



## **DISPUTE RESOLUTION CONCLUSION REPORT – MYANMA AWBA GROUP COMPANY LTD.-01/MYANMAR**

*This report summarizes the CAO dispute resolution process in relation to a complaint regarding the IFC-supported Awba Group Company (#35880) in Myanmar.*

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### **OVERVIEW**

#### **The Project**

According to IFC, Myanmar Awba Group Company Limited (#35880) ("Awba" or "the Company") received a USD\$10 million convertible C-Loan from the IFC in 2016 to support the expansion of its core business. The purpose of the IFC investment was for the construction of a new agrochemical formulation plant in an industrial zone next to an existing government-built crop-protection factory (Myanmar Pesticide Industry, MPI), construction of additional warehouse storage facilities and fertilizer distribution stations, equipment (bottling and packaging machinery), and working capital.

According to the IFC Awba's new facility (the Hmawbi Agricultural Inputs Complex, or HAIC) is scheduled to be constructed in phases through 2020. The first phase, which is now complete, was the development of a state-of-the-art formulation plant for crop protection products near Hmawbi Township, 30 km north of Yangon. The complete project is estimated to cost approximately US\$40 million.

#### **The Complaint**

The complaint was submitted to CAO in October 2017 by a local individual, on behalf of himself and a local group ("the Complainants") living in the vicinity of Awba's new agrochemical plant.

The complaint raised concerns about the impact of Awba's project on local water sources, including creeks and artisanal wells; lack of consultation with local communities before and during the construction of the factory; and lack of information disclosure regarding the project. Additionally, the complaint questioned the project-permitting process and compliance with IFC policies and standards. The complaint also raised concerns regarding violations of labor rights and health impacts on local community members working in the existing government pesticide factory adjacent to Awba's newly constructed plant, the obstruction of community access roads, and impacts on the local ecology. The full complaint is available on CAO's website: [www.cao-ombudsman.org](http://www.cao-ombudsman.org).

#### **CAO Action**

##### Eligibility and Assessment

The CAO found the complaint eligible in November 2017 and completed an assessment of the issues in March 2018. CAO's assessment included a desk review of the project documentation, documentation submitted by the Complainants in support of the complaint, and phone calls and meetings with the Complainants, the IFC's project team, and the Company. CAO also conducted a field visit to meet the Complainants and the Company. During the

field visit, CAO visited nine villages with the Complainants and met with Paungku, IFI Watch, and Myanmar Green Network, the Civil Society Organizations (CSOs) that had supported the Complainants in filing the complaint with the CAO. During the assessment, the Complainants and the Company agreed to engage in a voluntary dispute resolution process (“DR process”) facilitated by CAO, to address the issues raised in the complaint. Detailed information on the assessment process can be found in CAO’s Assessment Report.<sup>1</sup>



CAO Assessment in Hmawbi township, March 2018

### Preparation for dialogue

Following the assessment, CAO conducted several capacity-building workshops, between May and June 2018, with the Complainants, the Company, and the CSOs supporting the Complainants. The purpose of these workshops was to sensitize the parties regarding what to expect from the dispute resolution process and define the role of each party in the process.

The workshops, which were conducted separately for each party, also sought to equip the parties with the necessary communication and negotiating tools to

effectively engage in the dispute resolution process.

In July 2018, the parties attended their first joint meeting to collectively start working on the Ground Rules Agreement (“GRA”), which governs the dispute resolution process.

As part of drafting the GRA, the parties chose representatives with a mandate to negotiate and resolve the issues identified on behalf of a wider constituency. The Complainants selected a total of 18 representatives (two representatives from each of the nine villages) to engage and negotiate with the five representatives selected by the Company.

The Complainants also identified a total of six CSOs to act as their Advisors: IFI Watch, Paungku, Myanmar Green Network (who helped the Complainants file the complaint to the CAO), Bank Information Centre, Earth Rights International, and Ecodev/Alarm (who had interest in the case and technical skill to assist the Complainants with the CAO process (collectively referred to as the “Advisors”).

