



OMBUDSMAN ASSESSMENT REPORT

**Complaint Regarding the Mozambique Aluminum S.A.R.L. (MOZAL) Investment –
IFC Mozal II Project (#10323)**

Boane District, Maputo, Mozambique

February 2011

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

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LIST OF ACRONYMS

CAO	The Office of the Compliance Advisor/Ombudsman
CDC	Commonwealth Development Corporation
DBSA	Development Bank of Southern Africa
DEG	Deutsche Investitions und Entwicklungsgesellschaft
EDC	Export Development Corporation
EIA	Environmental Impact Assessment
EIB	European Investment Bank
FTC	Fume Treatment Centers
IFC	International Finance Corporation
JA!	Justiça Ambiental
JBIC	Japan Bank for International Cooperation
MCDT	Mozal Community Development Trust
MICOA	Ministry of Coordination of Environmental Affairs
MIGA	Multilateral Investment Guarantee Agency
OECD	Organization for Economic Co-operation and Development
SGS	Société Générale de Surveillance S.A

INTRODUCTION

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

The purpose of CAO's assessment is to: (1) clarify the issues and concerns raised by the complainant; (2) identify the principal stakeholders that need to be consulted on the issues raised in the complaint and gather information on their perspectives and view of the situation; (3) understand how the CAO Ombudsman might best assist the stakeholders determine whether and how they can resolve the issues raised in the complaint.

This document is a record of the views heard by the CAO team, and suggestions for next steps among the parties. These suggestions were intended to stimulate further ideas and options for improving environmental and social outcomes on the ground. This report does not make any judgment on the merits of the complaint.

As per CAO's Operational Guidelines¹, the following steps will normally be followed in response to a complaint that is received:

- Step 1: Acknowledgement of receipt
- Step 2: Determination of the complaint's eligibility for assessment under the mandate of the CAO (no more than 15 working days)
- Step 3: Assessment of opportunities for collaborative resolution of the issues in the complaint (no more than 120 working days). If the assessment determines that a collaborative resolution is not possible, the CAO Ombudsman will refer the complaint to CAO Compliance for compliance appraisal.
- Step 4: Facilitating Settlement
If the CAO Ombudsman process continues, then implementation of next steps (usually based on a Memorandum of Understanding and/or mutually agreed upon ground rules between the parties) through facilitation/mediation, joint fact-finding, or other agreed resolution process, leading to a settlement agreement or other mutually agreed and appropriate goal. The major objective of problem-solving approaches will be to address the issues raised in the complaint, and any other significant issues relevant to the complaint identified during the assessment or the problem-solving process, in a way that is acceptable to the parties affected².
- Step 5: Monitoring and follow-up
- Step 6: Conclusion/Case closure

¹ For more details on the role and work of the CAO, please refer to the full Operational Guidelines: <http://www.cao-ombudsman.org/about/whoweare/index.html>

² Where stakeholders are unable to resolve the issues through a collaborative process within an agreed time frame, the CAO Ombudsman will first seek to assist the stakeholders in breaking through impasse(s). If this is not possible, the CAO Ombudsman will inform the stakeholders, including IFC/MIGA staff, the President and Board of the World Bank Group, and the public, that CAO Ombudsman has closed the complaint and transferred it to CAO Compliance for appraisal.

In October 2010, a coalition of local and national NGOs representing themselves and other locally affected people submitted a complaint to the CAO, raising several social and environmental concerns related to the IFC's Mozal project – an aluminum smelter located in the outskirts of Maputo, Mozambique.

The complaint was also filed with the Complaint Mechanism of the European Investment Bank (EIB); the Organization for Economic Co-operation and Development (OECD) United Kingdom National Contact Point; and in several different judicial and non-judicial mechanisms. In addition, the complainants have led a national campaign that collected thousands of community member signatures for presentation to the Parliament of Mozambique regarding the Mozal bypass program.

On October 27, 2010 the CAO determined that the complaint met its three eligibility criteria:

1. The complaint pertains to a project that IFC is participating in, or is actively considering.
2. The issues raised in the complaint pertain to the CAO's mandate to address environmental and social impacts of IFC investments.
3. The complainant (or those whom the complainant has authority to represent) may be affected if the social and/or environmental impacts raised in the complaint occurred.

Subsequently, according to CAO's Operational Guidelines, the CAO Ombudsman began the assessment of opportunities for resolving the issues in the complaint. The assessment period is limited to a maximum of 120 working days, but may be completed more quickly depending on whether the issues are amenable to resolution.

