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Dear Vice President Taylor

**Re: Complaint concerning IFC investment in Dragon Capital Group and VEIL  
(Project no. 10740 and 20926)**

1. Inclusive Development International (IDI), Equitable Cambodia (EC), Cambodian Indigenous Youth Association (CIYA), Indigenous Rights Active Members (IRAM) and Highlanders Association (HA) are submitting this complaint to the Office of the Compliance Ombudsman on behalf of communities adversely affected by a project in Cambodia in which the IFC has invested through a financial intermediary. Authorizations of representation accompany this letter of complaint.

2. The complainants are 17 villages in Ratanakiri Province, Cambodia who are or will foreseeably be adversely affected by an IFC sub-project. The villages are located in the districts of Andong Meas and O'Chum. The villages consist of individuals of Jarai, Kachok, Tampuon, Cham, Kreung, Laos, Vietnamese and Khmer ethnicities. The vast majority of complainants belong to an ethnic minority group,<sup>1</sup> each with its own language, and most identify as Indigenous Peoples. 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 villagers 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.

3. Due to concerns for their personal security, we request that the names of signatories on the authorizations of representation not be disclosed at this time. They may consider waiving their confidentiality during the CAO dispute resolution process if necessary, but only with security assurances and after providing their express consent.

4. The complainant villages have suffered serious harm as a result of the activities of a Vietnamese company, Hoang Anh Gia Lai (HAGL), operating through a number of subsidiaries in Cambodia. Among HAGL's investors is Dragon Capital Group Ltd (DCGL), which invests in HAGL through Vietnamese Enterprise Investments Ltd (VEIL), a fund that it established and manages. According to Summary Project Information (SPI), IFC invested in DCGL/VEIL in 2002<sup>2</sup> and again in 2003.<sup>3</sup> IFC has

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<sup>1</sup> More than 85% of Cambodia's population is ethnic Khmer.

<sup>2</sup> SPI: VEIL/Dragon Capital Group (Project Number 10740). We note that the IFC has informed Global Witness that the investment amount of USD 12 million reported in the SPI is not accurate.

<sup>3</sup> SPI: VEIL II (Project Number: 20926). The investment amount recorded is USD 8 million

confirmed an additional investment in VEIL through participation in a rights issue in 2006.<sup>4</sup>

5. EC and IDI have conducted interviews in the affected villages in order to ascertain the nature of the losses and harms suffered as a result of HAGL's operations.<sup>5</sup> The preliminary findings of this research are set out below and in Annex 2. In addition, the UK-based NGO Global Witness published a report in 2013 entitled *Rubber Barons*, which also documents adverse social and environmental impacts of HAGL's activities. We refer the CAO to this publication as an additional source of information. We are aware that since *Rubber Barons* was published, Global Witness has sent additional relevant information to the IFC that can be made available to the CAO on request.

6. We are aware of other villages that appear to lie within the boundaries of HAGL's economic land concessions, but whom we have so far been unable to contact due to resource constraints. We wish to alert the CAO that additional villages may wish to join this complaint in the coming weeks and months, and if so, we shall provide notice to CAO. We will also endeavor to provide the CAO with further information about harms suffered by four villages who have joined this complaint but who we have not yet had an opportunity to interview. We further wish to point out that it is likely that HAGL operates through additional unknown subsidiaries, or sources rubber from other companies that it does not own, which adversely impact other villages in Cambodia. The complainants are seeking full disclosure from HAGL of all of its affiliated companies operating in Cambodia as well as social and environmental impact assessments and other relevant audits of all operations.

7. Finally, we wish to bring to CAO's attention reports by Global Witness of environmental and social harm to communities in Laos as a result of HAGL's operations through three rubber concessions.<sup>6</sup> While we are unable to access affected communities in Laos due to the repressive human rights situation there and the serious risks that such engagement could pose to the communities, we strongly encourage the CAO to consider initiating a compliance audit of IFC's subprojects there.

