been converted from dense forest into plantations by Economic Land Concessions (ELC). In 2009, these dramatic land use changes began to impact indigenous communities in Ratanakiri Province in north-western Cambodia. An investigation by Global Witness (GW) on rubber production in Cambodia and Laos (2012) revealed that several rubber plantations in Ratanakiri were subsidiaries of one of Vietnam's largest private companies, Hoang Anh Gia Lai (HAGL). This company enjoys close ties to political and business elites in Cambodia which allows them to make deals in secrecy and shortcut the normal processes for obtaining their concessions. At the outset of their concession agreement, HAGL was supported financially by international finance such as Deutsche Bank, Credit Swiss, and the World Bank's private sector arm, the International Finance Corporation (IFC).

Follow the Money

The IFC provided financing to HAGL through the Dragon Capital Group Ltd (Dragon Capital), a Vietnam-based investment group specializing in emerging financial markets. The IFC, a shareholder in Dragon Capital since 2002, also invested directly in Vietnam Enterprise Investments Ltd (VEIL) a fund owned by Dragon Capital. Both investment groups hold shares in HAGL.

IFC involvement was leveraged using their environmental, social and governance framework. According to this framework, all who receive IFC investment funds are required to comply with national laws and minimize negative environmental and social impacts (GW 2012, 33-35).

Leverage accountability mechanisms

The Compliance Advisor Ombudsman (CAO) is the independent recourse mechanism for the International Finance Corporation (IFC). The CAO responds to complaints from project-affected communities. They ensure compliance on the ground and resolve disputes using alternative dispute resolution approaches that include, mediation, joint fact-finding, information sharing and facilitated dialogue.

<http://www.cao-ombudsman.org/>

HAGL corporation's rubber plantations in Ratanakiri have severely impacted the ancestral lands of at least 14 indigenous communities (Map 1). Forest lands, community farms, burial grounds, spirit forests, fishing grounds, and lands reserved for future generations were all consumed by HAGL's rubber plantations. Villagers joined together to resist these encroachments and met only contempt for their rights, intimidation, and threats of violence by local authorities and company officials. Community complaints of land loss were countered with the 'fact' that the disputed territory was state land legally granted to the company, not community land. When local complaints did result in company compensation for losses, compensation was inadequate, but local authorities intimidated communities, saying "take it or you get nothing"; threats of violence and prison were also levelled against communities (Bugalski & Thuon 2015). Further, the loss of community lands decreased income and increased debt, giving rise to conflicts and disarticulation within the community. The food insecurity caused by the loss of Non Timber Forest Products and swidden lands has been exacerbated by company forest clearing and its attendant flooding and localized climate changes, increasing community health problems -especially for women.

Background information

At the time of the intervention, beginning late 2013, the community was demoralized and fractured, seeing no hope of protection from company encroachment. There were two strong forces working against the community, the company and local level government officials. The IDI/EC initiative gave the community hope and through it they have rebuilt a strong community network. Innovative advocacy from local, national, and international NGOs bolstered community mobilization and a comprehensive settlement framework agreement was reached with HAGL. The process was long and complicated and funding had to be sought from multiple sources. At a critical moment when there was a gap in funding, MLRG's Quick Disbursement Fund helped keep operations moving. After over 27 months of advocacy and negotiations, at the time of this writing, the process is not yet complete. Nonetheless, an unprecedented breakthrough was achieved and for the moment local communities are safe from further abuse.

Description of the conflict transformation process

From its inception in November 2013, the intervention was a dynamic process that rejuvenated commitment within the community. It relied on the special skills and cooperation of different advocacy organizations, on the patience and effectiveness of CAO mediators, and on the willingness of HAGL's investors and prospective investors to pressure the company and insist they adhere to human rights guidelines. The process can be replicated in the right circumstances, as will be discussed below, but an understanding of the iterations and layered activities of this lengthy process is an essential starting point. Importantly, after 27 months of negotiations, the intervention is not complete: the compensation agreed to is not yet paid; the undeveloped land to be returned to the community is measured, signed, and stamped at the provincial level, but national level documents are not yet complete; and there remains significant work to do in community mapping, as well as delicate negotiations over water treatment, the return of developed land, and the issuing of communal land titles.

For the past and ongoing operations of this initiative, each NGO organization had their particular role to play and each brought specific skills to the negotiation process. The support and expert advice of advocacy organizations was a crucial component that catalysed the process at the beginning and will see it through to the end. IDI has expertise in using international accountability mechanisms and lobbying corporate and financial institutions at the highest levels. EC is an organization with a proven track record of successful training and mobilization of grassroots communities against large companies in Cambodia. IDI and EC also reached out to indigenous advocacy organizations in Ratanakiri who have the trust of affected communities.

Intensive work was carried out necessary to organize and prepare communities for this initiative and grassroots NGO partners were essential, but not all organizations supported this intervention. Many were fearful of confronting the company; one activist organization had already been evicted by provincial authorities for challenging company legality. Those who did join in supporting the complaint—the Highlanders Association (HA), Cambodian Indigenous Youth Association (CIYA), Indigenous Rights Active Members (IRAM), and a later consultation commitment from Analysing Development Issues Center (ADIC) - were those willing to take on this powerful entity and those with the necessary skills. These skills included the very specialized abilities to communicate with widely dispersed communities in seven different indigenous languages. This was more than just linguistic translation. It involved interpreting between text-based and orally-based communities and the cultural logics of corporate finance and international mediation. Despite their specialized skills, the grassroots partners also needed extensive capacity building in order for them to understand and to meet the challenges of negotiation with a powerful company.

The intervention approach of persuading HAGL's investors to put pressure on the company, was seen by communities to introduce powerful tools for raising their concerns. Effective communication and translation of the language of legal processes was, nonetheless, a challenge. An even greater challenge, however, was to bring demoralized communities together in a common goal. After five years of company abuses with complicity of local-level authorities, communities were listless. Additionally, NGO organizations, although unwittingly, had further factionalized the community by providing funding for specific, targeted projects that created small groups of NGO clients, rather than cohesive communities with unified visions and objectives. Finally, and importantly, many were fearful of the company and sceptical of the effectiveness of interventions.