1. The Project

IFC has two active projects with Mozal - an aluminum smelter with a production capacity of 495,000 tons per year - Mozal I constituting a \$110 million quasi-equity position and loan for the construction and operation of the smelter, which opened on September 29, 2000, and Mozal II a \$25 million loan for doubling the production capacity to produce an additional 250,000 tons per annum of aluminum metal, which opened on April 7, 2003. IFC's first investment with Mozal was approved in 1997, while its second dates from 2001. Mozal I was designed with the Mozal II expansion in mind. BHP Billiton, a publicly traded international mining and metal group, is the primary sponsor of both projects.

BHP Billiton possesses an equity stake of 47.1% in Mozal II. Other shareholders include Mitsubishi Corporation (25%), a Japanese trading company, the Industrial Development Corporation, a South African developmental financial institution (24%), and the Government of Mozambique (3.9%).

Other lenders as included below³:

Lenders	US\$ mil
International Finance Corporation (IFC)	113.9
Commonwealth Development Corporation (CDC)	52.1

³ See <http://www.bhpbilliton.com/bbContentRepository/Presentations/MozalPresentation.pdf>

PROPARCO	29.6
Deutsche Investitions und Entwicklungsgesellschaft (DEG)	30.7
Development Bank of Southern Africa (DBSA)	82.5
European Investment Bank (EIB)	32.9
COFACE lenders (agent BNP Paribas)	189.3
MOZFUND CGIC/SAECA supported lender	445.3
Japan Bank for International Cooperation (JBIC)	60.2
Export Development Corporation (EDC)	24.1
Grand Total	1060.6

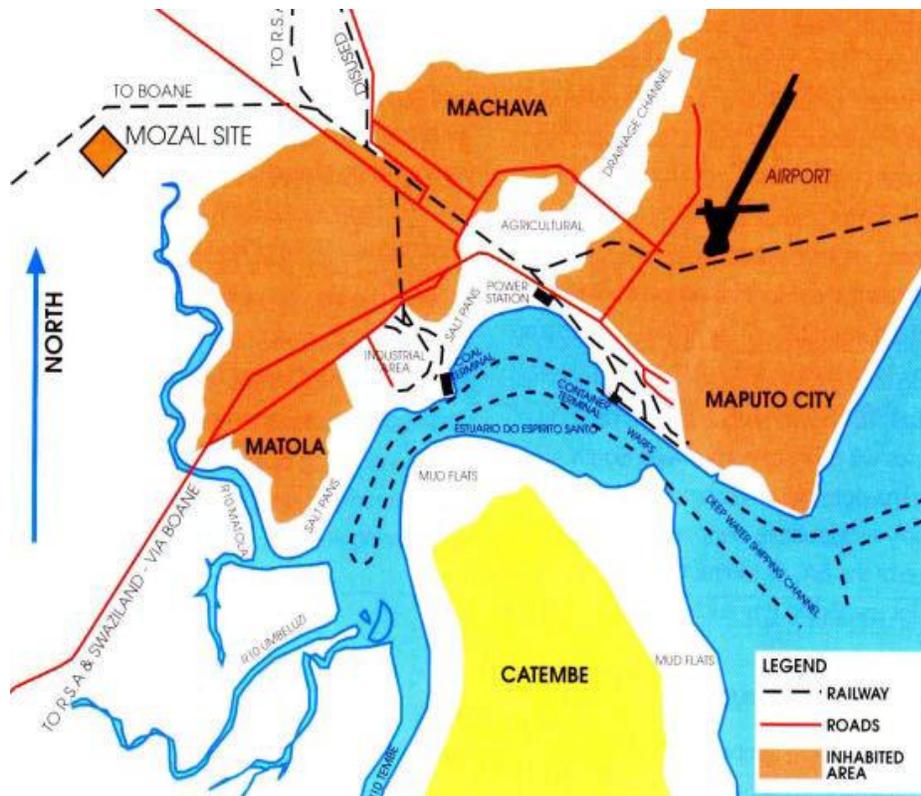
The estimated cost of the *first project* was US\$1.3 billion, including physical contingency, price escalation, initial working capital and interest during construction. IFC was requested to provide financing of up to US\$110 million in quasi-equity and loan. The estimated project cost of the *expansion* (second project) was US\$992 million, of which US\$600 million consists of loans. The IFC investment amounts to a US\$25 million loan for IFC's own account.