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

## **1.0 Harms suffered by complainants and environmental impacts**

9. HAGL operates through a number of 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. Annex 3 sets out the location and size of these concessions and the villages affected by each. Other known concessions currently

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<sup>4</sup> According to Global Witness, IFC confirms investing a further USD 6.95 million.

<sup>5</sup> Key informant interviews, mapping exercises and focus group discussions, including separate women's focus group discussions were conducted in each village.

<sup>6</sup> Ibid.

or previously held by HAGL subsidiaries are Hoang Anh Andong Meas in Virachey, Hoang Anh Andong Meas in Lumphat, Hoang Anh Lumphat, and Hoang Anh Mang Yang K Rubber Group. The activities of some or all of these companies have had adverse environmental impacts, and may have also harmed villages that we have been unable to reach.

10. As a result of HAGL's operations, the complainants have experienced losses of both a communal and household nature. Communal losses include collectively held and used lands, including community forest, 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 and fish resources. Household losses include rice fields and orchard/farming land (*chamka*) and crops 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.

11. 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.

12. The extensive 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. Some villagers are experiencing a high level of food insecurity due to the cumulative loss of natural sources of food and income. In some villages, families sometimes eat only rice. 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. Resin, a main source of energy and income for some villagers, has been badly depleted.

13. In some areas, children have stopped attending school or attend less frequently in order to tend to the family's cattle, since the community has been warned that cattle straying onto the company's plantation will be shot. Children, including some under the age of 10, are working on HAGL's plantations.

14. 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. Some complainants believe that the destruction of forest and natural resources has angered the spirits, causing them considerable anxiety. The cultural identity of communities has been further jeopardized by the rapid and mass introduction of migrant workers of Khmer ethnicity with a starkly different culture, which has begun to influence their own behaviour.

15. 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 losses 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.

16. There has been clear felling of intact community and State 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. According to Global Witness, satellite imagery shows evidence of significant clearance of evergreen and semi-evergreen forest in HAGL concessions.<sup>7</sup> According to at least one concession contract the company is required to protect evergreen forest within its concession boundaries.<sup>8</sup>

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

18. In many cases, the company has hired police and/or military as armed guards, who have threatened and in some cases detained community members when they have tried to defend or access their forest. In one village, after the community tried to prevent bulldozers from clearing their spirit forest in 2012, a policeman threatened the community by firing warning shots in their direction.

19. Some villages are not yet affected because the company has not commenced activities in parts of the concession in their direct vicinity; however these villages anticipate the above range of losses and adverse impacts if the company commences operations in the area.

20. Annex 2 contains a matrix of losses and impacts, or anticipated harms, of each village.

## **2.0 Land tenure situation of affected communities**

21. 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>9</sup> This typically includes a residential area, grazing land, community forest, spirit forest, burial ground, 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.

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<sup>7</sup> Global Witness, *Rubber Barons*, 2013, p. 19. Global Witness will provide the imagery to the CAO upon request.

<sup>8</sup> *Contract of Rubber Plantations Investment Between MAFF and CRD*, section 6.2 (available on request).

<sup>9</sup> Only one village does not appear to practice a system of customary/collective land tenure.

22. 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>10</sup> However, while a number of affected villages are at various stages in the process of preparing their application, 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.<sup>11</sup> The communities are nonetheless entitled to interim protection that allows them to continue to manage their lands according to custom.<sup>12</sup> These legal rights and protections are regularly flouted in Cambodia, and communities attempting to assert their rights to their lands and forests confront conflicting claims by the State and private companies.<sup>13</sup>

23. 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 receipts to their farming land and rice fields, and in some cases to residential plots, inside the boundaries of HAGL concessions. As a consequence significant parts of HAGL concessions were cut out and returned to households (see for example map of Hoang Anh Oyadav concession<sup>14</sup> in Annex 4). In some of the villages, households were excluded from receiving receipts to their farming and rice fields, despite the fields being located inside HAGL concessions. Annex 1 includes a summary of the situation in each village.