Description of the conflict transformation process

IDI and EC held two consecutive meetings to explain to community representatives and the local NGOs what the IFC is, what a financial intermediary is, what the CAO is, and how they intended to pressure the company into respecting the human rights of the community. During the meetings HA staff carried out careful translations, discussions, re-translations, and explanations of concepts. After the first dissemination exercises it was clear that new dissemination tools were required. In collaboration with another Cambodian NGO, IDI produced a script of the information meetings that was translated into four of the seven indigenous languages and created image-based slides for presentation. For dissemination, they printed those meeting slides and also produced a video disk that explained these detailed processes in clear language to share with communities. There were two introductory workshops in November and December 2013 and a great deal of community interactions to assist with dissemination.

Communities are not homogenous groups and much work was done outside the workshops. The Human Rights Impact Assessment (HRIA) conducted by IDI and EC was especially effective collecting the voices of women, who are often reluctant to take leadership roles in these processes. The HRIA and workshop dissemination efforts brought out the voices and concerns of people differently impacted by the company. The vast majority of affected individuals were concerned with the preservation of swidden and communal forest lands. There were also other concerns. For example, some individuals had marginally benefited through plantation jobs, while others had taken up illegal logging for cash. The issue of communal land title remains unresolved: some community members value the potential security and monetary benefits of individual land titles while others, including community representatives, advocate for communal title.

Despite differing expectations, the majority of community members from all affected villages agreed that they wanted to safeguard their lands and to protect forest resources from the company. After disseminating the information through workshops, focus groups, and video to all the villages, community representatives sought and received consent from their communities to proceed with the CAO complaint. In February 2014, IDI and EC put the complaint together and brought 17 representatives from the affected communities to Phnom Penh to meet IFC and tell them directly about community concerns (three villages proved unaffected by HAGL companies and dropped out of the complaint, leaving 14 communities). The next day, they submitted the formal complaint and held a press conference led by community representatives.

Representatives at HAGL contacted IDI immediately after the advocates filed the complaint to the CAO and sent a copy to Dragon Capital. In a meeting in Phnom Penh, company representatives expressed their commitment to address people's grievances and tried to persuade the advocacy team to go to Ratanakiri with them, where they said they would "solve the problems immediately". Suspecting that HAGL wanted to deal with the matter through the quick payment of compensation and perhaps intimidation, as typified previous company negotiations with local communities, the NGO team urged the company representatives to cooperate with the CAO process. The number of communities involved and the complexity of the grievances and human rights violations meant that a structured dispute resolution process was necessary. Company representatives were hesitant, but eventually agreed. The company and NGOs were financially responsible for their own participation in the negotiations, but CAO was financed by the IFC and the cost of direct mediation fell neither on the company nor the NGOs. CAO also paid to bring community members to the negotiations.

Once the negotiation process began, IDI, EC and Global Witness engaged with major HAGL's investors and prospective investors to keep them informed and urge them to use their leverage to persuade HAGL to redress their human rights violations in Cambodia. Several investors responded positively and their interventions appear to have been an important element in HAGL's eventual commitments (link to joint statements available page ii and page 9). The dogged persistence of IDI staff along with the willingness of investors and shareholders to engage in this form of advocacy eventually forced HAGL to seriously engage in negotiation.

Description of the conflict transformation process

Putting pressure on the company and their investors from the top and generating power in the grassroots communities from below was effective, but the process also met intimidation from local level authorities. During EC and HA's initial visit, they were harassed by local authorities who feared NGOs would ignite protests against the company. HA representatives were instrumental in smoothing these encounters with authorities and arranging ways to meet with villagers that avoided confrontations. Nonetheless, in March 2015 when the team of CAO mediators began to visit communities and have meetings, the provincial governor would not allow them to operate in the province and it was not until after CAO communicated with the Ministry of the Interior (MoI) and an official letter was issued, that interference from local authorities finally ceased—five months into the process.

Another important event occurred at the local level after the CAO reviewed the case and confirmed their role as mediators. CAO representatives met with village representatives to discuss how the mediation would proceed, what they could expect and what kinds of village-level information they would need to gather. The detailed processes and specialized skills required caused some of the elder representatives to resign in favour of younger members with better Khmer language skills and some education. The authority and leadership of these elders was missed in the ensuing months, especially when enlisting cooperation and gathering information at the village level.

The CAO mediator was a critical player, and this was apparent from their first mediation to set the ground rules. In this first negotiation, the mediator pushed for ground rules that side-lined NGO legal representatives and attempted to suppress the external communications necessary to keep investors informed. While such ground rules may be appropriate in a business to business dispute, they severely threatened effective mediation between indigenous communities and multinational corporations. As the process developed, CAO recruited an additional international mediator with extensive experience mediating such complex cases, who understood the asymmetrical power relations that pervaded the mediations and, working alongside the original mediator, brought appropriate techniques to this setting.

The case was kept on track by EC staff working on the ground in Ratanakiri and they played a crucial role managing the details and facilitating community interactions with the CAO. The workload for the case was intermittent, with intense data collection and training sessions from November 2013 through April 2014 when the CAO confirmed HAGL's commitment. It was not until January of 2015 that activities increased again until the major breakthrough in September 2015. Another lull ensued until March 2016 and how long this next phase of activities will last is yet unknown (see Annex 2: timeline). This was taxing on EC staff as there was a lot of capacity building needed for grassroots NGO partners and community representatives. Lessons had to be recapped and key activities required retraining from one burst of activity to the next. EC hired a permanent staff person to stay in Ratanakiri because continuous community interface was vital to ensure that all the necessary data from the affected communities was compiled for negotiations. This person worked and continues to work with local communities, with the grassroots NGOs, and with the CAO to gather and disseminate information between the stakeholders.

The community received multiple training sessions on land rights, effective negotiation and gathering solid data on the impacts they suffered from the company. Teaching community representatives how to develop inventories of losses at both collective and household levels took almost three months of careful coaching from IDI and EC staff. The community-led inventories and corresponding demands for restitution were accompanied by hand-drawn maps that provided visual representations of the affected areas (Annex 1: maps 2, 3).

Description of the conflict transformation process

This supplemented the Human Rights Impact Assessment (HRIA) and provided a strong evidence base for the negotiations. The community representatives used these inventories and the maps in the meetings to present their case to HAGL. This delicate and detailed mapping and inventory work brought community voices together and negotiation training sessions strengthened them.

In previous protests against the company, community representatives could hardly look at the faces of the people representing the company. The hierarchal structures are quite rigid in Cambodia, and uneducated villagers are at the bottom of this system. After many intensive training sessions by EC and IDI, community representatives stood tall in front of the company representatives and told them unequivocally where their ancestral lands were and demonstrated the impacts of HAGL's plantation development. This was a major achievement and had a powerful effect on company negotiators.