Between July and December 2018, CAO conducted four trips to Myanmar and held separate and joint meetings with the parties in order to finalize the GRA. During this period the parties identified, negotiated and agreed on the representatives for each party, the observer of the process and the CSO’s who would advise the Complainants throughout the process. After several bilateral meetings, the parties signed the GRA in December 2018. In that period, the Company also translated the Environmental and Social Impact Assessment (EISA) into

<sup>1</sup> See CAO’s Assessment Report available at <http://www.cao-ombudsman.org/cases/document->

[links/documents/AwbaGroupCompanyLtd\\_AssessmentReport\\_ENG.pdf](links/documents/AwbaGroupCompanyLtd_AssessmentReport_ENG.pdf)

Burmese and shared it with the Complainants.

The GRA identified eight issues listed below in order of priority, to be resolved through the dispute resolution process:

- a) Water contamination
- b) Odor and dust
- c) Labor-related issues
- d) Impact on local ecology
- e) Road access
- f) Consultation with the community
- g) Impacts on health
- h) Impacts on indigenous communities.

In January 2019, after the GRA was signed, the CAO met with the Complainants and their Advisors to start preparing for the first joint meeting. At this stage, the CAO raised concerns about the pace of the process and highlighted several procedural issues that had the potential to slow down the process. The Complainants also raised concerns about the continued impact of the Awba factory (HAIC), which officially commenced operations in August 2018, on the neighboring community.



*18 representatives of the Complainant group, from nine villages*

### Dialogue Process

The dialogue process began in February 2019. After an initial two-day meeting, the

parties recognized that there are documents they will need from each other, in order to proceed with the DR process. They agreed to compile a list of all the documents they would require from each other and to exchange these documents within an agreed timeframe. At the end of the two-day process, the parties jointly drafted a communique documenting the outcomes of the two-day meeting.

From March to May 2019, the parties engaged regarding the document exchange process. The Complainants requested that the Company provide them with documents relating to the investment contracts with IFC namely: the permits, licenses, and contracts with the government of Myanmar; and the Environmental Management Plan (EMP). The Company provided the Complainants with licenses and permits. However, due to the confidential and/or commercially sensitive nature of some of the information contained in the contractual agreements with the IFC and the government, the Company stated that it was either impossible or inappropriate to share these documents with the Complainants. The Company undertook to provide the EMP once they received the approved copy from the relevant government ministry. As a result, a Burmese version of the EMP was shared with the Complainants during this period as well.

In May 2019, CAO met with the parties separately to further discuss the way forward in addressing the eight issues identified in the GRA. At that time, the Complainants requested that the CAO liaise with the IFC project team, to discuss the option of having a meeting between the IFC and the Complainants in order to address questions and concerns related to IFC's investment in the Awba factory and/or to request the IFC to participate in the DR process as an observer.

CAO began liaising with the IFC, to explore the Complainants' request. However, the Complainants later decided to proceed with the DR process without engaging with the IFC. They decided to prioritize engaging with the Company and receiving the information about the project from the Company. The Complainants also decided to limit their requests for information from the Company to information directly related to the Company, the EMP, and related matters.

Between June and July 2019, the parties continued to exchange information, and the Complainants continued to raise concerns about the Awba factory operations and its impact on the environment and workers. CAO also engaged with the Complainants' Advisors who had suggested helping the Complainants in developing talking points to address the issue of water. On July 2019, the parties agreed to tackle the first issue of water by undertaking joint water testing. They agreed to discuss the framework of the joint testing at the next joint meeting.

In August 2019, at the joint meeting, CAO reviewed the progress made in the DR process since it started in July 2018. All the parties agreed that the pace of the process was too slow. CAO presented various tools and options used in other cases including a Joint Committee, which has helped parties in other cases move the process forward efficiently. The parties indicated an interest in learning more about how a Joint Committee (JC) functions. CAO explained that the JC would comprise of a smaller group of people that would serve to generate options for resolving each of the eight issues, beginning with the issue of water contamination, and present these options to a larger plenary group for decision making.