24. Some affected villages express satisfaction with the Directive 01BB process and the individual security of tenure they perceive the receipts to provide. However in the vast majority of complainant villages, people accepted the individual receipts only because they feared that they would otherwise lose their farming land and rice field. 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 2.

25. In some villages, despite receiving receipts under Directive 01BB, the company has taken or is encroaching on 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, as evident in the map of the Hoang

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<sup>10</sup> Cambodia Land Law 2001, article 26.

<sup>11</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>12</sup> Land Law, article 23, 24.

<sup>13</sup> See, UN Committee on the Elimination of 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)

<sup>14</sup> Provided to Global Witness by HAGL in September 2013

Anh Oyadav concession in Annex 4. 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 receipts. 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.

### 3.0 Breach of Cambodian law

26. 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. According to Global Witness, known concessions held by HAGL subsidiaries cover a cumulative surface area of 47,370 hectares,<sup>15</sup> almost five times the legal limit of concession holdings, including by several legal entities controlled by the same natural person (art. 59). HAGL claims to have sold three of its concessions but has admitted to currently holding concessions over a surface area of 28,422 hectares, almost three times the legal limit.

27. 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). 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).

28. According to Global Witness, 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).

29. The felling of rare tree species, including *kranhoun*, *neang noun*, *beng* and *thnong*,<sup>16</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.

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<sup>15</sup> Global Witness, *Rubber Barons*, 2013, p. 16.

<sup>16</sup> These species are listed as rare and valuable in Prakas no. 089 on Forest and Non-Timber Forest Products Prohibited from Harvesting (2005).

30. Satellite imagery obtained by Global Witness and seen by IDI<sup>17</sup> shows clear felling of forested areas within HAGL concession boundaries in Lumphat Wildlife Sanctuary, an offence under the Protected Areas Law 2008 (art 59 and 62).

31. In at least one village, children, including under the age of 10 are working on the rubber plantations. Under Cambodia's 1997 Labor Code, it is illegal to employ children under the age of 12 under any circumstances. Employment of children above the age of 12 must comply with certain conditions under the law (art 177).

32. Annex 5 contains a matrix setting out breaches of Cambodian law.

33. We note that HAGL 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>18</sup>

#### **4.0 Failure to comply with IFC policies and procedures**

34. IFC investments in DCGL/VEIL, approved in 2001 and 2003 are, at a minimum, subject to the pre-2006 Safeguard Policies and the 1998 ESRP. The IFC's review and appraisal of these investments were bound by these standards. However, in line with the CAO's appraisal of the Quellaveco mining concession in Peru, the IFC's approach to supervision of DCGL/VEIL should have evolved over time as new environmental and social (E&S) policies were adopted by the Board, even if the client is contractually bound only by earlier standards.<sup>19</sup>

#### **4.1 Pre-2006 Safeguard Policies and 1998 ESRP**

35. The overall objective of the safeguard policies, and in particular, of Environmental Assessments (EA) required for all projects, was to ensure that projects under consideration by the IFC were environmentally and socially sound. A process of due diligence was required to ensure that adverse impacts were prevented, minimized,

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<sup>17</sup> Available on request.

<sup>18</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).

<sup>19</sup> Compliance Advisor Ombudsman, *CAO Appraisal for Compliance Investigation of IFC: Anglo American Quellaveco SA, Peru (Ref: C-I-R9-Y12-F167)*, 15 May 2013, p. 11-12.

mitigated or compensated. We are not privy to specific information about the IFC's process of due diligence in appraising and thereafter supervising its investments in DCGL/VEIL; however the severe social and environmental harms resulting from the sub-project attests to significant failures in assessment of risks and capacity of the client to manage those risks. Particular caution was warranted for an investment in a fund with the objective of investing in Vietnamese companies and projects, including real estate, inside or outside of Vietnam,<sup>20</sup> in light of the poor social, environmental, and human rights record of Vietnamese companies operating in the region. An appropriate exercise of due diligence commensurate to the high-risk level was manifestly not conducted.