After the CAO joint meetings of September 2015, HAGL representatives confirmed the company's commitment not to carry out any further clearance or development of its concessions and return to the community the remaining undeveloped land and forests (see links below for the joint statements). HAGL's Hoang Anh Oyadav ELC was reduced by 13,720 ha (from 16,849 ha to 3,129 ha). Although this landmark agreement with HAGL was reached, significant challenges remain. The process is now at a critical stage that requires the cooperation of government. Importantly, the concession-reduction documents are signed at the provincial level, but are not yet approved by the Ministry of Agriculture, Forestry, and Fisheries (MAFF). The Ministry of Interior has been supportive and understands the significance of the process. MAFF, however, has been less supportive and raised concerns about CAO violating Cambodia's sovereignty. Without government support of these decisions, the process can stall. Even with company agreement, the government must legally recognize the reduction of the ELC, and the reallocation, in order for communities to receive their land back. CAO has conducted training for government on mediation/dispute resolution, which may increase their understanding and willingness to support the agreement. Whether or not all the concerned government agencies will be supportive of the agreements reached and cooperate in the implementation remains to be seen.

Main results/outputs

Grassroots capacity building

Training sessions attended by community and NGO representatives

- A one-day workshop for grassroots organizations explained the pertinent information contained in the Rubber Barons report by Global Witness; HAGL's ownership via subsidiaries of multiple concessions in Ratanakiri; HAGL's financial backers, including IFC; IFC's social and environmental safeguard policies and accountability mechanism; and the CAO.
- A subsequent workshop communicated the same information for community representatives, but was modified to include illustrated slides with brief clear messages. IDI and EC collaborated with the NGO Building Community Voices (BCV) to turn the slideshow into a 23-minute animated video voiced over in four of the indigenous languages for village dissemination.
- Training on Indigenous Community Land Rights and Human Rights, with presentations from representatives of other Cambodian communities who had filed successful complaints.
- Negotiations training (two different sessions) using the specially developed training tool, *Avoiding Forced Evictions: A Community Guide to Negotiation and Advocacy*
- Meetings and consultations before and after all negotiations to deliver community inventories and demands to HAGL.
- Seminar on 'Options for Possible Agreement' provided examples from other countries where settlements were reached in similar land disputes.
- Workshop on village mapping and using GPS devices.

Village-level activities

- Detailed impact assessment conducted in four stages from November 2013 to March 2014
IDI and EC conducted and produced a detailed HRIA. EC, with logistical and translation support from HA, led the empirical research visiting 25 villages. The research team completed 24 "key informant" interviews, 110 individual household interviews, 23 participatory community mapping exercises, 23 community group discussions, and 23 women's focus groups. IDI and EC wrote a comprehensive 80-page report, published in mid-2014. This was used as a basis for mediation discussions, but it has not yet been launched or distributed because of the ongoing mediations.
- Village research with the CAO team, EC and NGO partners in Feb 2015
They visited each of the villages to explain the CAO process and gather specific information regarding community losses and the problems to be resolved. The community representatives were each given assignments to prepare village-level inventories of losses and impacts and the corresponding solutions sought.
- Village maps and community inventories created in August 2015
EC with the support of the grassroots NGO partners visited each village to assist communities sketch customary maps that show village boundaries, land use and natural features, and those areas affected by HAGL concessions.

Main results/outputs

- New skills generated for grassroots indigenous advocacy organizations

Indigenous Persons Organizations now have experience engaging with the CAO's mechanism and know that this is possible. Valuable negotiation and organizational skills were introduced and practiced through this process.

NGOs like the Highlanders Association will be instrumental in supporting the communities to monitor the upcoming outputs, negotiations and the final agreements reached with HAGL. There is much work yet to be done, like joint mapping exercises with HAGL and government officials, preparing communities for these exercises, conducting individual negotiations and agreements for each village, and possibly negotiating communal land titles. Further, HAGL will need to be continually monitored even after the agreements are implemented. It is difficult to know how much support grassroots organizations will need from IDI and EC for the upcoming phases of the project. Skills were gained, and grassroots organizations speak confidently of their new abilities, but the capacity curve for these small organizations may remain sharp.

- Grassroots community members trained in negotiation and data collection

Extensive training and capacity building in land rights and negotiation skills resulted in community representatives standing strong in front of powerful company representatives to state their demands and defend them by articulating their legal rights. They have also gained awareness of how to clearly define “problems” and to inventory losses that correspond with demands in a precise way to seek reparations. These skills are not solid, however, and some members were more confident than others about their new abilities. Even the most assured of the community representatives would “find an NGO to help them” should they need to replicate this process.

Mediation meetings and company commitments

- Complaint issued to the Compliance Advisor Ombudsman (CAO) for the IFC was filed on February 10, 2014. The full complaint is available here:

<http://www.inclusivedevelopment.net/wp-content/uploads/2014/02/Complaint-to-CAO-re-Dragon-Capital-HAGL-.pdf>

- In January 2015 the first CAO facilitated a joint meeting with HAGL. In another meeting on 9 March 2015 selected Community Representatives stood up and delivered the “Collective Demands” of all 14 villages to HAGL Representatives.
- HAGL provided a response in writing, which was shared with the community representatives on 27-28 March 2015.
- Individual village inventories of losses and corresponding demands for redress were provided to HAGL over several months.
- On 15-16 and 17-19 September 2015- each of the 14 villages presented their sketch maps to HAGL and representatives of their subsidiaries in CAO joint meetings. After intensive negotiations, HAGL representatives officially confirmed the company’s commitment not to carry out any further clearance or development of its Heng Brothers, CRD and Hoang Anh Oyadav concessions and return the remaining undeveloped land and forests, which the company estimates to be greater than 10,000 hectares. The commitments were made in two letters dated 7 September 2015 and signed by HAGL’s CEO. In the first letter, HAGL agreed not to clear and develop lands belonging to Kachout, Ket and Nay villages, which were previously at risk of losing their land to the expansion of the company’s rubber plantations. Similar commitments were made in the second letter to 11 already affected villages (Kres, Kam, Mass, Talao, Inn, Malik, Kanat Thom, Kak, Tanong, Muy, and Peng) to avoid causing additional adverse impacts.