CAO explained the role of the JC and conducted separate meetings with each

party to get their thoughts and discuss any concerns that the parties might have about forming the JC. When the parties came back into a joint session, CAO conducted a roleplay with the parties to demonstrate how the JC works and gave the parties an opportunity to give feedback on the process. The parties decided to form the JC to move the process forward. The Complainants chose ten representatives, and the Company chose five representatives. The JC members set up a Viber Chat group to facilitate a secure and speedy distribution of information among themselves.

The parties also agreed that Advisors and other interested community representatives from the nine villages would be allowed to observe the JC meetings, but not actively participate in such meetings. The parties also agreed that they would jointly drive the JC meeting, with CAO attending the initial meetings to assist with facilitation if required.



*Joint meeting, August 2019 - discussion about the formation of Joint Committee*

The first JC meeting was held in September 2019. By the end of the first JC meeting, the JC members had discussed draft terms of reference for the JC and agreed on draft ground rules for future JC meetings. The JC acknowledged that any ground rules created for the JC should be aligned with the GRA for

the dispute resolution process signed in December 2018. The JC members agreed to finalize the terms of reference and ground rules at the next JC meeting and commence discussions on options to resolve the water contamination issue.

During the second JC meeting, also in September 2019, the JC completed its discussion on the terms of reference and ground rules and defined CAO's role during the JC meetings. The JC discussed the issue of water contamination and matters relating to joint testing of the water, including the appointment of technical experts, the role of observers/advisors, the parameters of testing, location of the tests to be conducted, and the costs and funding for the tests. At the end of the second JC meeting, the Company, having noted some of the difficulties expressed by some Complainant JC representatives in accessing Viber (because they either did not have mobile phones or had ones that could not access Viber), proposed to loan each Complainant JC representative a mobile phone to facilitate communication of the JC through Viber. The Company then distributed mobile phones to the Complainant JC representatives, on condition that any JC member who left the JC would hand over the loaner mobile phone to their replacement on the JC.

After this meeting, members of the Complainant representative group who attended the meeting as observers expressed their concerns with the Company's action of providing Complainant JC representatives with mobile phones. They felt the Company was attempting to influence the Complainant JC representatives and split the wider community. As a result, several members from the Complainant group ("Complainant Group A") began publicly expressing their desire to exit the dispute resolution process and requesting for the

case to be transferred to CAO's Compliance function. This group also expressed that the GRA of the dispute resolution process was restrictive and prevented them from publicly sharing the details of the process.

Despite this development, the Company and some of the Complainant JC representatives ("Complainant Group B") continued to voice their desire and willingness to resolve the eight issues through the existing dispute resolution process, even though other representatives wanted CAO to transfer the case to its Compliance function.

In November 2019, the CAO team held separate meetings with Complainants Group A, together with the Advisors, and with Complainants Group B. The objective of these separate meetings was to enable CAO to understand the causes of the divergent views within the Complainant groups and to help them understand the compliance process. The Advisors confirmed their support for exiting the dispute resolution process and transferring the case to CAO's Compliance function. They helped CAO understand who wanted to continue with the DR process and who wanted to exit the process.

CAO also attempted to facilitate a joint discussion between Complainant Group A and Complainant Group B. However, after speaking with both groups separately, CAO determined that such a discussion was not feasible, due to the existing tension between the two groups.

In December 2019, CAO received letters from the two representative Complainant groups, each supported by hundreds of signatures from community members who either wanted to continue with dispute resolution or transfer the case to Compliance. CAO carried out a detailed

analysis of both lists and extensively considered the requests from both groups.

CAO further consulted with the 18 representatives of the nine villages representing the Complainants to ascertain the decision their constituencies had taken regarding the way forward. Because the community seemed divided on how they wished to proceed, CAO wanted to ensure that it received a clear mandate from the 18 representatives chosen by the Complainants at the beginning of the dispute resolution process. To CAO's best knowledge, the representatives remained duly mandated by the Complainants.