### **Applicable requirements:**

36. The pre-2006 Safeguard Policies were effective at the time of IFC's investments in DCGL/VEIL. The project is categorized as FI-1.<sup>21</sup> At a minimum, *Operational Policy (OP) 4.01 on Environmental Assessment* and the 1998 ESRP requires IFC to, inter alia, ensure that its FI client:

- Establish an environmental and social management system (ESMS) for relevant operations and require activities conducted under those operations to comply with host country environmental, health and safety requirements.<sup>22</sup>
- Submit an annual environmental performance report that focuses on its environmental and social management system.<sup>23</sup>
- Ensure that EA reports for Category A subprojects are made available in a public place accessible to affected groups and local NGOs.<sup>24</sup>

37. OP 4.01 also required IFC to do the following in its appraisal of the project:

- Review the adequacy of the proposed FI's EA arrangements for subprojects, including the mechanisms and responsibilities for environmental screening and review of EA results, and when necessary, take steps to strengthen these arrangements; and
- For FI operations expected to have Category A subprojects, examine the FI's institutional capacity for its subproject EA work and identify, as necessary, measures to strengthen capacity. If IFC is not satisfied that adequate capacity exists for carrying out EA, all Category A subprojects and, as appropriate, Category B subprojects—including EA reports—are subject to prior review and approval by IFC.<sup>25</sup>

### **E&S Requirements placed on DCGL/VEIL by IFC:**

38. The SPI summarizes the E&S requirements placed on DCGL/VEIL by the IFC for its 2001 investment commitment:

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<sup>20</sup> SPI: VEIL/Dragon Capital Group (Project Number 10740) and VEIL II (Project Number: 20926).

<sup>21</sup> The SPI lists the environmental category as FI-1, and the project description suggests that the investments are not targeted at specific sub-projects. However, in the section on environmental and social issues, it states: "This is a Financial Intermediary (FI) Type 1/Type 2 project according to IFC's environmental review procedure." It also appears to describe two levels of E&S requirements: (1) an environmental review of relevant operations to ensure compliance with host country requirements; and (2) a set of additional requirements for subprojects "financed with IFC funds through the credit line...", which are broadly consistent with several Type 2 requirements.

<sup>22</sup> OP 4.01, (para. 9) and ESRP 1998 (Annex F, para. 5(a)).

<sup>23</sup> IFC, 1998 (Annex F, para. 5(a)).

<sup>24</sup> OP 4.01, (para. 15)

<sup>25</sup> IFC, OP 4.01, (para. 10).



DCGL will be required to undertake an environmental review of relevant operations (project finance, corporate finance, leasing) to ensure compliance with host country requirements. For each subproject financed with IFC funds through the credit line, DCGL will be required to undertake an environmental review of each subproject to ensure compliance with host country requirements, IFC environmental and social safeguard policies, and, if applicable, World Bank Group environmental, health and safety guidelines. IFC will assess DCGL's capability to carry out environmental reviews. DCGL must obtain IFC clearance prior to making any investment with IFC funds in any Category A project. In addition, DCGL will be required to submit an annual environmental performance report.<sup>26</sup>

39. The SPI for IFC's second investment commitment in 2003, states only that "VEIL will be required to demonstrate that the existing environmental management system is still in place."<sup>27</sup>

40. No further information is publicly available about DCGL/VEIL's E&S requirements.

#### **Non-compliance by IFC and DCGL/VEIL with minimum requirements:**

41. Due to the IFC's lack of transparency, it is impossible for third parties to comprehensively monitor and assess the extent to which the IFC has complied with its policy and procedures with regard to review, appraisal and supervision, or whether its client has complied with the E&S requirements to which it was bound. For example, environmental reviews and annual performance reports carried out by DCGL/VEIL, if any, and the IFC's assessment of its client's capability to carry out these environmental reviews, if any, are not publicly available.