Main results/outputs

During the meetings in Siem Reap (15-19 September, 2015), further significant agreements were reached with the eleven villages that have already lost land and resources to the HAGL plantations, including:

- o HAGL agreed to only use chemical products that comply with environmental regulations;
- o HAGL agreed to repair and maintain any roads and bridges that villagers use which have been affected by HAGL's operations;
- o The parties agreed to conduct a joint visit, along with other stakeholders, including NGO advisors, CAO and local authorities, to each of the 11 affected villages in order to identify the boundaries of HAGL's plantations and the boundaries of the affected villages for the purposes of demarcation;
- o If through the joint visits it is ascertained that HAGL has cleared and developed customary lands and resources of the communities, then the company committed to (a) offer compensation for this land; and (b) if the villagers do not accept the compensation, return the land to the community; and
- o HAGL agreed to support the villagers in securing title to their land.
- o HAGL agreed to restore affected water sources, including depleted fish resources, for all 14 villages.
- o HAGL also agreed to adopt an operational grievance mechanism in relation to their agribusiness operations in Cambodia.

The Joint Statements are available here:

<http://www.inclusivedevelopment.net/wp-content/uploads/2015/09/Joint-Statement-Villages-Group-2-16-Sept-2015-EngKh4clean-SS-1.pdf>

<http://www.inclusivedevelopment.net/wp-content/uploads/2015/09/Joint-Statement-Villages-Group-3-19-Sept-2015-Eng.pdf>

Tools and resources produced and used

- Explanatory video about the rubber industry and how the IFC was linked to HAGL through a financial intermediary was translated into four indigenous languages and given to each community as a VCD.
- This case deployed a variety of training tools developed by EC and IDI:

Avoiding Forced Evictions: A Community Guide to Negotiation and Advocacy

<http://www.inclusivedevelopment.net/resources/publications/>

Following the Money Advocates Guide

<http://www.inclusivedevelopment.net/wp-content/uploads/2015/09/Following-the-Money.pdf>

"A Community Guide to Economic Land Concessions"

<http://www.equitablecambodia.org/website/>

"Community Guide to Defending Land and Housing Rights"

http://www.inclusivedevelopment.net/wp-content/uploads/2015/09/CG-Book-1_final1.pdf

Dissemination

- A report was jointly published by Oxfam, IDI and EC on the lack of transparency, accountability and oversight of IFC's financial intermediary investments. The report, entitled "The Suffering of Others", garnered extensive international media coverage and a high-level response from IFC.
https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/ib-suffering-of-others-international-finance-corporation-020415-en.pdf
- A paper detailing the HRIA, *Human Rights Impact Assessment of HAGL's concessions in Ratanakiri*, was presented at an international conference on land grabbing at Chiang Mai University in June 2015.
http://www.iss.nl/fileadmin/ASSETS/iss/Research_and_projects/Research_networks/LDPI/CMCP_28- Bugalski_Ratha.pdf
- There was also local uptake of the breakthrough settlement:
<http://mrlg.org/resources/major-breakthrough-in-cambodia-mediation/>
<http://www.inclusivedevelopment.net/cambodia-and-laos-hagl-rubber-plantations/>
<http://www.phnompenhpost.com/national/hagl-makes-deal-villagers>
- Because the case is not yet fully settled further dissemination is inappropriate.

Setting precedents for international investors

Precedent is now set for major investors to hold up their human rights, environmental impact policies, and commitments to abide by the laws of host countries. The IFC attended the September 2015 CAO joint meetings as an observer, which provided an opportunity for IFC to hear from the communities the impacts of their investment projects.

Lessons learned

Relationships of unequal power

The cornerstone of this initiative was mediating and negotiating relationships of unequal power. No one was sure whether mediation between indigenous communities and a powerful international corporation would be possible. Investor advocacy and delicate mediation proved effective in the end to mitigate those power imbalances and interest-based negotiation did serve to secure meaningful redress. This strategy broke the company's initial confidence that they could solve the problem with face to face meetings at the village level. They were forced to address their grave human rights abuses through more balanced negotiations.

The process was not smooth, however, and the risk of a top-down initiative was ever present. It took real effort to establish a mediation process that was able to confront, rather than reproduce, the power imbalance. The power of local authorities threatened to undercut both NGO activities and community freedoms. There were imbalances of institutional power and staff skill levels between local, national and international NGOs. There were even challenging power dynamics between national level NGO and the communities they advocated for. One EC staff member said the most important lesson was to realize that the people from the city [EC staff], "just don't understand we have to meet them where they are, we have to study from the villagers first. When we understand them, they can come join the program." Understanding across languages with multiple mediators is fraught with difficulties.

- ⇒ **The supporting organizations must establish roots and spend some time in the affected communities to be able to understand their point of view**

Understanding the villagers' point of view was the strategy used by the CAO mediator, asking the company representatives to see the world a different way and to understand the local impacts of their company. Asking company representatives to respect the lives and livelihoods of indigenous communities, asking local authorities to comply with the process, and challenging NGO staff members to really see things from the village point of view were the elements that altered the balance of power. First with force, through investor advocacy, then with communication and attempts at mutual understanding and trust.

- ⇒ **It is essential to have a highly qualified mediator who understands power imbalances**

Community commitment

Delivering what village representatives learned at the workshops with IDI and EC to the affected communities in their villages was a challenge for multiple reasons. First they had to build excitement and commitment in a defeated community to fight *again* against the company. What motivated people was the novelty of this approach and that it made sense. They saw immediately that putting pressure on the company through the accountability mechanisms of an investor could make a difference. Even still, there were a few community members that would not join the initiative, a small minority were involved in the illegal wood trade and some wanted to retain individual titles to their land to be able to secure loans or to sell their land.

Lessons learned

Negotiating these differences was not difficult, the vast majority were united in their objectives. Explaining all the details of this new process to villagers was very difficult. Community representatives understood the concepts from the workshops, but it was new for them too, and certain parts were challenging. The video disk was an excellent tool, but the lack of electricity and equipment in many areas made face to face communication and detailed discussions very important at the village level. Printed slides from the presentation were helpful, but representatives said they still had too many words and there were many questions from communities. HA representatives facilitated numerous meetings in the villages.

The community representatives were a vital interface between NGOs, the CAO, and the rest of their communities. The elders who resigned in favour of better educated youths were better communicators and organizers than their younger replacements and this caused some challenges with community mobilization, information dissemination, and data collection. Some of these communities required extra assistance from NGO partners, which was difficult, but overall manageable. Another major obstacle was the remote location and the large number of villages, 17 at the outset and 14 after the initial investigation. During the wet season it was very difficult to travel there.