MIGA is also participating in the project as it issued a \$40 million guarantee to cover the Industrial Development Corporation of South Africa Limited's investment in the aluminum smelter. The guarantee covered the investment against the risks of expropriation, war and civil disturbance.

Map of location area of Mozal project site⁴:

The project site is located 21 km west of Mozambique's capital, Maputo, in the outskirts of Matola City, with an associated port terminal 5 km west of the main port of Maputo. The project site is located within the Beluluane Industrial Park an area that is zoned for industrial activities. The population in Maputo is approximately 1.5 million, although may be higher given unofficial settlements. Matola is 12 km west of Maputo, and its population estimate varies from 200,000 to 600,000.

⁴ See: <http://www.bhpbilliton.com/bbContentRepository/Presentations/MozalPresentation.pdf>



2. The Complaint

In October 2010, the CAO received a complaint filed by six NGOs raising a series of environmental and social concerns regarding the Mozal project. More specifically, complainants are highly concerned about the impacts resulting from the bypass program to be undertaken by Mozal for a period of 137 days, which was scheduled to begin on November 1, 2010.

The coalition of NGOs that filed the complaint is comprised of six local Mozambican organizations⁵: Justicia Ambiental (JA!)⁶; Livaningo⁷; Liga Moçambicana dos Direitos Humanos⁸; Centro Terra Viva⁹; Kulima¹⁰; and Centro de Integridade Pública (CIP)¹¹.

⁵ The following descriptions have been provided by each of the Coalition's member organizations.

⁶ JA! describes itself as a leading Mozambican NGO working on development impacts, public awareness, research and campaigns against damaging environmental/social practices to support communities in Mozambique. JA! supports communities by providing strategic assistance, technical advice and information.

⁷ Livaningo describes itself as an NGO based in Maputo, Mozambique, whose main area of work is advocacy and mobilization of civil society, including rural communities in matters referring to environmental problems.

⁸ Liga Moçambicana dos Direitos Humanos describes itself as the only general civil society organization in Mozambique, whose mission is to advocate for the protection and promotion of human rights in Mozambique and across borders particularly in the African region. Liga also works on providing access to justice and legal assistance to women and children, and those persons who cannot afford to pay themselves.

⁹ Centro Terra Viva – Estudos e Advocacia Ambiental describes itself as a Mozambican non-governmental institution dedicated to promote good environmental governance based on science, justice and legality; and sustainable management of natural resources influenced by civil society participation, including rural communities and the promotion of valorization and conservation of ecosystems and biodiversity.

All six local organizations that filed the complaint before the CAO are based in Maputo and other nearby towns, which they state are inside Mozal's radius of influence for emissions.

The complaint raises issues regarding a program to bypass the air emissions treatment system for the carbon anode plant (termed the Fume Treatment Centers or FTCs) during system rehabilitation to be conducted by Mozal, IFC's project sponsor. The complainants believe that the scheduled bypass program will violate a number of IFC's policies and procedures because during rehabilitation, emissions will be released to the stack without treatment. The complainants are concerned that the bypass program will result in harmful exposure to themselves, other communities residing in the area, and the environment at large.

In addition, the complainants raise questions about the environmental and social due diligence undertaken by Mozal to approve the bypass program, and the accessibility of project information to relevant stakeholders.

According to the complaint, representatives of Mozal announced in a public meeting in April 2010 that the company had identified the need to rehabilitate the smoke and gas treatment centers, as a matter of urgency, to guarantee the structural stability of the facility and continue to ensure that the air emissions from Mozal comply with environmental standards required by law – Mozambican regulation "Regulation on Environmental Quality Standards and Effluent Emission" (Decree from June 2, 2004 n. 18/2004); the 2005 World Health Organization Air Quality Guidelines; and IFC's Environmental, Health and Safety Guidelines.

The complainants' understanding of the FTCs rehabilitation is that Mozal operations would go under bypass for a period of six months, initially scheduled to commence on November 1, 2010. The complaint states that the bypass program would mean that the exhaust fumes of the smelter would be released to the environment without passing through the FTCs, action for which Mozal required and obtained a special authorization from the Ministry of Coordination of Environmental Affairs (MICOA).

The main concerns expressed by the complainants are whether other alternatives to the bypass had been fully considered and analyzed; possible implications of the bypass and risks to human health and the environment; and what mitigation measures are being planned and implemented.

In brief, the concerns expressed in the complaint included:

- Air emissions and risks these could pose to human health and the environment;
- Lack of access to and disclosure of information;
- Environmental and social mitigation measures/Assessment plans;
- Contingency and emergency response plans in the events of upset conditions.

