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A HUMAN RIGHTS IMPACT ASSESSMENT: Hoang Anh Gia Lai Economic Land Concessions in Ratanakiri Province, Cambodia

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Abstract

Ratanakiri province has one of the largest populations of indigenous peoples in Cambodia. Many of the economic land concessions that have been granted throughout the province overlap with land traditionally possessed by indigenous communities. A Vietnamese company called Hoang Anh Gia Lai (HAGL) was granted tens of thousands of hectares of land in Ratanakiri to develop rubber plantations.

In 2014, the authors conducted a human rights impact assessment of HAGL's concessions in thirteen affected villages or communities. Most of these villages are indigenous. Several methods were applied in data collection included key informant interviews, focus groups, including separate women focus groups, community mapping and household interviews.

Results of the study showed that, in breach of the right of indigenous peoples to self-determination, there was no attempt from the company to consult affected communities or seek their free, prior and informed consent to conduct operations. The company provided no notification and very little information to affected communities prior to commencing operations. Since the concessions were granted, affected communities have experienced loss of both communal and household property. At the communal level, they lost access to state forests, grazing lands, water sources, reserved lands, spirit forests, burial grounds and other sacred sites. In addition, more than a hundred households in affected communities experienced loss of household property such as orchid lands, rice fields, animals, crops and structures. As a result of these losses, affected people experienced regressions in their enjoyment of the right to an adequate standard of living; the right to the highest attainable standard of health; and the right to practice cultural and spiritual traditions. Despite efforts to seek redress, affected people have been denied the right to an effective remedy for human rights violations. The experience of the villagers interviewed for this report suggest that the introduction of large-scale agribusiness into such settings can reduce local food security and sovereignty, shrink existing livelihoods while failing to provide appropriate and effective alternatives, and bring about a host of other damaging repercussions on the well-being and human rights of local populations.

INTRODUCTION

The Cambodian province of Ratanakiri is at once a remote, sleepy wilderness, and an important geographic nexus of three rapidly developing countries. Sparsely populated, Ratanakiri is home to eight indigenous groups, who have maintained many aspects of their distinct traditions, cultural identity and way of life through Cambodia's turbulent history. Ratanakiri's total population was 150,466 in 2008 (official census data), over half belonging to an ethnic minority (non-ethnic Khmer) group (Moul and Seng, 2012). A unifying feature of these groups is their strong connection with and reliance upon the surrounding natural resources for their socio-economic and spiritual well-being. Also distinguishing them from Cambodia's Khmer ethnic majority is their customary system of collective land and resource tenure that governs each village's territory.

The governments of Cambodia, Laos and Vietnam formed the "Development Triangle" in 2004, approving a master plan for socio-economic cooperation in the areas of, inter alia, transport, trade, electricity and tourism in several bordering provinces in each country (Nguyen 20012). Linking Cambodia's northeast to Vietnam and Laos, Ratanakiri is today a hub of cross-border economic activity within the tripartite Development Triangle. Logging, often illicit, dominates trade, with some estimating that hundreds of thousands of cubic meters of timber are trucked into Vietnam each year.¹ Forest clear-felling is frequently justified as necessary for conversion to industrial plantations and occurs behind a thin veil of legitimacy on land granted to companies by the Cambodian government through concessions, usually for between 70-99 years. According to publicly available information, approximately 15 percent of Ratanakiri's landmass is subject to economic land concessions (ELCs),² predominantly for rubber plantations, which thrive in the area's red volcanic soils (Vize and Hornung, 2013).

Intensive logging and cultivation of industrial plantations over the past two decades have visibly transformed the landscape: The dense old-growth and secondary evergreen and tropical forests that once covered much of the province's 12,000 km² surface area are in rapid decline. As the forests disappear, the once rich array of wildlife, including the yellow-cheeked gibbon, the gaur, the giant ibis and the Asian elephant, are increasingly endangered. This immense loss of natural resources and fauna has had devastating impacts on Ratanakiri's indigenous peoples.

This paper contains the findings of a human rights impact assessment of four ELCs in Ratanakiri owned by Vietnamese company, Hoang Anh Gai Lai (Global Witness, 2013),³ through several subsidiaries.⁴ There are at least three other ELCs in the province that were previously owned by HAGL, but for which current ownership status is unable to be confirmed. In total, these seven concessions combined cover a non-contiguous area of more than 50,000 hectares, making HAGL one of the largest – if not the largest – single beneficiary of ELCs in Ratanakiri (see Table 1). HAGL's concessions are primarily for the cultivation of rubber plantations but also for other crops including oil palm.

¹ Communications with confidential source.

² This figure is an estimate based on information available on the Open Development Cambodia (ODC) website (<http://www.opendevdevelopmentcambodia.net>). ODC lists 26 ELCs covering a total of almost 170,000 hectares, constituting approximately 15 percent of Ratanakiri's total landmass of 1.11 million hectares. Mining licenses listed on ODC cover a total of 156,000 hectares. There may be other concessions that are not publicly listed. It is also possible that some concession areas overlap and that some of the listed concessions are not active.

³ HAGL is one of Vietnam's largest private companies. As of March 2013, the company was worth US\$258 million. Endnote 81, referencing Ho Chi Minh Stock Exchange.

⁴ This paper is based on Bugalski and Thuon (2014), 'A Human Rights Impact Assessment of HAGL's Concessions in Ratanakiri' (not yet publicly published)

Table 1: HAGL Concessions

Concessionaire	District	Size (ha)	Contract date and duration	Affected Villages
Heng Brother Co. Ltd. Director: Nguyen Tuan Linh	Andong Meas	2361	31 July 2009 70 years	<ul style="list-style-type: none"> • Kanat Thom • Malik
CRD Co. Ltd. Representative: Nguyen Van Minh	O'Chum, Andong Meas, Bor Keo	7591	25 March 2011 70 years	<ul style="list-style-type: none"> • Kresh • Kam • Mass
Hoang Anh Oyadav Co. Ltd. Director or representative unknown	Andong Meas	9000 original size, later reduced to 5305	22 Sep 2011 Duration unknown	<ul style="list-style-type: none"> • Inn • Kak • Muy • Peng • Talao
Hoang Anh Andong Meas (Lumphat) Representative: Nguyen Van Thu	Koun Mom	9470	17 Nov 2011 70 years	<ul style="list-style-type: none"> • Srae Angkrong 1 • Srae Angkrong 2 • Srae Angkrong 3
Sources: Open Development Cambodia Website; Global Witness, 2013; Correspondence with Global Witness for updated information; and Interviews with village representatives				

Research was conducted in thirteen villages situated inside or near the boundary of the concessions known to be owned by HAGL, and which have been directly affected.⁵ This paper describes the human rights impacts on the thirteen villages. The majority of affected people belong to indigenous people,⁶ including Kachok, Jarai, Kreung and Tampuan, each with its own language, while some affected people are ethnic Khmer. Some of the affected villages consist entirely of one ethnic group, and others contain a mix of ethnicities, both indigenous and non-indigenous. The villagers are traditionally animist, and their culture, livelihoods and identities are intimately tied to the land, forests and other natural resources of the region. The communities practice shifting cultivation and rely heavily on forest resources for their livelihoods.