- ⇒ **Working with the traditional leaders is essential in such a process. If younger people are needed to facilitate communication with the outside world, they should remain under the authority of (and report to) the elders.**

Time and persistence is needed

It took considerable time to establish confidence with the affected communities and their leaders and to train and support them. Organizing the mediation and data gathering was also a time consuming process. There were long periods of waiting and long periods of intense activity. The results obtained here could not have been achieved in a shorter period. The whole process has taken 27 months so far, and is not completed yet.

- ⇒ **Be prepared for the long haul**

Community mapping

All parties at the grassroots level felt there was not enough time to do this exercise and some community representatives had difficulty keeping up on plans and strategies. Gathering essential data for this process often entails new skills for community representatives. In addition, community representatives were not always village elders and did not have enough authority to gather needed information in a timely fashion.

- ⇒ **Allocate enough human resources to assist community representatives in the tasks of documenting resources and making maps.**

NGO coordination and communication

It was crucial to have multiple partners with varied skills to enact this intervention, but enlisting four grassroots NGOs was too much. One strong grassroots partner may have been more effective. IDI kept EC informed with the big picture of advocacy and strategic decisions and EC coordinated with the CAO and the grassroots NGO partners. Grassroots NGOs lacked the institutional capacity to manage all the dissemination and organization necessary for this project and their capacity development proved to be a drain rather than a benefit for the project. Additionally, while each organization had their areas of expertise and had specific assignments for the operation, maintaining overlapping accountability was challenging. After the first round of negotiations EC hired a new case officer to work at the grassroots level.

Lessons learned

EC played a vital intermediary role to ensure that rapid decisions involving multiple widely-dispersed actors were made when necessary, and also to disseminate regular information and updates during the long waiting periods, which were crucial to maintain community solidarity and commitment to the process.

- ⇒ **Although it is important to have organizations cooperating at the international, national, and regional levels, their number should be limited. Strong coordination must be ensured at the field level through the presence of the national lead organization.**

Follow the Money works

This strategy has been used already, but its effectiveness was starkly visible in this case. The investors were able to put special pressure on the company to seriously redress their human rights violations. There were moments when the company reverted to an uncooperative stance with regard to reparations. After HAGL's financial backers were enlisted into the advocacy and when prospective financing was jeopardized by advocacy, HAGL was more willing to cooperate and settle in a manner acceptable to the communities.

- ⇒ **Without the financial pressure and direct contact with the financial backers, the process would never have gone forward.**

Negotiation with local and national authorities

There were tensions with provincial, commune and village level officials at the start of the process. For years, official support favoured the company at the expense of communities and there was long-standing mistrust. Once local officials were brought into the process and understood that there would be no protests, they were more cooperative in about half the villages. This could have been done at the outset and eased some difficulties, but it was not until the CAO reached an agreement with Mol that local authorities were obligated to let the process to continue unmolested.

- ⇒ **Negotiation with national and provincial authorities is vital as soon as the mediation process begins. For the first steps of mobilizing villages, interface with local level officials may or may not diffuse tensions.**

Conditions for replication

- The company has to be sufficiently vulnerable to their investors.
 - Companies with state backing or deep connections to their national governments are more difficult to pressure.
 - If at least one strong pressure point can be found, the strategy is worth pursuing. However, multiple pressure points are most effective.
 - The strategy is least effective with very small private investors.
- The investors and company shareholders must be willing to support the advocacy campaign and put pressure on the company.
- Organizations with different sets of contacts and influences are necessary. This intervention requires organizations with international, national, and field-level expertise.
- The instigating organization(s) must have sufficient monetary and human capital to enter into this process.
 - EC alone spent over \$100,000 USD over the course of 27 months and there is still much work to be done
 - Intensive workshops and trainings must be conducted with communities and grassroots partners
 - ◆ Grassroots NGO may need significant capacity building at all stages
 - Follow-up assistance and significant staff time will be required at inconsistent intervals.
 - ◆ The organization must have significant human resources for this kind of flexibility
- The community must be invested in the process, have strong solidarity, and be given the tools they need to articulate their needs to the company. Without the community, this is an NGO problem and has no weight.
- The security risks in every situation must be assessed to determine whether this strategy is worth pursuing in a given case.

Conclusion

The land dispute described here presents one small piece of a global phenomenon in which rapid and large-scale land conversions, often funded by international financiers, are divesting small holders and indigenous people of their land (Borras and Franco 2012). In Southeast Asia these land grabs take place in the context of transitioning states and increasing pressure to 'develop' toward more 'productive' land use practices (Harms and Baird 2014; Woods 2013). After more than twenty years of development aid and "private-sector friendly" environments (World Bank 2015, p.115), Cambodia has converted over 4.5 million hectares of land to agricultural and mining companies. Contrary to official documents, this converted land was neither degraded nor empty (Neef et al. 2013) and land conflicts between companies and displaced communities have been rampant for 15 years.

Cambodian dispute mechanisms are grounded in governmental interventions and national land laws designed to hold companies accountable for social and environmental integrity, resulting in a situation where there are "no dispute resolution mechanisms" (CCHR 2013, p.29). What the above case study demonstrates is that there are mechanisms outside the constrained environment of state policies. International funding mechanisms are increasingly bound by environmental and human rights frameworks and large-scale business ventures are increasingly entangled with international finance. Finding these entanglements is not easy (Dwyer 2015), but as this case demonstrates it can be done. Moreover, it gives communities a form of financial leverage they cannot wield in disputes based in state bureaucratic and legal systems. The publicity of cases like this can send a strong signal to foreign direct investment (FDI) originating countries and also to those multinational companies considering investments in large-scale agriculture.