42. However, it is nonetheless evident that IFC has failed to effectively comply with policy and procedure requirements in a manner broadly consistent with the safeguard policy objectives, and to reasonably ensure that its investments will not be used in way that will do E&S harm. The following areas of non-compliance are evident:

#### Failure to ensure establishment of ESMS and require compliance with host country laws

43. The SPI does not refer to a requirement to establish an ESMS, which may reflect a failure to include this requirement in legal agreements. We note that the requirement to undertake environmental reviews of subprojects is only one component of an effective ESMS.

44. It is apparent from the severe adverse social and environmental impacts of HAGL's activities described above, that DCGL/VEIL did not have an effective ESMS in place. It is also clear from the flagrant breaches of Cambodian law that IFC did not ensure that

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<sup>26</sup> International Financial Corporation website, IFC Project Database, *Summary of Project Information: VEIL/Dragon Capital Group (Project Number 10740)*.  
<https://ifcndd.ifc.org/ifcext/spiwebsite1.nsf/78e3b305216fcd8a85257a8b0075079d/d85d60a3a03e7abf852576c10080cb10?opendocument> (accessed August 2013).

<sup>27</sup> International Financial Corporation website, IFC Project Database, *Summary of Project Information: VEIL II (Project Number: 20926)*.  
<https://ifcndd.ifc.org/ifcext/spiwebsite1.nsf/78e3b305216fcd8a85257a8b0075079d/dfe5879675a79794852576ba000e24f9?opendocument> (accessed August 2013).

DCGL/VEIL required activities conducted by HAGL to comply with host country environmental, health and safety requirements. Even HAGL's public acknowledgement that its activities were not fully in compliance with applicable national laws and regulations in 2011 does not appear to have triggered an appropriate response by DCGL/VEIL or IFC, and indeed, may have gone unnoticed. The ESMS system put in place was either not fit for purpose or not properly applied.

45. Despite the lack of available information, it is clear that the IFC did not carry out its appraisal and supervision requirements in an effective and robust manner. If efforts were made to compel its client to improve its ESMS management system and ensure that its subproject was in compliance with Cambodian laws, these efforts were not effective. When evidence of social and environmental harm and violations of Cambodian law was presented to the IFC by Global Witness in March 2013, a reasonable interpretation of the policies would require the IFC to take proportionate supervisory steps to compel and support its client to take corrective action. Given the on-going and mounting harms to the complainants - clearing of community land and spirit forests has occurred within the last month - it is apparent that robust supervisory and corrective action has not been taken almost one year later.

Failure to ensure adequate capacity for Category A subprojects or ensure such subprojects are subject to prior review and approval by IFC

46. According to the SPI, DCGL/VEIL was required to obtain IFC clearance prior to making *any investment with IFC funds* in any Category A project. We assume that this requirement was stipulated in the legal agreement. It is unclear if this requirement is limited to particular DCGL/VEIL investments or applies to all investments, since IFC has an equity stake in the company.<sup>28</sup>

47. We are not privy to information about when DCGL/VEIL invested in HAGL, and whether at the time HAGL had initiated or planned to initiate its rubber plantation business. If so, the investment in HAGL should clearly have been categorized as Category A, since it had "significant adverse environmental impacts" as defined by OP 4.01, including raising issues covered by OD 4.20 on Indigenous Peoples, OD 4.30 on Involuntary Resettlement and OP 4.36 on Forestry.<sup>29</sup> HAGL's main areas of business, according to its website, include agri-business and property development, both of which have the potential to raise issues under the safeguard policies. Therefore, if DCGL/VEIL did not categorize the HAGL investment as a Category A project and/or did not seek clearance from the IFC to invest, it appears to have been in breach of its contractual obligations to do so and IFC failed to supervise effectively. If Dragon Capital did seek clearance and IFC approved the investment, then IFC evidently did so without ensuring that its client's institutional capacity for its subproject EA work was adequate. In either case, policy and procedural requirements have been breached.