ASSESSMENT FRAMEWORK

International human rights law is used as the normative framework for assessment. In particular, impacts on the enjoyment of rights enshrined in the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC) and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) are assessed. The ICCPR, ICESCR and CRC have been ratified by both Cambodia and Vietnam. The UNDRIP has been adopted by the General Assembly by 144 States in favor, including Cambodia and Vietnam.

The Royal Government of Cambodia (RGC) has the primary obligation to respect, protect, and fulfill the human rights enshrined in these instruments for those people affected by HAGL's operations in Cambodia. The obligation to protect requires the government to take steps to prevent human rights abuses by third parties, including companies such as HAGL. International law recognizes that a State is obliged to abide by its international legal obligations extraterritorially in certain circumstances.⁷ United Nations treaty bodies have affirmed that the obligation of States to protect against abuses of human rights extends to a duty to regulate the overseas conduct of businesses registered in their

⁵ There may be other villages affected by HAGL's concessions.

⁶ More than 85% of Cambodia's population is ethnic Khmer.

⁷ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion) [2004] ICJ Rep 136, p. 180.

territory.⁸ HAGL is registered in and has its center of activity in Vietnam. Therefore, the Government of Vietnam has a duty to regulate HAGL's activities in Cambodia and elsewhere, with a view to improving its accountability and transparency, and preventing and redressing human rights violations caused or contributed to through its conduct. Furthermore, HAGL itself has a responsibility to respect human rights. The Guiding Principles on Business and Human Rights, endorsed by the Human Rights Council, affirmed that while States have the primary obligations under international human rights law, this does not absolve other parties, including business enterprises of responsibility.⁹

HAGL's operations in Ratanakiri have affected a range of human rights. With limited resources available, the researchers decided to focus the assessment on the human rights most impacted. The legal basis and nature of each human right is explained briefly below.

The right of self-determination

The right of peoples to self-determination and to pursue their own economic, social and cultural development is recognized in identical first articles of the ICCPR and the ICESCR.¹⁰ The UNDRIP affirms that the right of self-determination is a foundational right of indigenous peoples, from which other collective procedural and substantive rights are derived.¹¹

An integral component of the right of self-determination is the freedom of a people to dispose of their natural wealth and resources.¹² Relatedly, a people must not be deprived of its own means of subsistence.¹³ The collective exercise of self-determination by a people therefore implies a high degree of autonomy to govern the use, management and development of their territory and productive resources. The UNDRIP recognizes the right of indigenous peoples to "own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired."¹⁴

The collective right of indigenous peoples to participate in decision-making in matters that affect their rights, and to give or withhold their free prior and informed consent (FPIC) for any project affecting their lands, territories or other resources, is thus essential to the exercise of self-determination.¹⁵ The confiscation or deliberate destruction without consent of a people's lands and resources by the State or a third party is a violation of the right of self-determination.

The right to an adequate standard of living

The right of everyone to an adequate standard of living, including adequate food, clothing and housing, is recognized in article 11 of the ICESCR and article 27 of the CRC. The ICESCR recognizes a right to the continuous improvement of living conditions, which requires adequate livelihood opportunities for all households. The UN Special Rapporteur on the Right to Food has articulated that States are acting in violation of the human right to food if, by leasing land to investors, they are depriving the local populations from access to productive resources indispensable to their livelihoods.¹⁶

⁸ See, for example, CRC/C/BHR/CO/2-3 paras. 20, 21; CERD/C/CAN/CO/19-20 para 14; CERD/C/CAN/CO/18 para. 17; CERD/C/AUS/CO/15-17 para 13; E/C.12/AUT/CO/4, para. 12.

⁹ Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, A/HRC/8/5, endorsed by the Human Rights Council in resol. 17/4 of 16 June 2011.

¹⁰ ICCPR and ICESCR, article 1.

¹¹ UNDRIP, *chapeau* articles 3, 4.

¹² ICCPR and ICESCR, article 1(1).

¹³ ICCPR and ICESCR, article 1(2).

¹⁴ UNDRIP, article 26(2).

¹⁵ *Ibid*, article 18, 19 and 32.

¹⁶ Report of the Special Rapporteur on the right to food, Olivier De Schutter, 2009, A/HRC/13/33.Add.2, para15.

The right to health

The right to the enjoyment of the highest attainable standard of physical and mental health is recognized in article 12 of the ICESCR and article 24 of the CRC. The right to health is closely related to and dependent upon the realization of the right to an adequate standard of living as well as other human rights. It is also intimately connected to the natural environment, especially for people who derive their food, water and medicines directly from their natural surroundings. The UNDRIP recognizes the right of indigenous peoples to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants.¹⁷

The right to enjoy culture and practice traditions

The ICCPR, in article 27, enshrines the right of persons belonging to ethnic or religious minorities, in community with the other members of their group, not to be denied the enjoyment of their own culture or the practice of their own religion. A similar right of children of minority or indigenous origin is recognized in the CRC.¹⁸ The UNDRIP affirms the right of indigenous peoples to practice their cultural traditions and customs, and to manifest and practice their spiritual and religious traditions, customs and ceremonies.¹⁹

The Human Rights Committee has observed in relation to article 27 of the ICCPR that culture manifests itself in many forms, including a particular way of life and traditional activities associated with the use of land resources, including fishing or hunting, especially in the case of indigenous peoples.²⁰ The confiscation or destruction of these resources by others therefore denies members of the minority group their right to enjoy their own culture.

The right to an effective remedy

The right to an effective remedy of any person whose human rights are violated is enshrined in article 2(3) of the ICCPR.²¹ States Parties to the Covenant undertake to ensure that any person claiming a remedy for violation for their human rights can access a competent judicial, administrative or legislative authority to adjudicate their claim and that competent authorities enforce remedies when granted.²²

Access to remedy is a pillar of the 2011 UN Guiding Principles on Business and Human Rights. According to the Guiding Principles, while States bear the primary obligation for ensuring effective remedies for human rights violations, businesses complicit in violations also have a role to play. Business enterprises should establish or participate in effective operational-level grievance mechanisms that ensure that outcomes and remedies accord with internationally recognized human rights.²³

¹⁷ UNDRIP, article 24.

¹⁸ CRC, article 30.

¹⁹ UNDRIP, article 11 and 12.

²⁰ Human Rights Committee, General Comment 23, Article 27 (Fiftieth session, 1994), para. 7.