References and suggested readings

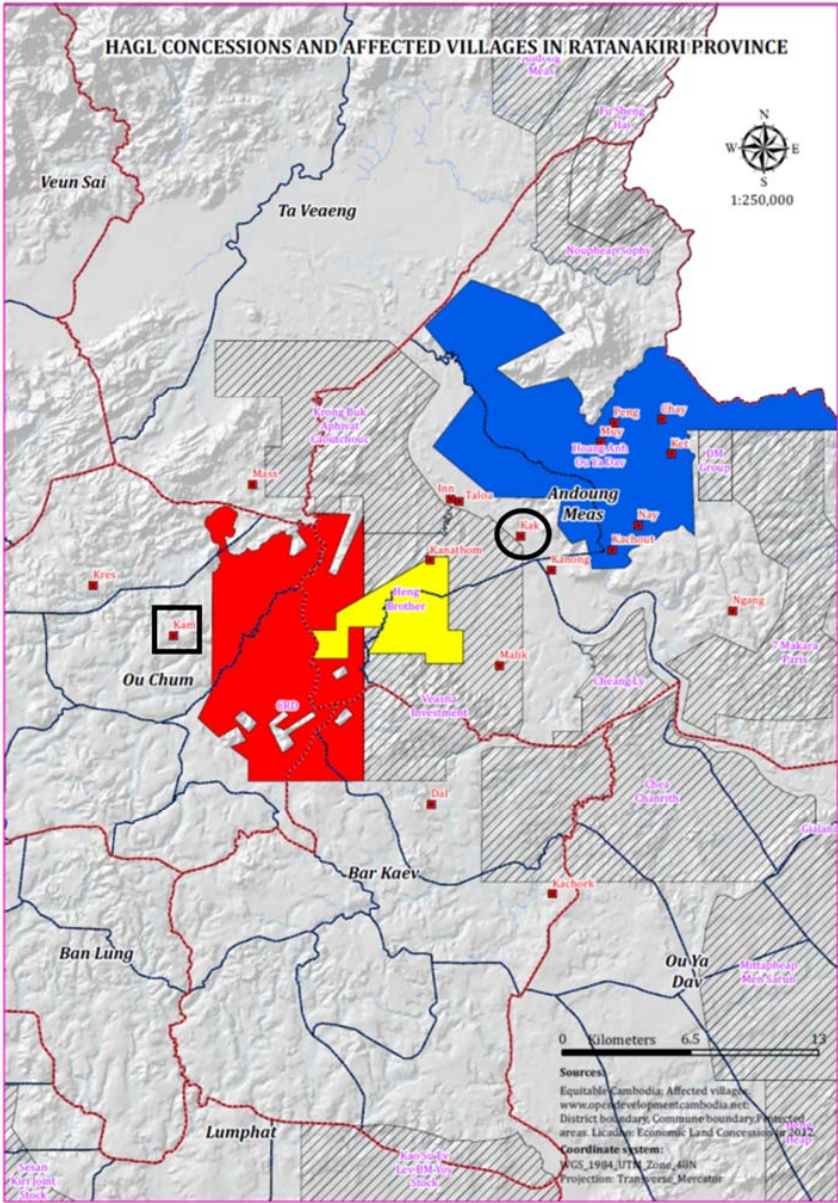
- Borras, S. and Franco J. 2012. Global Land Grabbing and Trajectories of Agrarian Change: A Preliminary Analysis. *Journal of Agrarian Change* 12 (1): 34–59.
- Bugalski, N. and Thuon, R. 2015. A Human Rights Impact Assessment: Hoang Anh Gia Lai Economic Land Concessions in Ratanakiri Province.” In *Land Grabbing, Conflict and Agrarian-environmental Transformations: Perspectives from East and Southeast Asia*. Chiang Mai: BRICS Initiatives for Critical Agrarian Studies (BICAS), MOSAIC Research Project, LDPI, RCSD Chiang Mai University, Transnational Institute.
- Dwyer, M. 2015. *Trying to Follow the Money*. 177. Bogor Barat.
- Global Witness. 2012. *Rubber Barons: How Vietnamese Companies and International Financiers Are Driving a Land Grabbing Crises in Cambodia and Laos*. London.
- Harms, E. and Baird, I. G. 2014. Wastelands, Degraded Lands and Forests, and the Class (ification) Struggle: Three Critical Perspectives from Mainland Southeast Asia. *Singapore Journal of Tropical Geography* 35: 289–94.
- Messerli, P., Peeters, A., Schoenweger, O., Nanthavong, V., & Heinimann, A. (2015). Marginal Land or Marginal People? Analysing Patterns and Processes of Large-Scale Land Acquisitions in South-East Asia. In G. Christophe, C. Golay & P. Messerli (Eds.), *Large-Scale Land Acquisitions: Focus on South-East Asia* (Vol. International Development Policy series No.6, pp. 136-171). Geneva: Graduate Institute Publication.
- Neef, A., Touch, Siphath, and Chiengthong, J.. 2013. The Politics and Ethics of Land Concessions in Rural Cambodia. *Journal of Agricultural and Environmental Ethics* 26: 1085–1103. doi:10.1007/s10806-013-9446-y.
- Woods, K. 2013. *The Politics of the Emerging Agro-Industrial Complex in Asia's 'final Frontier': The War on Food Sovereignty in Burma*. Paper presented at the Conference 'Food Sovereignty: A Critical Dialogue'. New Haven: Yale University.
- World Bank. 2015. *Cambodian Agriculture in Transition: Opportunities and Risks*. Washington, D.C.