Failure to ensure that EA reports for Category A subprojects are made available

48. EA reports for HAGL's activities in Ratanikiri, if such assessments exist, have not been made available in a public place accessible to affected groups and local NGOs. IFC has not taken adequate steps to ensure this procedural requirement was met.

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<sup>28</sup> Again, it is unclear whether this is a Type 1 or Type 2 project and thus whether there are specific subprojects financed by IFC through a credit line.

<sup>29</sup> IFC OP 4.01, (para. 8(a) and footnote 9).

## Non-compliance with other Safeguard Policies:

49. Pre-2006 approved FI -1 projects were not required to satisfy the requirements of the full suite of Safeguard Policies, but rather had to comply only with host country requirements. However, according to the SPI, “for each subproject financed with IFC funds through the credit line, DCGL [is] required to undertake an environmental review of each subproject to ensure compliance with...IFC environmental and social safeguard policies.”<sup>30</sup> Thus, DCGL/VEIL may have been contractually required to ensure that HAGL complied with the safeguard policies.

50. In addition to OP 4.01 on Environmental Assessment discussed above, the relevant pre-2006 Safeguard Policies are Involuntary Resettlement (OD 4.30), Indigenous Peoples (OD 4.20) and Forestry (OP 4.36). The objectives and key requirements of each were not implemented by HAGL. It is evident that there have been multitudinous and possibly complete failures to comply with requirements under each policy.

## 4.2 The 2006 and 2012 Sustainability Framework

51. The complainants state that HAGL’s operations began affecting them in 2010, some eight years after IFC’s initial investment in DCGL/VEIL. This provided ample time for IFC to ensure its client’s ESMS and its institutional capacity for its subprojects were robust.

52. By the time HAGL started operating in Cambodia through the relevant land concessions, there had been major revisions to IFC’s policy approach to E&S risk management. The updates to the IFC’s Sustainability Framework, which according to the IFC “reflect the evolution in good practice for sustainability and risk mitigation,”<sup>31</sup> should have been reflected in IFC’s approach to supervision of its investment in DCGL/VEIL over time. IFC should have supervised its project with reference to the 2006 Framework<sup>32</sup> between May 2006 and December 2011, and thereafter with reference to the 2012 version.<sup>33</sup> Supervision should have also been strengthened over time to reflect updates in the ESRPs. While adherence to supervision requirements in the updated policies and procedures may have been constrained by the earlier contractual E&S requirements on the client, many of the new measures could have been adopted without any apparent inconsistencies with the legal agreement. IFC’s participation in the 2006 rights issue provided a special opportunity to strengthen its client’s E&S management system and requirements in line with contemporary approaches.

53. Under the 2006 Policy, the IFC is required to review the business of FI clients to identify activities where the client could be exposed to social and environmental risk as a result of its investments.<sup>34</sup> As a part of its on-going supervision, it would appear that the IFC should undertake such review of its *entire FI portfolio* including investments made

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<sup>30</sup> International Financial Corporation website, IFC Project Database, *Summary of Project Information: VEIL/Dragon Capital Group (Project Number 10740)*.

<https://ifcndd.ifc.org/ifcext/spiwebsite1.nsf/78e3b305216fcd8a85257a8b0075079d/d85d60a3a03e7abf852576c10080cb10?opendocument> (accessed August 2013).

<sup>31</sup> [http://www.ifc.org/wps/wcm/connect/Topics\\_Ext\\_Content/IFC\\_External\\_Corporate\\_Site/IFC+Sustainability/Sustainability+Framework/](http://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/IFC+Sustainability/Sustainability+Framework/)

<sup>32</sup> *Policy on Social & Environmental Sustainability*, 30 April 2006.

<sup>33</sup> *Policy on Social & Environmental Sustainability*, 1 January 2012.