²¹ While the right in article 2(3) as articulated applies to human rights and freedoms contained in the ICCPR, numerous international law authorities have affirmed that the right to a remedy pertains to all violations of human rights.

²² ICCPR, article 2(3).

²³ Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie: Guiding Principles on Business and Human Rights (2011), para 31.

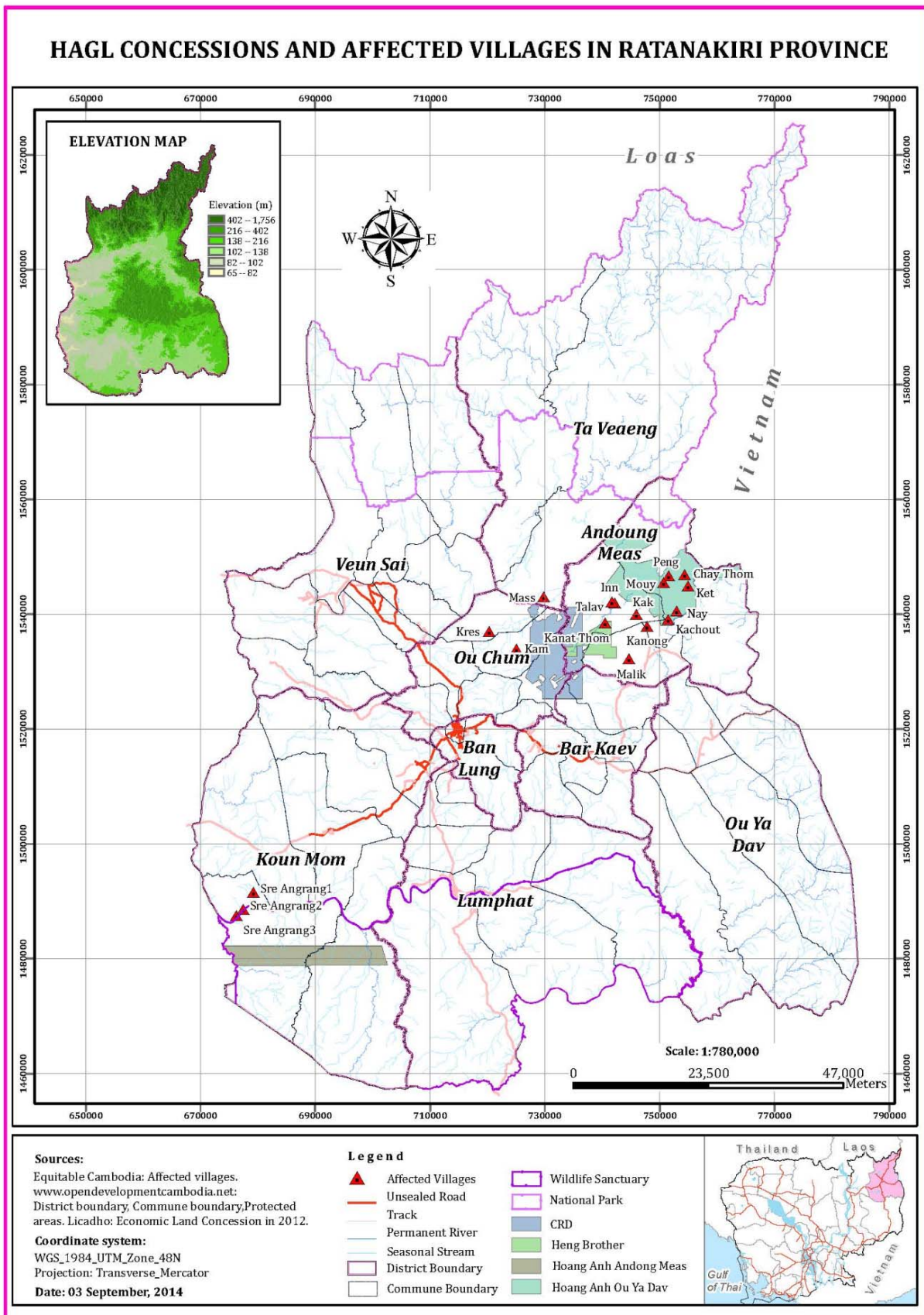
METHODS

Study Site Description

The study covers eighteen villages in Ratanakiri that have been or are expected to be affected by ELCs owned by subsidiaries of HAGL. These villages were chosen because they appear to be inside or near the boundary of HAGL concessions on available maps or because of reports from other NGOs or nearby villagers that they are affected by CRD, Heng Brother, Hoang Anh Andong Meas (Lumphat), and Hoang Anh Oyadav. HAGL has confirmed that it owns these four companies.²⁴ Thirteen of the eighteen villages were reported to have been directly affected by HAGL. These thirteen villages were therefore included in all aspects of the impact assessment.

²⁴ Global Witness, *op. cit.*; and HAGL Group, Report of Environmental and Community Development Program in Laos and Cambodia, 2013.

Figure 1: Map of HAGL Concessions and Affected Villages in Ratanakiri Province



Data Collection Methods

Both primary and secondary data collection methods were applied. Desk research was used to gather background information about the concessions and villages as well as information on relevant laws and policies. The primary data was collected through a range of tools including key informant interviews, participatory community mapping, focus group discussions, including separate women focus groups, and household interviews.

Participatory community or village mapping: Several affected villages (Mass, Talao, Malik and Kanat Thom) reported that there is more than one ELC inside their territory. In such cases, it was sometimes difficult to attribute impacts to HAGL's operations as opposed to other companies' activities. To deal with this issue, the research team facilitated a participatory community mapping exercise prior to applying the other tools of data collection in each village. At least five persons in the village who are familiar with local geography and are most knowledgeable about the concessions participated in the mapping process. First, they were asked to draw the main parts of the village, including its boundaries and main landmarks such as stream, river and road, on a flipchart. Then, they had to draw different types of land uses such as dependent state forest, community forest, spirit forest, burial ground, farmland, settlement area, on the appropriate parts of the map. Next they were asked to mark the boundaries of the plantation or company's concession area to show where this overlaps with the village or community resources. Besides helping to understand the land use patterns and infrastructure in each village, community mapping provided clarity about the location of HAGL's concessions vis-à-vis the various parts of the village. It also helped participants and interviewers differentiate losses and impacts caused by HAGL as opposed to other companies.

Key informant interviews were conducted to understand the overall situation and existing issues in each village and to gather data that ordinary villagers may not be able to provide. Key informants were village elders, community representatives/committees and village chiefs. These interviews are in-depth and aim to collect qualitative data such as community livelihoods, land tenure, communal and household losses and impacts, compensation, consultation, work on the plantation, perceived benefits from the company, complaints, remedies sought, and future concerns about the company's operations. In total, thirteen key informants were interviewed in affected villages.