Annexes

Annex 1. Maps

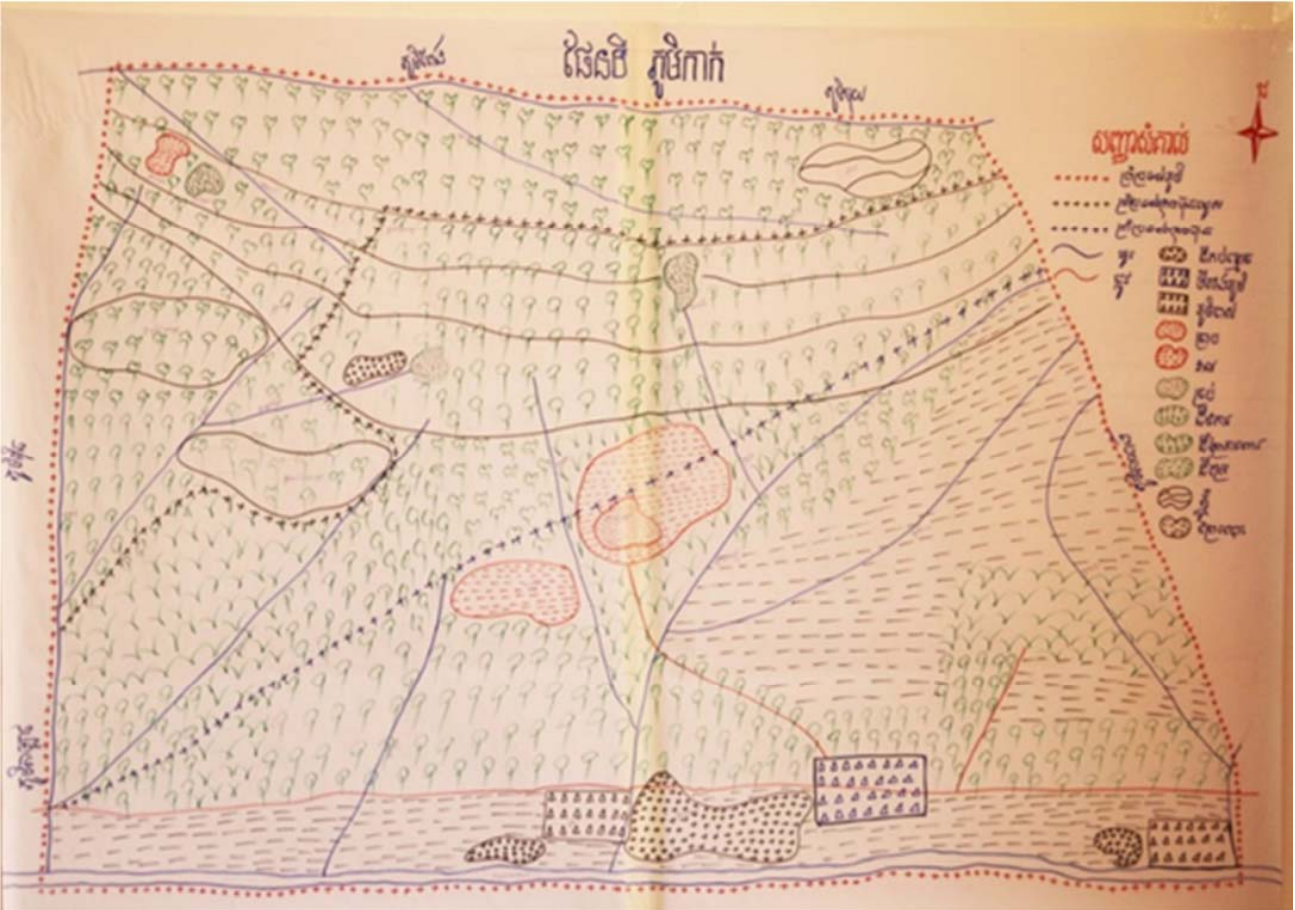
Map 1. HAGL concessions and affected villages in Ratanakiri province

The colored areas are HAGL concession lands, the grey-striked areas are other concessions, and the red squares are affected villages. Not all affected villages were determined to be affected by HAGL. All 14 villages in the HAGL case were mapped and two of those maps are reproduced below. Kak Village (map 2) is indicated by a circle and Kam village (map 3) is indicated by a square. While these villages do not seem to be inside concession boundaries, the maps below describe customary claim land areas that can span thousands of hectares.



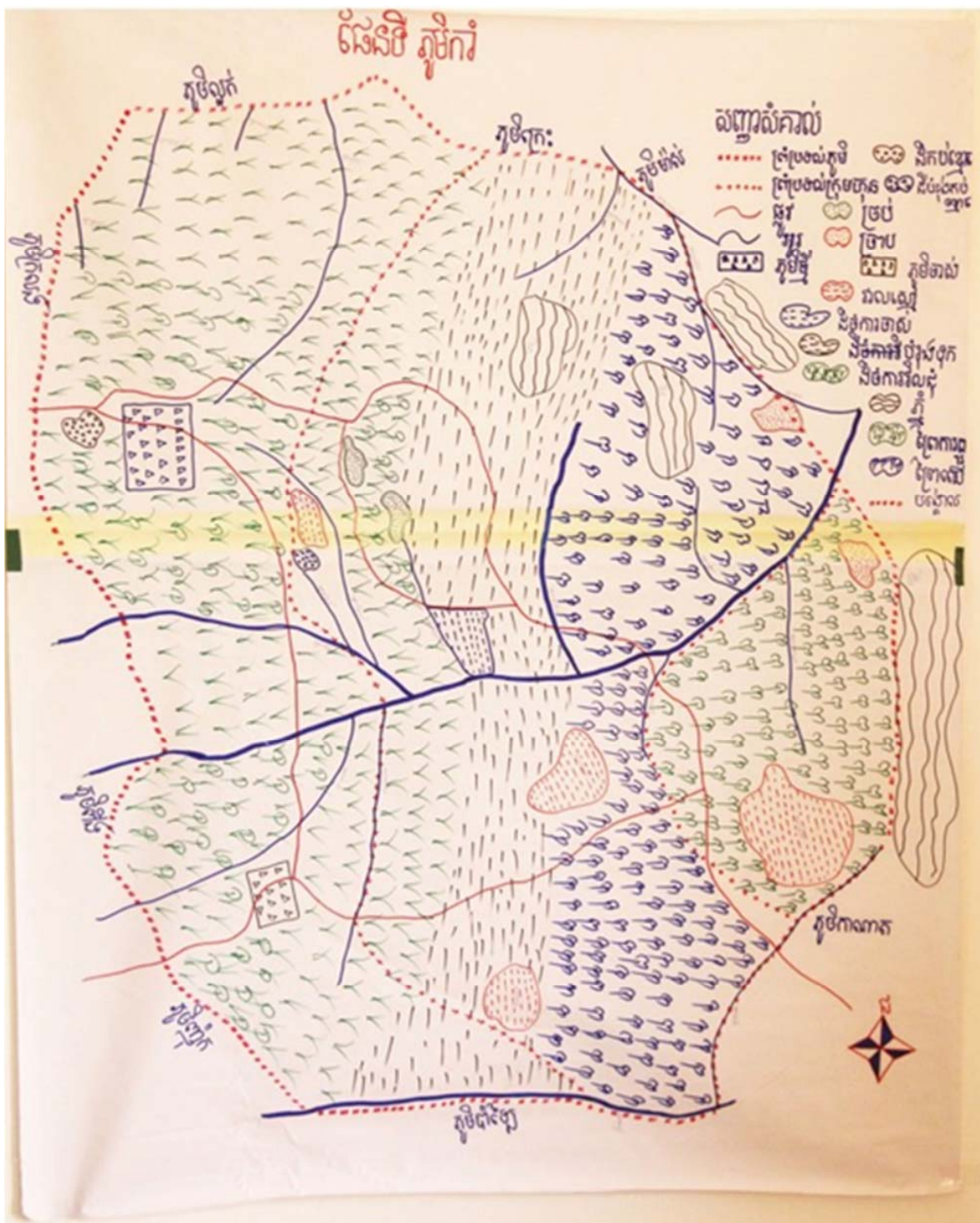
Map 2. Kak village

This is a community map that details community resources and land holdings. The blue dotted line through the middle of the village is the company boundary and the black dotted line represents land lost to company clearing. What is pictured in that space is now gone.