<sup>34</sup> *Ibid* (para. 28).

prior to 2006. Under the Policy, the IFC must also ensure that clients require recipients of their financing to:

- follow national laws where the activity financed presents limited social or environmental risks; and
- apply the Performance Standards where the activity financed presents significant social or environmental risks.<sup>35</sup>

54. Intermediaries are required to establish and maintain a Social and Environmental Management System to ensure that its investments meet IFC's requirements. The IFC should monitor the client's performance based on this system.<sup>36</sup> While it may not be feasible for the IFC to compel DCGL/VEIL to undertake these measures to the extent that they exceed their original legal commitment, the IFC should have taken all possible steps to encourage its client to do so, especially in light of the high-risk nature of DCGL/VEIL's subproject. It is clear from the adverse impacts on complainants described above, that Performance Standards have not been met, in particular PS 1 on Social and Environmental Assessment and Management Systems, PS 2 on Labor and Working Conditions, PS 4 on Community Health, Safety and Security, PS 5 on Land Acquisition and Involuntary Resettlement, PS 6 on Biodiversity Conservation and Sustainable Natural Resource Management, and PS 7 on Indigenous Peoples.

55. The 2009 ESRP and the 2012 Policy contain some important additional requirements on the IFC with respect to supervision of its FI investments. IFC is to implement a regular program of supervision of FI investments with E&S risks or impacts. It is to undertake periodic reviews of the process and results of environmental and social due diligence, and work with its client to address any shortcomings. The policy encourages site visits to high-risk sub-projects as part of a robust supervision process.<sup>37</sup> Given the continuing social and environmental harms resulting from HAGL's activities, it appears these steps have not been taken in any meaningful manner some two years after the updated Policy was adopted. We are not aware of a site visit by the IFC to villages affected by HAGL, even after evidence of harm was provided by Global Witness, although it is possible that such a visit has occurred.

### 4.3 Exclusion List

56. The exclusion list includes commercial logging operations for use in primary tropical moist forest.<sup>38</sup> While the subproject's overt purpose was cultivation of rubber plantations, according to compelling evidence presented by Global Witness – both satellite imagery and eyewitness testimony – illegal logging activities, including of evergreen forest, are taking place within HAGL's concessions.<sup>39</sup>

57. 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

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<sup>35</sup> Ibid.

<sup>36</sup> Ibid (para. 29).

<sup>37</sup> International Finance Corporation, *Policy on Social & Environmental Sustainability*, 1 January 2012 (para. 45).

<sup>38</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>39</sup> Rubber Barons, p. 19.

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>40</sup>

58. The 1998 *Procedure for Environmental and Social Review of Projects* (table 2, page 34) indicates that the general exclusion list did not apply to FI type 1 projects (ie. not subproject focused). The SPI did not mention the Exclusion List. However, since DCGL/VEIL were required under the legal agreement to obtain clearance from the IFC for all Category A sub-projects, any reasonable interpretation would prohibit approval of any subprojects engaged in activities on the Exclusion List. The 2006 and 2012 Sustainability Frameworks do require FIs to apply the Exclusion List.<sup>41</sup>

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

59. It is evident that the pre-2006 policy requirements, even if they have been correctly applied, would fail to provide an adequate level of E&S protection in the case of the HAGL sub-project. The policy requirements are vague and unduly rely on the FI client's review and reporting of E&S performance of subprojects. For FI-Type 1 projects, they also rely on requirements to comply with "host country environmental, health and safety requirements" for E&S protection rather than the full suite of Safeguard Policies. Cambodian law and regulations are insufficient to provide adequate levels of protection in line with the Safeguard Policies.

60. While an improvement on the pre-2006 policies, the Sustainability Framework in both its initial and revised form remains weak in ensuring that FI subprojects 'do no harm'. Its requirements for supervision, and particularly for identifying and monitoring problems at the subclient level, continue to rely excessively on client reporting, and do not involve systematic monitoring of social and environmental impacts. 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.

61. 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 40 percent of its portfolio.<sup>42</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

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<sup>40</sup> Rubber Barons, p. 19.

<sup>41</sup> Ibid.