Household or individual surveys were conducted to collect information about impacts and losses experienced by households in each village. Names of affected households were given by village chiefs and/or community representatives. In total, 69 households in affected villages that experienced losses because of HAGL concession were interviewed. Due to challenges in accessing villages and conducting interviews, the research team was unable to interview a consistent number of households in each village. For example, the team was able to interview as many as eleven households in Kanat Thom, but only two in Inn village. On average, the team interviewed five to six households in the thirteen affected villages.

Focus group discussions were conducted in all the thirteen villages that have been affected by HAGL. In village where men tend to dominate, separate women's group discussions were conducted to ensure women's voices were heard. Distinct impacts of the project on minorities or marginalized groups were also identified through group discussions.

RESULTS

Impacts on the Right of Self-determination

Lack of Free, Prior and Informed Consent

There was no attempt by either Cambodian government authorities or the company to seek local communities' free prior and informed consent for the grant of the concession or the company's operations. Most of the households interviewed stated that they learned about HAGL's operations either through rumors or by witnessing workers begin clearing their land and forests. Nearly half of the key informants first heard about the project from a local authority including a commune or district official after the concession contract was already signed. None of the villages were provided with any documentation about HAGL's concession or operations. Moreover, none of key informants felt they were consulted about the project. Although meetings were conducted in nine of the villages after the company began operations, around 90 percent of households interviewed that attended the meetings did not feel they were consulted.

One villager in Srae Angkrong 3 village said "the company came to the village and invited villagers to a talk about land issue between the company and villagers. The company did not say anything while district chief took the lead in speaking... Villagers felt loss of hope because [they] could not talk with the company... They kept saying that the land belongs to the company, so we should not demand anymore... [A villager] requested that the company leave a large area along the bank of the stream available for raising cattle... A bodyguard of the district chief asked [the villager] if he has ever known prison."²⁵

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

Loss of control over and access to land, territories and resources

The majority of communities interviewed practice a customary form of tenure over their lands, which differs from the dominant individualized tenure system throughout most of Cambodia.²⁶ Under this system of tenure, much community land is managed and used collectively, including residential areas, grazing land, community forest, reserved land, forest, spirit forest and burial grounds. In general, natural resource management is governed by elders, who allocate use rights over various resources based on sustainability and equity considerations. In most villages, parcels of land within the community's territory are allocated to individual households for farming including of rice and other small-scale crop plantations (*chamka*). The concept of collective ownership over their territory and resources is central to the communities' identity. Traditionally, the communities have regarded their lands as inalienable to outsiders, but in some villages, external factors have begun to erode this customary norm.

In this context, there have been both communal and individual household losses due to HAGL's operations.

Communal losses

Communal losses include collectively held and used lands and resources usually governed under a customary tenure system. These include grazing land; reserved land for future generations and

²⁵ The authors have removed all identifying descriptions of respondents for security reasons.

²⁶ Several villages, mostly those that are predominantly Khmer, do not practice a customary form of tenure.

shifting cultivation; spirit forest, burial grounds or other sacred places; resin trees; water sources and fish resources; community forest; and access to state forest and the resources previously sourced there. In most villages, respondents do not know the precise size of communal lands taken.

Table 2: Type of Communal Loss by Village

Name of village	Communal losses											
	Grazing land	Communal forest	Access to state forest	Water source/access	Resin trees	Spirit forest	Burial ground	Other sacred place	Chrob ²⁷	Chrab ²⁸	Reserved land/forest	Other communal resources
Inn												
Kak												
Kam												
Kanat Thom												
Kresh												
Malik												
Mass												
Muy												
Peng												
Srae Angkrong 1												
Srae Angkrong 2												
Srae Angkrong 3												
Talao												
Total	8	2	13	11	9	7	6	2	10	8	10	9

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

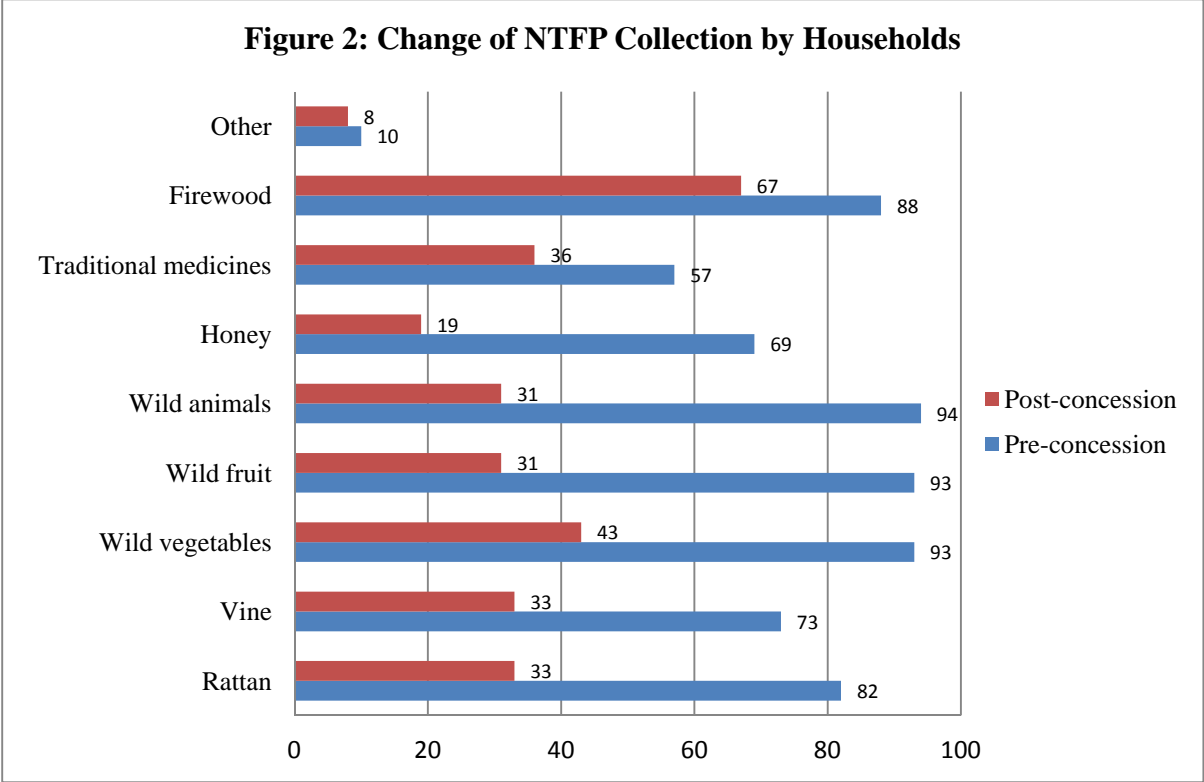
Before the concession, almost all respondents (97 percent) collected a diverse range of NTFPs such as rattan, vine, wild vegetables, fruit, animals, honey, traditional medicines, and firewood. Although at the time of interview, around 60 percent of respondents said that they still collect NTFPs, the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

Almost all respondents said that prior to the company’s operations, fishing for food consumption

²⁷ Chrob is a floating mass of debris that resembles soil. Villagers can find vegetables, rattan and vine. People also farm (usually rice) in the surrounding chrob area because the soil is fertile.