The complaint also indicates a range of requests for actions/activities to be undertaken such as:

- Suspension of bypass program by Mozal;
- An independent environmental audit of Mozal;

¹⁰ KULIMA describes itself as aiming to facilitate the sustainable development of communities on a medium and long term basis. They work towards strengthening partnerships with other NGOs, local and national government ministries and other organizations in Africa and abroad.

¹¹ CIP describes itself as a Mozambican Civil Society Organization located in Maputo. CIP works in the area of governance through research, advocacy and monitoring, and promotes public awareness activities to promote transparency, good governance and integrity in Mozambique.

- Access to all Mozal's annual reports regarding environmental performance and their initial environmental permit;
- Evaluation of alternatives to bypass operations during the rehabilitation process;
- Public presentation of the environmental audit and effective consultation of civil society and affected community members.

3. CAO Ombudsman Assessment

3.1 Approach

CAO's approach is to listen to multiple perspectives on all sides of an issue raised in a complaint in order to formulate potential suggestions for a constructive solution. As part of the assessment, CAO conducted a field trip to Mozambique during the week of December 13-17, 2010. In preparation, the CAO Ombudsman team reviewed IFC files and project documents and met with IFC staff. In Mozambique, the CAO team met with representatives of the coalition of organizations that filed the complaint; the project sponsor, including the CEO, management team and technical staff from Mozal; the Ministry of Coordination of Environmental Affairs (MICOA) and the Deputy-Minister of Environment of the Republic of Mozambique and a delegation of experts; stakeholders identified and suggested by Mozal; IFC staff; and staff from the European Commission Delegation to the Republic of Mozambique.

EIB's Complaint Mechanism also conducted their field trip during the same week. In order to avoid duplication of efforts, key stakeholders agreed that both mechanisms would hold joint meetings.

3.2 The CAO Ombudsman's understanding

The complaint pertains to a bypass program being undertaken by Mozal in order to repair and reconstruct the two FTCs that treat air emissions from the carbon anode plant. The bypass program entails the bypass of both FTCs for a period of 137 days. Work on the first FTC started on November 17, 2010 and work on the second started on December 2, 2010.

In 2009, the Sponsor inspected the smelter's two FTCs and found that the steel at the base of each was severely corroded, resulting in a risk that the stacks would collapse. The corrosion represented a risk for the safety of the workforce employed at the facility and for overall production.

To correct the situation, Mozal considered different alternatives for repairing and reconstructing the FTCs, including:

- Stopping operations;
- Importing anodes;
- Stocking anodes;
- A sequential bypass of the FTCs;
- A simultaneous bypass of both FTCs.

According to Mozal, the company made the final decision to operate in simultaneous bypass of both FTCs based on technical analyses that determined that total (or site-wide) air concentrations of pollutants would be below established limits and would present no risk to human health and/or the

environment. This assessment was based on the dispersion model elaborated within the framework of an assessment carried out by SE Solutions, a long-established partner of Mozal. As per Mozal's request, a peer review of the air quality assessment for the Mozal FTC rehabilitation was conducted by PAEHolmes, Australia.

With regards to the Governmental of Mozambique's role in authorizing the bypass, the Ministry of Coordination of Environmental Affairs (MICOA), with a view to protect the environment and the health of workers as well as the neighboring communities, led the initial process and coordinated the Government's actions in relation to whether or not the bypass operation would comply with national standards. MICOA proposed the creation of a special committee, with representatives from different Ministries, to decide on the special authorization for bypass, with the decision ultimately taken by the Council of Ministers. Within the framework of this process, the Government of Mozambique put forward specific conditions for the authorization of the bypass program, such as: strict compliance with the announced deadlines; continuous monitoring of air concentrations; implementation of proper Contingency and Maintenance Plans; full engagement with affected and interested parties; close government involvement during the rehabilitation period; and adjustment of the Corporate Social Responsibility policy of Mozal in the area affected by the bypass. The Government of Mozambique is undertaking ongoing follow-up of monitoring activities.

As part of its own monitoring process, Mozal contracted Société Générale de Surveillance S.A. (SGS)¹², an independent company to monitor air emissions during the bypass.

Based on its assessment, the CAO Ombudsman team heard three key questions from multiple stakeholders in Mozambique:

1. What are the possible risks to the environment, communities' health and the workforce during the bypass?
2. Was the simultaneous bypass the best approach to address the severe corrosion of the FTCs and why?
3. What can we learn from this situation? Why was the situation not discovered earlier enough so that the bypass could have been avoided?