<sup>42</sup> CAO, Audit of a Sample of IFC Investments in Third-Party Financial Intermediaries, 2012, p. 8.

interests. As the CAO recognised in its audit of third-party financial intermediaries, “potential complainants may not know about IFC’s relationship to the subclient transaction – or about the CAO as an available resource mechanism.”<sup>43</sup> It is certainly possible that there are other links between the IFC and land rights abuses in Cambodia, but that due to the non-disclosure of even basic information about the end use of IFC financial market investments, such links will never be brought to light.

62. 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>44</sup> However, by adopting the Sustainability Framework and projecting a corporate image of global leadership in environmental and social issues,<sup>45</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 subclients. We also take issue with the fact that IFC can invest significant amounts in an existing client through participation in a rights issue without being required to publicly disclose any information. The justification for non-disclosure of an increase in investment in an existing client is not apparent.

63. 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**

64. The lands and forests of the communities submitting this complaint are central to their livelihoods, culture and identity. Their customary tenure system is based on collective natural resource management and conservation, with exploitation carefully

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<sup>43</sup> CAO, Audit of a Sample of IFC Investments in Third-Party Financial Intermediaries, 2012, p. 8.

<sup>44</sup> IFC Policy on Disclosure of Information, para. 9.

<sup>45</sup> CAO, Audit of a Sample of IFC Investments in Third-Party Financial Intermediaries, 2012, p. 19.

controlled, in order to ensure that it continues to provide amply and will be available to future generations. Indigenous communities' belief in spirit forests and other sacred places also fosters a deep attachment to their geographical location. Moreover, the historical reliance on natural resources for food, housing materials, medicines and other needs has meant that their integration into the cash economy has been limited. As a result, the seizures of their lands and destruction of their natural resources have been particularly devastating.

65. Due to their deep connection to and dependence on their lands, the complainant communities want their lands, wrongly seized by HAGL, to be returned to them. Complainants that have not yet been impacted want to protect their land and forests and secure their customary tenure rights for future generations. Communities are willing to participate in a process of independently facilitated boundary demarcation of their lands that accords with their rights under the Land Law.

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

67. Complainants "do not want cash compensation [for their land] because it cannot be inherited by the next generation."<sup>46</sup> They say, that while land can continue to feed them and their children forever, if they receive money "soon it will be gone."<sup>47</sup>

68. Complainants, however, do want cash compensation for losses of crops, structures, livestock and other chattels. They also want compensation for the income they have lost since their crops, resin trees and other NTFPs were destroyed by the company.

69. The complainants also wish to make clear that a dispute resolution process with the company cannot proceed while the company continues to clear their forests. They want the destruction of their natural resources to cease immediately.

70. Finally, we wish to emphasize that IFC and DCGL/VEIL should step up its efforts, and bring to bear all resources at its disposal, to ensure the severe harms suffered by communities are redressed in accordance with the outcomes sought by communities. Divestiture prior to remedial action would leave affected communities in a dire situation and would not address adverse human rights impacts that have materialized while IFC, through its FI client, held investments in the responsible business entity.

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**Inclusive Development International (IDI)** is an independent, non-profit association working to make the international development paradigm more just and inclusive. Contact: Dr. Natalie Bugalski, Legal Director, Tel: +1-213-457-3135, Email: [natalie@inclusivedevelopment.net](mailto:natalie@inclusivedevelopment.net), Address: 23532 Calabassas Road, Suite A, Calabassas, CA 91302, USA.

**Equitable Cambodia (EC)** is a Cambodian organization working to promote equitable development and the progressive realization of human rights in Cambodia through

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<sup>46</sup> From key informant interview in Kachout Leur village.

<sup>47</sup> From key informant interview in Ket village.

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: #55 Street 101, Boeung Trabek, Phnom Penh, Cambodia.

**Cambodian Indigenous Youth Association (CIYA)** works to strengthen solidarity and build strong capacities of indigenous youth, empowering them as the future generation of the communities they represent.

**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.

**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.