²⁸ Chrab is an area of salty soil that is a source of food for birds and wild animals. Villagers often go hunting there. The area is also believed to be inhabited by spirits.

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

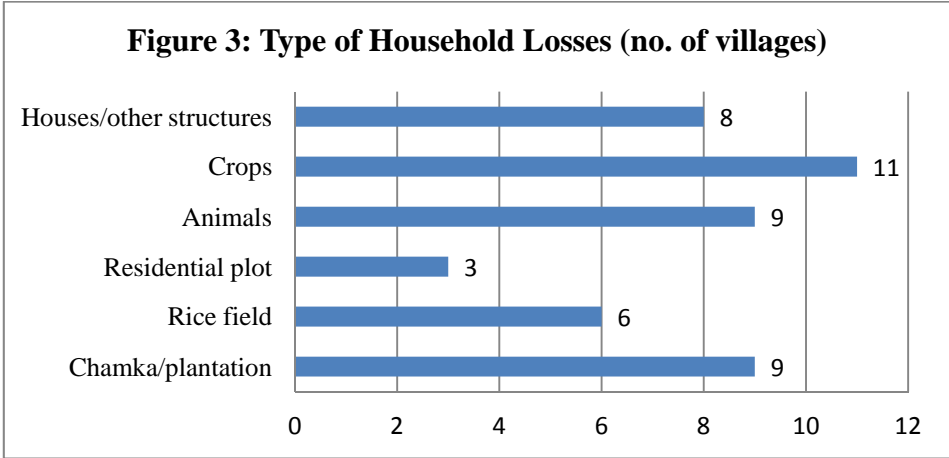


The ethnic Kreung village of Kam in Ou Chum district estimates that thousands of hectares of community land have been cleared by the company. Rare and precious tree species, including resin trees, Neang Nourn, Beng, Thnong and Kranhoung (rosewood) have been logged despite being protected under the Forestry Law. The villagers have lost access to vital resources for household consumption and income generation, including timber and NTFPs such as vine, wild fruit, vegetables, resin, and traditional medicines. In addition, the community lost grazing land and must now monitor their cattle at all times to prevent them from destroying the company’s rubber trees and being killed or confiscated by company workers. More than 20 streams have been affected. Some streams have been filled with tree residue from logging or turned shallow and muddy, while others have been contaminated by chemicals used on the plantation. The community has also lost a forest and wildlife protected area of almost 1000 hectares established by the Forestry Administration in 2008. The community invested both their time and labor in protecting this area through forest patrols in the years prior to HAGL’s presence in the area. The community is very disturbed by the destruction of two of their spirit forests, which play an important role in their beliefs and culture. Community mapping shows the loss of two spirit forests, measuring approximately seven hectares in total, to the concession. Kam village has also lost 150 hectares of reserved land for shifting cultivation and for the survival of the next generation.

Household losses

Household losses include residential plots, rice fields and chamka (orchard/farming land), and

crops. In some cases, houses or other shelters have been destroyed by the company. Animals have also reportedly been killed or stolen by company workers.



According to key informants and focus groups in each village, a total of 164 of 1,672 households²⁹ in the thirteen affected villages have lost residential plots and/or individually held farmland (chamka or rice fields) to the company.

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

Compensation for Losses

According to respondents, neither the company nor the government provided compensation to any of the villages for communal losses. According to key informants and focus groups, three villages - Kresh, Mass and Peng - received no compensation at all for either communal or household losses. A villager in Kresh village stated that “The company did not provide compensation for our communal losses such as forest and streams we depended on, [because they] explained to us that it is state-owned land granted to the company.”

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

Most of the households that were offered compensation had their chamka or rice fields cut out of HAGL’s concessions and returned to them through a nation-wide Prime Ministerial program ostensibly aimed at curbing and reversing land seizures connected to ELCs. The compensation was, in these cases, a purchase “offer” by the company in order to reestablish control of the plots. In other cases, households in Kak, Kanat Thom, Malik, and Talao were reportedly told by company representatives that they were being compensated for the labor they invested in clearing the land, and not for the land itself, because it was State property. Twenty-seven households in Inn, Talao, Kak and Muy accepted replacement land offered by the company. At least five of these households claimed that the replacement land is smaller than the land that was taken from them. In Inn and Muy, the company

²⁹ Data gathered from key informant interviews and validated in August 3-21, 2014

cleared people's land before negotiating and offering alternative land. Thirty-six households in affected villages did not receive compensation of any kind for seized land.

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

Almost 90 percent of the households interviewed that received compensation said they took it even though they were not happy about it. They gave several reasons for accepting compensation despite being unsatisfied with the offer. These reasons included: they were warned that they would lose their land anyway; they were told that their land is surrounded by the company's concession, and that they would be fined if they cause damage to the company's rubber trees while cultivating their land. In some cases, they were told by local authorities and the company that their land located inside the company's concession area and that it was legally granted to the company. Some said they had lost hope of protecting their land because the company kept expanding the boundary of its operations. Many respondents also expressed sadness at losing their land, since it is their main source of livelihood and an enduring resource. For them, cash - a short-term asset - cannot compensate for loss of land. One villager from Kanat Thom said: "We do not want cash compensation. We would like to have our land back because we never rely on money for living based on our tradition. Unlike land, money could not feed us and our next generations in the long-term."

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

Key findings on the impacts on the right of self-determination

There has been a failure on the part of all responsible actors to respect the right of affected indigenous communities to self-determination, which also amounts to violations of Cambodian law. In particular, no opportunity was provided for community participation in decision-making on issues affecting them. In most cases, no notice or information was provided prior to the company commencing operations, and when meetings did occur, the communities were not accurately or fully informed about the project or its impacts. In the few cases that documents and maps were presented, these were not in a form accessible to the communities.

In addition, no effort was made to consult communities about the decision of the government to grant the concessions or about HAGL's business activities, and no attempt was made by any actor to seek their free prior and informed consent for a project with serious and direct effects on their lands, territories and natural resources. The failure to consult or negotiate with local residents also amounts to non-compliance with the requirements of Cambodian Sub-decree No. 146 and the concession agreements.

The use of police and military as security guards intimidated people and precluded their free expression of opposition to the project. In some cases, threats of violence and other forms of retribution for attempts to enter concession boundaries or to oppose the company's activities have been more explicit, infringing several other human rights, including the right to security of person recognized in article 9 of the ICCPR.