From a neutral and independent view, it appears that these questions remain important to many stakeholders on the ground. The following range of concerns and views regarding the bypass and Mozal's operations were highlighted by the different stakeholders:

- The desire to enhance ways of sharing information regarding Mozal's operations and create opportunities to allow all stakeholders to acquire a shared understanding of potential impacts/risks.
- The importance of processes that allow impacted community members to participate with the company on key environmental issues.
- There is a desire from the parties to increase credibility in their interactions in order to create a greater benefit for everyone. This includes strengthening levels of trust,

¹² SGS is an independent inspection, verification, certification and testing services provider.

achieving more transparency, and opportunities to learn more about the role played by the different stakeholders.

4. Suggestions & Next Steps

4.1 Suggestions

Based on its meetings with all the key stakeholders in this case, the CAO Ombudsman understands that there is a broadly recognized desire to change the kind of stakeholder engagement that has taken place and design spaces that will lead to more constructive relationships. In addition, there is a broad desire for acknowledgment and respect for people's, organizations', and institutions' roles and efforts to protect the environment and people's health.

During the bilateral meetings conducted in the assessment field trip, stakeholders expressed a number of suggestions and options that might begin to address the issues raised in the complaint. CAO provides a summary of the suggestions that we heard below, but emphasizes that there is not yet agreement or consensus on any of these options. Further, the list of ideas in no way represents demands being made by any of the parties and is not an exhaustive list:

1. Conduct a second meeting between Mozal and the Coalition of organizations to clarify views and perspectives regarding: a) the events that led to the corrosion of the FTCs; b) the feasibility of alternatives to the bypass; c) the rationale behind the decision for selecting the bypass procedure as the most feasible alternative; d) the timeframe for the bypass; and e) clarification of constituents/communities represented by Coalition members.
2. Involve NGOs and community members that live in the surrounding area of Mozal's operations in the monitoring process.
3. Discuss how emissions are being measured, and define which standards/guidelines are being followed.
4. Select a trusted, independent health risk practitioner to assess the health situation on the ground after commencement of the bypass.
5. Enhance knowledge about SGS and its work, as well as the overall monitoring program under implementation by Mozal.
6. Discuss the possibility of undertaking an independent environmental audit of Mozal operations;
7. Involve trusted, independent peer review for monitoring data.
8. Discuss relevant aspects of an emergency response (or contingency) plan that includes definition of worst and interim case scenarios for air emissions (focusing on the three emissions of most concern: hydrogen fluoride, tar and dust) and establish clear criteria that would trigger a specific response and action. This could also include identifying the most vulnerable groups in the area near Mozal operations.
9. Discuss a mechanism for the Coalition to access future information on Mozal's environmental and social performance and risks, and improve existing mechanisms.

The CAO Ombudsman is therefore proposing a facilitated problem-solving process where the parties seek collaborative opportunities to address the issues raised in this complaint. A set of Basic Principals/Code of Conduct is included in this report, and a more detailed set of Ground Rules will be discussed and agreed by parties. The main objective of the Ground Rules is to create common rules that apply to both parties in all further jointly developed activities. These rules will apply whether parties meet to exchange information or engage in a session to discuss or negotiate aspects of the monitoring process.

For all participants to be able to engage in a meaningful way and to enhance opportunities to build trust and respect, preparation is required. The CAO team will provide necessary support and guidance in this effort, and will incorporate into its Ombudsman team mediator(s)/facilitator(s) who are regionally and locally based. Any joint meetings should take place at a neutral location.

4.2 Next Steps

The proposed next steps are based on a combination of stakeholders' suggestions and CAO's experience in conflict resolution and management. The proposed facilitated problem-solving process is a suggestion, and we hope that stakeholders will provide comments and suggest changes, if needed.

I. Stakeholder Confirmation to Participate in an Ombudsman Process

The complainants and Mozal will need to confirm their willingness to continue with a CAO Ombudsman dispute resolution process. A simple letter confirming parties' willingness will allow the process to continue under CAO's Ombudsman function.

II. Stakeholder Preparation

CAO Ombudsman will support and work with the Complainants and the Sponsor to prepare for effective and constructive engagement with one another. This support may take a variety of forms including, but not limited to:

- Planning for internal ("intra-stakeholder") decision-making, representation and communication with constituents.
- Defining agendas of discussion for meetings.
- Ensuring information is being shared by the parties in a satisfactory and constructive manner.
- Making sure parties understand commitments made and agreed upon through the set of Ground Rules.
- Providing capacity-building or training (in communication, negotiation, "interest-based" problem-solving, etc).