Map 3. Kam village

This community map also shows village resources and the red dotted line shows the company boundary. None of the land has been cleared by the company yet and the initiative described in this report will keep the village intact.



Annex 2. Time-line

Mid-2013: Global Witness contracted IDI, which agreed to take the case after conducting a preliminary IFC policy analysis and reviewing the known information about facts on the ground. In late 2013, IDI enlisted EC as its main local partner on the case.

November 2013 – April 2014

December 2013: IDI and EC conducted workshops in Ratanakiri to explain to community representatives the complex actors, relationships and advocacy strategy and provide training on indigenous land rights. The community representatives expressed their desire for the complaint to be submitted on their behalf. IDI and EC reached out to local indigenous people's organizations (HA, CIYA and IRAM), and explained the case and encouraged them to join as representative organizations since the affected communities are indigenous. Three indigenous organizations agreed to join the complaint. IDI and EC worked with BGV, a Cambodian NGO, to produce a video to explain the actors and advocacy strategy (eg. IFC, CAO, etc.). The video was dubbed into four different indigenous languages and distributed to each of the villages to help community representatives communicate what they had learned in the workshops to their fellow villagers.

January 2014: IDI prepared a detailed complaint, setting out the evidence of harms, the policy violations and the demands of the communities, to IFC's independent accountability mechanism, the Compliance Advisor Ombudsman (CAO).

February 2014: IDI and EC prepared community representatives to meet with the IFC to inform them of the pending complaint. Meetings took place in IFC offices in Phnom Penh. The complaint was filed, and on the same day NGOs and community representatives held a press conference in Phnom Penh. There was an immediate response from HAGL; the company was urged to engage in structured mediations. The complaint was acknowledged as eligible by the CAO.

November 2013 – March 2014: IDI and EC conducted research to gather evidence about the impacts of HAGL's concessions and activities and used the preliminary findings to draft the complaint and then later produced a comprehensive Human Rights Impact Assessment. The research team made four separate trips to the region and collected data from all 18 villages possibly affected by HAGL. They drew detailed village maps with 16 communities, conducted 18 key informant interviews, 18 focus group discussions, 18 women's group discussions, and 87 household interviews. This was a substantial investment of human resources.

April 2014: CAO secured HAGL's participation.

May – December 2014

August and October 2014: EC and IDI conducted negotiation skills training for the community.

January 2015 – September 2015

January 2015: Community representatives, NGO advisors, and representatives of HAGL and subsidiaries met to, inter alia, adopt a set of Ground Rules to govern the CAO Dispute Resolution process and for community representatives to share their stories with HAGL.

February 2015: MLRG Quick Disbursement Fund was received. EC and the grassroots NGO partners joined the CAO team in visits to each of the villages to explain the CAO process. NGOs supported community representatives from each village to gather detailed information regarding losses and impacts and the problems they wanted resolved.

March 2015: Refresher negotiation and advocacy workshop for community representatives in advance of the CAO meeting.

CAO mediation meeting with HAGL representatives EC, NGO partners and community representatives from the 17 affected villages.

Community representatives presented 14 “collective demands” to HAGL, setting out what meaningful reparations meant to them as a group. HAGL committed to continuing its moratorium on clearing until the problems with the communities are resolved.

April 2015: EC discovered HAGL was engaged in activities outside the mediation process and was forced to issue a cease and desist communication to HAGL.

Detailed clarifications of information between CAO and villages, mediated by EC.

Communications and discussions with HAGL financiers and shareholders.

May 2015: Continued work preparing data required for mediation and facilitating information exchange between CAO and villages.

June 2015: Individual village demands which included an inventory of losses and impacts and corresponding demands compiled from the community representatives were delivered to HAGL.

July 2015: Community workshop on ‘options for a possible agreement’. HAGL responds to community demands saying they will not return any land, the community’s primary demand. IDI and EC cancelled the August mediation with HAGL due to this bad-faith negotiating and engaged in investor advocacy.

August 2015: Assistance was provided to the communities to sketch customary maps showing their village boundaries, land use and natural features and those areas which have been affected by HAGL concessions.

September 2015: Joint meetings in which HAGL issued commitments to the 14 communities confirmed to be affected by the company’s subsidiaries in Ratanakiri.

November 2015 – March 2016

March 2016: Meeting between CAO and HAGL representatives in Vietnam.

Meeting between EC, local NGO, and CAO in Ratanakiri.

Training session with EC, local NGO, and community representatives to discuss new developments and provide training in using GPS tools for continued boundary mapping activities.

The **Mekong Region Land Governance Project** aims to contribute to the design of appropriate land policies and practices in the Mekong Region, responding to national priorities in terms of reducing poverty, improving nutrition, increasing economic development, and supporting family farmers, so that they can be secure and make good decisions on land use and land management. MRLG is operating in Cambodia, Laos, Myanmar and Viet Nam since April 2014, with the support of SDC and the German cooperation. For more information on MRLG, please visit www.mrlg.org.

The **MRLG Capitalization Note series** highlights key lessons emerging from the actions and engagements of a range of individuals, groups and institutions seeking to better understand and address land insecurity of smallholder farmers in the Mekong Region. It aims to contribute to the learning process of partner organizations and sharing of lessons with other interested parties. As such, it consists of a rigorous description of issues and activities as well as critical analysis of results and impacts achieved. The production of a Capitalization Note is coordinated by an editorial steering committee composed of representatives of MRLG, partner organizations and invited experts.

Equitable Cambodia is a Cambodian nongovernmental organization working to promote equitable development and the progressive realization of human rights in Cambodia through research, evidence-based advocacy, and community organizing. For more information on Equitable Cambodia, please visit www.equitablecambodia.org.

Inclusive Development International is a human rights organization supporting communities to defend their land and human rights in the face of harmful development and investment projects and works to strengthen the regulation and accountability of corporations and financial institutions. For more information on IDI, please visit www.inclusivedevelopment.net

The views, opinions and interpretations expressed in this publication are those of the authors and contributors. They should not be interpreted as representing the official or unofficial views or positions of SDC or BMZ.

Funded by



Implemented by



Supported by