The confiscation of lands and destruction of forest resources within the communities' customary territory is a serious violation of their right of self-determination, and to control and pursue their own

economic, social and cultural development. These actions also violate Cambodian Land and Forestry Laws as well as the terms of concession agreements. The communal and household losses, including the loss of access to productive resources, has meant a fundamental deprivation of the communities' means of subsistence.

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

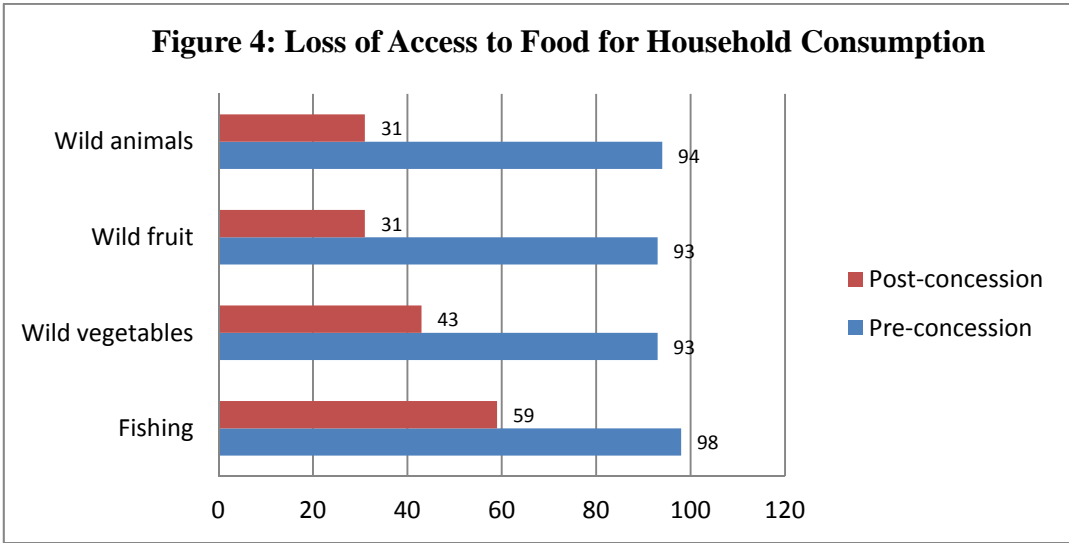
Impacts on Right to Adequate Standard of Living

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

Impacts on right to food

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

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



Households now need to purchase more food from the market because of the reduced access to

natural sources of food. Most households say they prefer food from natural sources because it is fresher, tastier and chemical-free, but they increasingly have no choice. At the same time, household purchasing power has decreased due to the reduced access to resources previously relied upon for income, such as timber, resin and a range of other NTFPs. Thus, while most families still eat three meals a day, more than half of respondents said they often or sometimes consume less in a day than before the concession, and almost 85 percent said there has been a drop in the quality of food that their household consumes. More than 90 percent of respondents said that their household is able to store less food now than they could prior to the company's operations.

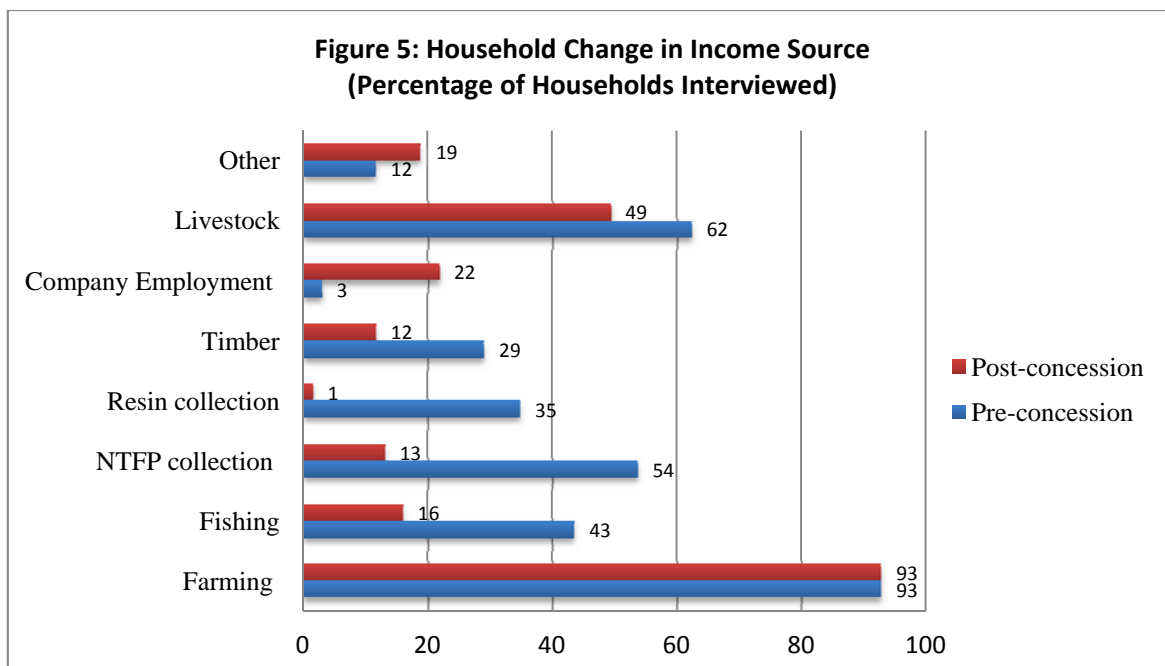
In some villages, including Inn, Kak, Mui and Peng, women said they eat less than before because of reduced access to NTFPs. Some women pointed out that, by tradition, they eat less than men because "men work harder than women" and might get angry if they do not have enough food. This suggests that women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

Impacts on livelihoods

According to key informants, eleven out of thirteen of the villages already affected by the company's activities have faced negative impacts on their livelihoods. More than 90 percent of household respondents reported a drop in income. Reduced incomes are attributed to the loss of livelihood resources, namely livestock (due to loss of grazing land and fear of being fined if animals stray into the plantation), timber and NTFPs (due to destruction and loss of access to forest), fish (due to loss of streams and reduction in fish stock), and crops (due to loss of chamka). In Srae Angkrong 1, key informants thought that the company's presence was having both a positive and negative impact on their community's income. While HAGL's activities have destroyed forests and fisheries - important sources of income - respondents also noted that many people in their village now work on the rubber plantation, mostly as part-time laborers. However, many of those who have sought work on the plantation have done so because of reduced access to their original sources of food and income.

