



OMBUDSMAN ASSESSMENT REPORT

**Complaint Regarding the Special Economic Zones (SEZ)
Advisory Services Project
(#564427)**

Madang Province, Papua New Guinea

February 2012

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

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LIST OF ACRONYMS

BRG	Bismarck Ramu Group
CAO	Office of the Compliance Advisor Ombudsman
DEC	Department of Environment and Conservation
DCI	Department of Commerce and Industry
ICDC	Industrial Centres Development Corporation
IFC	International Finance Corporation
MIGA	Multilateral Investment Guarantee Agency
MPG	Madang Provincial Government
NFA	National Fisheries Authority
PMIZ	Pacific Marine Industrial Zone
PNG	Papua New Guinea
SEZ	Special Economic Zone

INTRODUCTION

The Office of the 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 IFC/MIGA supported projects in a manner that is fair, objective, and constructive and to enhance the social and environmental outcomes of those projects.

The CAO assessment is conducted by CAO's Ombudsman function. The purpose of CAO's assessment is to: (1) clarify the issues and concerns raised by the complainant(s); (2) gather information on how other stakeholders see the situation; and (3) to help the CAO Ombudsman and the stakeholders determine whether and how they might be able to resolve the issues raised in the complaint.

This document is a preliminary record of the views heard by the CAO team, and explanations of next steps. *This report does not make any judgment on the merits of the complaint.*

As per CAO's Operational Guidelines,¹ the following steps are typically followed in response to a complaint that is received:

Step 1: **Acknowledgement** of receipt of the complaint

Step 2: **Eligibility:** Determination of the complaint's eligibility for assessment under the mandate of the CAO (no more than 15 working days)

Step 3: **Ombudsman assessment:** Assessment of the issues and provide support to stakeholders in understanding and determining whether a collaborative solution is possible through a facilitated process by CAO Ombudsman, or whether the case should be transfer to CAO Compliance for appraisal of IFC's/MIGA's social and environmental performance. The assessment time can take up to a maximum of 120 working days.

Step 4: **Facilitating settlement:** If the CAO Ombudsman process continues, this phase involves initiation of a dispute resolution process (typically based or initiated by a Memorandum of Understanding and/or a 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 that were identified during the assessment or the problem-solving process, in a way that is acceptable to the parties affected.²

OR

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.

Compliance Appraisal/Audit: If a collaborative resolution is not possible, CAO Compliance will initiate an appraisal of IFC's/MIGA's social and environmental due diligence of the project in question to determine whether a compliance audit of IFC's/MIGA's involvement in the project is merited.

Step 5: **Monitoring** and follow-up

Step 6: **Conclusion/Case closure**

In July 2011, a complaint by community members residing in Madang Province, Papua New Guinea was filed with the CAO. The complainants raised concerns about the impact of a marine industrial zone on their livelihoods and the environment.

On July 8, 2011 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

The Government of Papua New Guinea (hereafter, the Government) incorporated the concept of Special Economic Zones (SEZ) into its overall economic development strategy and in 2008, asked IFC for assistance in developing the strategy and legislative framework that would enable SEZs to be established in the country.

Under its Advisory Services department, IFC approved the project in April 2009 and entered into discussions with PNG's Department of Commerce and Industry. The strategy aimed to provide the country with best-practice approaches to develop and operate economic zones. Known as SEZs, these zones are geographically delimited areas set up with conditions conducive to investment. Incentives are provided to startup businesses through simplified processes, and by supplying infrastructure and labor.³

In the earlier stages of the project, IFC's plans included providing advice on the economic and legal conditions and site selection for the successful establishment of the Pacific Marine Industrial Zone (PMIZ) and looking at implementing guidelines for SEZs. Located in Madang Province, PMIZ was meant to be the first SEZ to be established by the Government. The economic zone would cluster a range of tuna catching and processing facilities and would be aimed at promoting investment in onshore processing of regionally caught tuna.

³ "IFC Helps Papua New Guinea Develop Economic Zone Strategy to Promote Growth." IFC Press Release, June 3, 2009

As the project advanced, the Government took the lead in selecting the site and IFC's involvement was no longer required in the specific PMIZ component. Since then IFC has focused on drafting a legal model to provide a general framework for the development and operation of SEZs in the country. IFC has submitted the model legislation to the Department of Commerce and Industry for consideration.

2. The Complaint

In July 2011, a complaint was filed with the CAO by the Bismarck Ramu Group (BRG)—a local NGO based in PNG—on behalf of several villages in Madang Province and with the support of an elected representative.

The complainants are broadly concerned about IFC's participation in assisting the Government with SEZs, as they do not believe it will benefit the majority of the people or that it is in the interest of the environment. They are particularly concerned about IFC's role in paving the way for the establishment of the PMIZ and the impact it would have on local populations and the environment. They contend that the level of consultation with landowners in and around the site was inadequate and that a SEZ focused on tuna will deplete fish populations as well as have social and environmental implications for the area. The complainants are wary of the establishment of the PMIZ, since their experience with an existing tuna factory has involved foul smells, environmental damages to reefs, and unsanitary conditions. The complaint also states that the environmental planning for the zone is unsatisfactory.

3. ASSESSMENT METHODOLOGY

The purpose of the CAO assessment is to clarify the issues and concerns raised by the complainant, to gather information on how other stakeholders see the situation, and to help the CAO Ombudsman and the stakeholders determine whether and how they might be able to resolve the issues raised in the complaint. The CAO Ombudsman does not gather information in order to make a judgment on the merits of the complaint.

The CAO assessment of the complaint consisted of:

- Review of project documents
- Interviews, meetings, and group discussions
- Country missions and site-visit

The CAO team conducted three field trips to Madang during September and October 2011. In preparation, and during the field trips, the CAO Ombudsman team reviewed IFC project documents, and met with complainants, IFC's project team, relevant Papua New Guinea government representatives (at the national, provincial and district level), and additional affected community members from Rempì, as well as other groups and villages around the PMIZ.