III. Stakeholder Engagement Meeting

CAO would convene an information-sharing session for Complainants and the Sponsor. The goal of this event/stage is NOT to address differences of opinion or negotiate. The purpose is to provide the space for a constructive opportunity to clarify remaining questions relating to:

- Events prior to the corrosion of the FTCs;
- Feasibility of alternatives to the bypass;
- Rationale for deciding on the bypass procedure as the most feasible alternative;
- Timeframe for the bypass;
- Clarification of constituents/communities represented by Coalition members.

This session will give the Sponsor the opportunity to explain, clarify and address all remaining questions. Complainants may still have questions in relation to what led to the current need to rebuild the FTCs, the decision to undertake the bypass program, and the analysis of

alternatives. Also, the Sponsor could learn more about the representation of the members of the coalition.

IV. Negotiation and Consensus Building

CAO would convene and facilitate a negotiation meeting between the parties to first define what issues may be considered in a negotiated/facilitated process. Some of the suggested topics presented by stakeholders are:

- Discuss how emissions are being measured and which standards/guidelines will be followed;
- Discuss possible involvement of NGOs and community members in the monitoring process;
- Selection of a trusted, independent health risk practitioner to assess the health situation on the ground after commencement of the bypass;
- Discuss the possibility of undertaking an independent environmental audit of Mozal operations;
- Involve trusted, independent peer review to analyze monitoring data;
- Discuss relevant aspects of an emergency response (or contingency) plan by Mozal that includes definition of worst and interim case scenarios for air emissions during the bypass (focusing on the three emissions of most concern: hydrogen fluoride, tar and dust) and establish clear criteria that would trigger specific responses and actions. This could include identifying the most vulnerable groups in the area near Mozal operations.
- Discuss a mechanism for the Coalition to access future information on Mozal's environmental and social performance and risks, and improve existing mechanisms.

We anticipate that meetings would take place in late January and February 2011, and we cannot anticipate the number of meetings required until the process is further advanced. By March 4, 2011, CAO will discuss with parties the specific outcomes that have been achieved in meetings to date, with the goal of helping parties decide whether they would like to continue with this process.

4.3 Proposed Schedule

This is a tentative timeline and actual dates may vary.

Activity/Event	Date
Stakeholder Preparation	Between January 24 and February 4, 2011
Stakeholder Engagement Meeting	February 7 or 8, 2011 (btw 4 to 5 hours)
Negotiation and Consensus Building	Week of February 14, 2011 (first meeting)

4.4 General Principals/Code of Conduct

- Parties will have to communicate in a language of their choice and agree to the use of interpreters;
- Continuous and active participation;
- Honesty;
- Transparency;
- Mutual respect and acknowledgment;

- Commitment to the process;
- Willingness to listen;
- Willingness to learn and ask constructive questions;
- Safe space where people can say what they want but must be responsible for their impact; and
- Parties agree to be bound by the agreement reached by means of the process.

4.5 Continuing with CAO dispute resolution process

Based on this report parties have agreed to meet under the auspices of the CAO Ombudsman and try to address issues through the suggested dispute resolution process.

5. Additional Observations and Recommendations for IFC

During CAO's assessment, local stakeholders raised questions that also concern IFC. Some of these questions are: what can the different parties learn from this situation? Why was the situation not discovered early enough so that the bypass could have been avoided? Why was the simultaneous bypass the best approach to address the severe corrosion of the FTCs?

This case raises issues that relate to IFC's monitoring and supervision process. It provides IFC an opportunity to review and improve current mechanisms to monitor and supervise investments, such as the Annual Monitoring Reports submitted by clients – specifically, how this process is understood by IFC clients.

As referenced in CAO's Review of IFC's Sustainability Framework, insufficient information in Annual Monitoring Reports creates knowledge gaps for IFC regarding client performance. However, information deficiencies are not necessarily indicative of performance problems on the ground. They may highlight opportunities to improve the clients' quality of environmental and social monitoring and reporting. Better quality of social and environmental monitoring and reporting may improve IFC's ability to assist its client in a timely fashion, and benefit the quality of the companies' environmental and social management overall. Most importantly, it may lead to improved communication between clients and communities around mitigation plans. CAO would like to encourage discussion within IFC on how to improve in this regard.