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

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



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

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

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

Working on the plantations

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

Most villagers in Inn, as well as in Talao and Srae Anrong 1, 2 and 3 who work on the plantation are part-time or seasonal laborers, generally paid about \$6.25 per day to plant seedlings, weed, spread fertilizer and water the trees, among other tasks. Working hours are between 7:00am 5:00pm, with a

two-hour break. Children work on the plantation when they have free time. A few are reportedly under the age of 12, which is in breach of Cambodia's Labor Code Law and ILO Convention No. 138.³⁰ The younger children are usually tasked with weeding. Villagers in Srae Angkrong 1, 2 and 3 said the working conditions vary depending on the foreman. Some have experienced delays in payment and underpayment, and others complained that breaks during work hours were prohibited.

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

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

Key findings of impacts on the right to adequate standard of living

The confiscation of lands and destruction of forests and other productive resources has resulted in a retrogression in the enjoyment of the right to an adequate standard of living of affected people, and violated Cambodian law. In particular, the loss of access to household and communal resources, including farming and grazing land, animals, fruit and vegetables sourced from the forest, and fish from streams has meant a reduction in food resources available for household consumption. Loss of reserved lands for rotational agriculture further poses a risk to future food security. The confiscation and destruction of these productive resources for present and future use has also meant a loss of sovereignty of affected communities over their food system, which people felt had successfully provided them with healthy and culturally appropriate food in a sustainable manner. Households that lost chamka and/or rice fields have suffered from the most serious impacts on their right to food.

Loss of livelihood sources, for both income generation and household consumption, including lost livestock, access to timber, resin, other NTFPs, fish stock and crops, has affected various aspects of living standards. The logging of resin trees tapped by the communities as a part of their traditional livelihood system violates Cambodia's Forestry Law.

The cumulative effect of the loss of access to wild/natural food and drop in income has meant that some people are facing challenges adequately feeding their family, with a range of coping mechanisms used, including increased debt. Women in some villages are bearing the brunt of reduced food quantity and/or quality. While most households continue to eat three meals per day, should further loss of land and resources occur there is a risk of serious food insecurity and deprivations of the right to food.

Employment on rubber plantations of some affected people has only partly mitigated income losses for those households and has in no way compensated for lost control over food and livelihood sources and systems.

³⁰ Labor Code (1997), article 177(4); and ILO Minimum Age Convention, 1973 (No. 138), article 7 (ratified by Cambodia in 1999 and Vietnam in 2003).

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

Impacts on Right to Health

Given the adverse impacts on the environment and natural resources, some affected people have reported changes in their physical health and to their system of health care. Moreover, the sudden loss of resources for basic needs and abrupt changes in the village due to the company's presence has provoked feelings of stress and anxiety, affecting the mental health of some, especially women.

Key informants from ten of the thirteen villages already affected thought that their community's health had been impacted by HAGL's operations. Approximately 40 percent of all household respondents said that their family's health has been affected.

Impacts on health were variously attributed to chemicals used on the plantation; changes in climate; dust produced from the new road; insufficient food consumption; and consumption of market-bought food, which people believe to be treated with chemicals and of poorer quality than food they collect or grow themselves. Women in Mui said their health has worsened because they eat less and work harder than before. Similarly, in Inn, Kanat Thom and Kak villages, women said their health has been affected by the reduction in food intake and quality. Some women reported getting headaches and dizziness that they correlated with not eating enough. One woman in Mui village said during a women's focus group discussion: "Our health has become worse because we have a lot more work to do and consume less food than before the concession."

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

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

Women from many of the villages said that they are upset and stressed about their loss of natural resources and are anxious about their household livelihood. They also worry that there will be no land or forest left for the next generation.

Under its "investment for community development" program, HAGL has offered free medical check-ups and treatment in 18 villages in Ratanakiri since June 2013. According to HAGL's website, on at least three occasions, a team of medical specialists provided free medical examinations, diagnoses and treatments, including medications, to people in 18 communities.³¹ HAGL states that "the main purpose of this program is to help the people living in HAGL's project areas overcome disease and poverty, [and] improve their physical and mental lives step by step."³² Among other treatments, HAGL reports that it has taken 30 visually impaired people with their family members to HAGL Medicine and Pharmacy University Hospital in Gia Lai, Vietnam for eye surgery.³³

³¹ See, <http://www.hagl.com.vn/Group/News/55>

³² HAGL provides free medical examinations to all of 18 communities at the project areas in Cambodia, available at: http://www.hagl.com.vn/Group_Posts/DetailPost/201311271443494349

³³ See, http://www.hagl.com.vn/Group_Posts/DetailPost/201311271443494349; and

Key findings of the impacts on right to health

In some villages, people have experienced a retrogression in the enjoyment of the right to health, but some people have also had improved access to medical care. Adverse health impacts are mainly perceived to be due to pollution and destruction of the local environment and, relatedly, deterioration in the quantity and/or quality of food. Pollution of streams is viewed as a major cause of health issues. Women, in particular, are reporting health impacts due to changes in food consumption. Women are also experiencing higher levels of stress and anxiety due to livelihood concerns and security issues, with potential implications for their mental health.

The activities that are directly or indirectly causing adverse impacts on health amount to a violation of Article 12 of the ICESCR. At the same time, HAGL's medical program has provided much needed services to communities, with notable positive impacts for those who have received treatment for visual impairment and eye disease. The provision of regular ongoing free medical services would contribute to the progressive realization of the right to health.

Impacts on the Right to Practice Cultural and Spiritual Tradition

Loss of sacred sites

The loss of spirit forests, burial grounds and other sacred sites has affected the customs and cultural practices of affected communities. There are important traditional or spiritual places in every village, whether indigenous or Khmer. In Khmer villages, communities have a pagoda, animist sacred places, and burial grounds. In indigenous villages, communities have spirit forests and mountains, burial grounds, and sacred streams, ponds and fields.

Spirit forests are central to the identity of indigenous communities of Ratanakiri. They play an important role in traditional ceremonies. Communities believe that their ability to protect spirit forests determines community happiness, peace, safety, health and satisfaction of needs. If they are unable to protect the "home" of the spirits, villagers believe they will be punished through disease or natural disasters, such as drought or storms, that could lead to the death of community members. People make offerings to the spirits for high crop yields, good health, the resolution of intra-community disputes, and on a host of other occasions. As spirits are believed to inhabit big trees and rocks, dense forest and some mountains are usually respected as spirit forest. To avoid making the spirits angry, villagers are prohibited from felling big trees and cultivating areas inside spirit forests, but they are allowed to collect some NTFPs such as rattan, vine, and traditional medicines as such activities are not believed to disturb the spirits. Villagers know the location and boundaries of their spirit forest even when there is no physical demarcation.