At the national level, meetings were held with several government representatives, including Charles Abel, Minister for Trade, Commerce & Industry and Stephen Mera, Secretary for the Department of Commerce and Industry. These government consultations were held before the initial community site visit to collect information and describe the role and mandate of the CAO, and after the site visits to discuss observations and issues identified during the field trips. At the provincial level, meetings were held with the Regional Member for Madang and separately with

the Deputy Governor of Madang Province, the Provincial Administrator of Madang Province, and representatives of the provincial commerce and community development divisions, among others.

The community level meetings included individual interviews and small group discussions held over the three field trips. During the first field trip, meetings were held with four representatives from BRG (who also accompanied the CAO team to the first visit of project site) and with approximately 30 community members via an organized forum convened in Rempi village. The forum involved representatives from all land owner groups in and around the project site who claimed a connection with the land on which the PMIZ is being developed. In subsequent field trips, the CAO team met with individual landowners and with the squatters, now evicted, but who formerly lived within the fenced off area that is the PMIZ project site. The CAO team also met with IFC representatives in Port Moresby, Papua New Guinea, and Sydney, Australia.

4. ASSESSMENT FINDINGS

The PMIZ project under development in Madang Province aims to take advantage of PNG's considerable tuna stock by establishing centralized port, transportation and processing facilities, as well as fostering general commercial growth around this hub. The project is led by the national government through the Department of Commerce and Industry (DCI) and the project has been afforded both budget and acknowledgment in national plans. Other government agencies participating in the project development process include: (1) the National Fisheries Authority (NFA) who provide technical advisory and regulatory inputs; (2) the Department of Environment and Conservation (DEC) whose initial function is to assess environmental and community impact issues; and (3) the Industrial Centres Development Corporation (ICDC), also under the auspices of DCI, who have been appointed as project managers. An inter-departmental task force is in place for the project but its progress has been hampered by turnover in Ministerial and Departmental Secretary posts which has resulted in varying levels of input and support for the initiative. The Madang Provincial Government (MPG) has indicated their consistent support for the project but feel that they have had less input and influence on the project development process than the national government, and they are critical of some of the actions taken by other actors in the project activity to date.

4.1 Summary of Issues

Based on the original complaint and further stakeholder discussions undertaken as part of the CAO Assessment, the primary topics and issues that would need to be addressed to resolve the complaint are summarized below:

1. How can community benefits be maximized for those affected by the PMIZ SEZ?

The complainants are concerned that the PMIZ SEZ will not benefit the majority of the people affected by the project and Government acknowledged in conversations with the CAO that maximizing community benefits is vital to the success of the SEZ. Some stakeholders interviewed by the CAO also referenced two landowner companies that were created to represent and manage the interests of two broad groupings of landowners and which received seed capital from the Department of Commerce and Industry. There may be opportunities for broader and improved community consultation on how these companies will use the seed capital, and how benefits would be shared.

2. *How might negative environmental impacts from development in the PMIZ be mitigated or avoided altogether?*

The complainants are concerned that the SEZ's focus on tuna will deplete other fish populations and have negative effects on the marine ecosystem. Furthermore, local community members' previous experiences with existing tuna factories that brought foul smells, environmental damage to reefs, and unsanitary conditions to the area reinforce these concerns. The complainants are also concerned that environmental planning for the SEZ has been unsatisfactory to date.

3. *How can all parties ensure meaningful community consultation and engagement during all stages of the development and implementation of the SEZ?*

Many community members contend that the level of consultation with landowners in and around the site has been poor. They argue that when the project designers and promoters did meet with the communities, it was to inform them of the project moving forward rather than to consult them on their concerns and insights regarding the proposed PMIZ. Many stakeholders also expressed the need for a constructive way to handle disagreements and to identify and resolve issues related to the PMIZ. For example, villagers from Rempi indicated they had lost access to a significant mangrove area located within the PMIZ fenced boundary that has served them over time as an important food source. Local community members stated that even when "consultations" did take place, tensions were high and people were nervous or scared to speak up.

4. *How can concerned parties clarify land rights and titles and resolve any land disputes in a mutually satisfactory manner?*

There may be some confusion and disagreement over certain land rights related to the development of the PMIZ. In meetings with the CAO, community members described their traditional and historical connection to the land, including their understanding of the transfer of land titles between communities, the Church, and the Government. Even where legality of titles may not be in question, community members are concerned about having more of a voice in land title transfer processes.

4.2 Summary of Stakeholder Goals and Interests

Based on the discussions with key stakeholders listed in Section 3 above, the CAO heard and understood the following key goals and interests, most of which were shared by all parties:

- Promoting economic growth and local investment
- Maintaining an open and transparent process
- Honoring and observing traditional and cultural rights of local communities
- Maximizing benefits of the SEZ for local communities (and fair distribution of those benefits)
- Keeping all concerned parties, especially local community members, informed and educated about the PMIZ SEZ (timelines, benefits, roles and responsibilities, etc.) in an accurate and timely fashion
- Avoiding/reducing social tensions and potential for conflict

- Minimizing environmental damage
- Ensuring project compliance with IFC standards and policies

Many, if not all, of these goals may serve as constructive “common ground” for addressing the concerns in the complaint.

4.3 Conclusion and Next Steps

The complainants and the Government have agreed to continue working with the CAO Ombudsman team to try to resolve the issues related to the PMIZ using a collaborative approach. The CAO will encourage the parties to draw on previous experiences of managing community disputes in PNG (and elsewhere) in order to apply lessons learned in a constructive way to the current situation in Madang.