From the information obtained during the consultations with the 18 representatives between November 2019 and January 2020, 12 representatives from the nine villages confirmed their wish for CAO to transfer the complaint to its Compliance function. One representative wanted to continue with the DR process, and 5 representatives could not be reached to determine their preference.

The Company continued to express an interest in continuing with the dispute resolution process, stating a desire to develop a good relationship with the community. The Company indicated a willingness to proceed with both the compliance process and the dispute resolution process if need be. After evaluating all the information from the Company and Complainant representatives, including the fear of threats and reprisals alleged by the group that wished to continue dispute resolution, CAO concluded that the environment was not conducive for the dispute resolution process and that CAO could not continue to facilitate the dialogue. CAO did not have a clear and unanimous mandate from any of the villages to proceed with dialogue. CAO encouraged the

Company and the representatives of the community who wished to continue with the dialogue to consider other ways to continue the dialogue without CAO's involvement. Per CAO Operational Guidelines, the case is being transferred to CAO's Compliance function for appraisal.

## **CHALLENGES AND LESSONS LEARNED**

The Awba case was CAO's first complaint in Myanmar. It presented both challenges and learning opportunities for all the parties involved. Challenges and lessons were identified by the Complainants, Advisors, and the CAO team during the DR process:

### Complainants

The Complainants expressed that the formation of the Joint Committee (JC) presented many unexpected challenges, which eventually resulted in them deciding to terminate the DR process. They noted that the development of disagreements between the Complainant group was an offshoot of many things, including the operation of the JC. The Complainants shared that the limitation in the number of participants in the JC created a feeling of exclusion and division among them. Furthermore, they felt that the way in which the JC was structured and operated resulted in the CAO taking a back seat and allowing the parties to conduct the meeting jointly, with CAO available to facilitate where conversations became challenging. They expressed that this led to the Company driving the JC process and the Complainants feeling an imbalance in power. The Complainants explained that the Company's decision to distribute cell phones to JC members to address the issue of poor communication was carried out without prior consultation of the Complainant group. This created further division among the Complainant groups, as some perceived this act to be the Company's way of buying favor

from the JC members. The Complainants also shared that the way in which the JC was structured and conducted decreased their trust in the CAO team and the DR process.

#### Advisors

The Advisors felt that the mistrust between the Complainants and the Company was one of the reasons that finally resulted in the Complainants opting to stop the DR process.

The Advisors also noted that the pace of the DR process was very slow, and this discouraged the Complainants from continuing with the DR process. They also expressed that, in their view, the process of exchanging documents took a long time and caused unnecessary delays to the process.

#### CAO

The CAO identified that the case progressed at a pace that was frustrating for all parties involved. The causes of delay can be attributed to several factors, including challenges in finding an interpreter and a mediator in Myanmar at the beginning of the CAO process.

Further delays were experienced as a result of waiting for translation and exchanging of documents required for the Parties to have a meaningful engagement. The parties often took extended periods of time to consult

among themselves and with their wider communities which caused further delays.

CAO conducted several capacity-building sessions for the Complainants, Company, and Advisors, to ensure that they were familiar with the CAO DR process and ready to engage. Although the parties appreciated the need for the capacity-building process, they also expressed concern that it delayed the start of the mediation process.

From the onset of the CAO process, the Complainants appeared to be divided on the outcome they desired from CAO's intervention. For example, some wanted the Company's factory to relocate, while others wanted to engage with the Company to find resolution for the issues raised. The CAO mediation team tried to assist the Complainants to reach agreement among themselves on a way forward. However, as the case progressed, the Complainants were unable to reach consensus, and the divergent interests created tension that resulted in one group wishing to continue with the dispute resolution process and others wanting to transfer the complaint to Compliance.

***All documentation relevant to this case is available on CAO's website at [www.cao-ombudsman.org](http://www.cao-ombudsman.org).***