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

Table 3: Loss of Sacred Sites

Village	Spirit forest	Burial ground	Chrab	Other place sacred
Inn				
Kak				
Kam				
Kanat Thom				
Kresh				
Malik				
Mass				
Muy				
Peng				
Srae Angkrong 3				

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

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

Traditional activities and livelihood practices

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

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

The many agro-industrial plantations cropping up in and around these villages have severely encroached upon the reserved land still available for shifting cultivation. Nowadays, villagers are clearing land to protect it from being seized, rather than as a part of their traditional rotational agriculture system. In at least one village, there is now conflict over land amongst villagers, who are fighting for control over the remaining farming land.

Respondents expressed concern about losing areas reserved for shifting cultivation, which will

mean that future generations will not be able to practice this traditional form of agriculture. The loss of access to forests has also impeded the collection of NTFPs, including resin and hunting, which many regard as an important part of their customary way of life. In Kak village, for example, the company has taken control of the forestland that villagers used for collecting NTFPs and shifting cultivation. At the time of interview, the company was clearing land that had been reserved by the community for multiple purposes, including the next generation's cultivation needs. The community expressed great concern about having no land left for their children. Some people commented on the alternative form of livelihoods that company and government representatives say will be available to them in the future and how these are discordant with their traditional livelihood practices. One villager from Kak said: "I am personally concerned that the population is growing, but land is reducing... The company has caused losses of land and forest... The company said: do not be afraid of the issue of landlessness. In the future, when the plantation is ready for operation, our kids and grandchildren can harvest rubber. The company will provide us with income... The company said this frivolously."

Key findings of Impacts on the Right to Practice Cultural and Spiritual Tradition

The confiscation and destruction of spirit forests, burial grounds, forests and reserved cultivation lands have violated the right of communities to practice their cultural and spiritual traditions, as well as Cambodian Land and Forestry laws. The destruction of spirit forests is deeply offensive to the affected communities and affects their ability to hold traditional ceremonies and practice their spiritual customs. The destruction of forests and pollution of streams has impeded communities' traditional activities including resin tapping, hunting and fishing, and the loss of reserved lands for shifting cultivation has affected the communities' traditional agricultural practices.

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

Access to Remedy

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

None of the key informants thought that their villages had received an adequate response to their complaints or a resolution of their grievances. Most of the complaints, both verbal and written, have been ignored. For example, Kam village submitted a petition with approximately 150 thumbprints to the Ministry of Agriculture, Forestry and Fisheries, but received no response, and then later another complaint through the Cambodian NGO Adhoc that was reported in the media, but still received no resolution. A villager from Srae Angkrong 3 said: "To get our land back, we made countless complaints with thumbprints to local authorities. The complaint to commune office was rejected. Then, we submitted complaint to district office, but the district authority said they did not have ability to resolve the problem. When our complaint reached provincial level, we were told that land was granted to the company and shown some legal document."

In other cases, complaints resulted in a 'take it or leave it' offer of compensation from the company, with the amount offered perceived as inadequate by affected people. After villagers from Malik protested outside the provincial government office, some of the affected households received cash compensation for encroachment onto their cashew plantations, at an amount set by the company without negotiation. In Srae Angkrong 1, 2 and 3, community members verbally complained to the

commune office, and Srae Angkrong 3 villagers also submitted several written complaints to commune and district offices. When they did not receive a response, they submitted a complaint through Adhoc. As a result, the company provided cash compensation to households that had lost chamka and rice fields in these villages. The households believe the compensation to be inadequate.

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

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

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

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

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

Key findings on access to remedy

Affected people have so far not received effective remedies for human rights violations that they have suffered, although they hope to do so through the ongoing mediation process. While many communities and households have submitted complaints to local authorities and the company, these have either been ignored, met with threats or addressed through offers of inadequate compensation without negotiation. No communities or households have attempted to bring a lawsuit through Cambodia's court system, despite strong grounds under Cambodian law.

Prior to their joint complaint to the CAO, a considerable proportion of households had not formally complained about the company's activities due to, inter alia, information and knowledge barriers, fear and threats, a perception that challenging a powerful company is futile, and misinformation about the legality of the concession.

A failure of the Cambodian government to ensure access to remedies for human rights violations suffered by the affected persons would amount to a violation of Article 2(3) of the ICCPR.

Intimidation and threats of violence or imprisonment amount to a violation of several other human rights including, the right to freedom of expression in Article 19 and the right to security of person in Article 9 of the ICCPR.

DISCUSSION AND CONCLUSIONS

“[T]he complaints of villages concerning non-consultation, the use of armed guards, the presentation for signature of an unexplained contract, the shooting of cows which wander onto concession areas and the feared endangerment of village survival and security of traditional sites of grave, pasture and farming land [should] be resolved without delay justly and according to the law.”³⁴

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

This assessment finds that there have been and will foreseeably be serious adverse impacts on the enjoyment of a range of human rights in all villages interviewed. No effort was made to seek the free prior and informed consent of indigenous communities despite the serious and direct effects on their lands, territories and natural resources. Both the failure to seek FPIC, and the confiscation of lands and destruction of forest resources within the communities’ customary territories amount to a violation of their right of self-determination. The confiscation and destruction of productive resources has resulted in a retrogression in the enjoyment of the right to an adequate standard of living of many affected people. It has meant a loss of sovereignty over their food and livelihood system, which has not been significantly mitigated through employment opportunities on the plantations. In some villages, people have experienced a retrogression in the enjoyment of the right to health, especially due to the reduction in quality of food and the pollution of water sources. Beneficiaries of HAGL’s medical program, however, have experienced some positive health impacts. The confiscation and destruction of spirit forests, burial grounds, forests and reserved cultivation lands have violated the right of communities to practice their cultural and spiritual traditions. Affected communities are yet to receive effective remedies for these human rights violations, although hope to do so through the CAO mediation process.

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

The experience of the villagers interviewed for this report suggest that the introduction of large-scale agribusiness into such settings can reduce local food security and sovereignty, shrink existing

³⁴ UN Doc., E/CN.4/1996/93 (26 February 1996), para. 84.

livelihoods while failing to provide appropriate and effective alternatives, and bring about a host of other damaging repercussions on the well-being and human rights of local populations. This effect is not mitigated by the payment of (inadequate) cash compensation, nor by acts of corporate social responsibility such as the provision of small-scale infrastructure, food and intermittent health services. Importantly, in this case, as in others, the harms were not significantly mitigated by employment opportunities on the plantations. As the current UN Special Rapporteur on the situation of human rights in Cambodia, Professor Subedi, wrote in his report to the Human Rights Council:

[T]hroughout my analysis, I struggled to fully comprehend the benefits of many land concessions that the Government has granted. In general, it is not clear to what extent the people of Cambodia have actually benefited from land concessions [...].³⁵

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

Fundamentally, there must be a transformation in the attitude of government and its development partners towards indigenous peoples and their way of life. As Vize and Hornung observe, “[t]here is a prevalent perception among Cambodian authorities and decision-makers in the capital that indigenous peoples “waste” precious land that could be used to further the country’s economic development.”³⁶

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

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