



OMBUDSMAN ASSESSMENT REPORT

Regarding Community and Civil Society Concerns in Relation to
IFC's Quellaveco Project (#3823)

July 2012

Office of the Compliance Advisor Ombudsman
*for the International Finance Corporation
Multilateral Investment Guarantee Agency,
World Bank Group*

www.cao-ombudsman.org

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LIST OF ACRONYMS

CAO	Compliance Advisor Ombudsman
EIA	Environmental Impact Assessment
IFC	International Finance Corporation
MIGA	Multilateral Investment Guarantee Agency
UNOPS	United Nations Office for Project Services

1. 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 purpose of CAO's assessment is to: (1) clarify the issues and concerns raised in the complaint; (2) gather information on how relevant stakeholders see the situation; and (3) help stakeholders understand and determine whether a collaborative solution is possible through a process facilitated by CAO's Ombudsman, or whether the case should be dealt with through CAO Compliance.

This report summarizes the assessment carried out by the CAO Ombudsman, and is a record of the views heard by the CAO team. *This report does not make any judgment on the merits of the complaint and the issues raised therein.*

Annex 1 presents CAO's process steps in response to a complaint.

2. THE PROJECT

Currently in the feasibility stage, Quellaveco is a large scale copper mining project located in the Region of Moquegua in south-eastern Peru. It was nationalized in the 1960s, and then privatized in 1992. In 1993, the IFC Board approved an equity investment in Anglo American Quellaveco (the company) comprising a 20 percent equity stake for the acquisition of the company and a two-phase feasibility pilot program for a technology assessment to confirm process feasibility and commercial viability. In the 1990s and 2000s, IFC's equity position changed slightly. By 2010, IFC maintained an 18.1 percent equity stake and started a process to sell shares in early 2012. The sale of all of IFC's shares to a fully-owned indirect subsidiary of Mitsubishi Corporation was formally completed in February 2012. The remaining shares are owned by Anglo American Plc.

Quellaveco's current copper reserve is approximately 10 million tonnes (content metal basis) with an initial mine life of 28 years. The initial production is approximately 225,000 tonnes per annum. The company is targeting development to commence production in 2016.¹

The initial project predates IFC's 1998 Safeguard Policies. In 1989, IFC developed its first formal procedure for environmental review of projects, and used the 1988 World Bank Guidelines for evaluating project-specific pollution-prevention and -control measures. This procedure was effective from March 1990.²

¹ <http://www.mitsubishicorp.com/jp/en/pr/archive/2012/html/0000014055.html> (Accessed June 6, 2012)

² http://www1.ifc.org/wps/wcm/connect/90f2d88046b63bdaa9f7abb254bfb7d4/IFC_Third_Year_Report_PS_DP_.pdf?MOD=AJPERES (Accessed June 6, 2012)

The figure below illustrates the project location³:



3. THE COMPLAINT

In November 2011, the CAO received a complaint from *Asociación Civil Labor*, a local environmental NGO in Peru, raising concerns about the mine's anticipated impacts on local people and the environment. Upon CAO's request for documentation verifying the participation of project-affected groups, the Water Users Board of Moquegua and the *Frente Unificado de Defensa de los Intereses del Distrito de Torata* sent letters to CAO in March 2012 (see also section 4.1 'CAO's Eligibility Decision' below).

The complainants cited the following social and environmental concerns regarding Quellaveco's operations, among other issues:

- Concerns regarding water scarcity, the degradation of water quality, and increased competition over water resources in an arid area;
- Environmental impact of toxic wastes and the health impact on communities;
- Concerns around land acquisition without the consent of landowners;
- IFC's due diligence, particularly with respect to reviewing the quality and transparency of the company's Environmental Impact Assessment (EIA) process, community consultation and disclosure of information.

4. CAO'S PROCESS AND ASSESSMENT

4.1 CAO's Eligibility Decision

The CAO determines the eligibility of a complaint according to three eligibility criteria:

1. The complaint pertains to a project that IFC/MIGA is participating in, or is actively considering.

³ <http://www.mitsubishicorp.com/jp/en/pr/archive/2012/html/0000014055.html> (Accessed June 6, 2012)

2. The issues raised in the complaint pertain to the CAO's mandate to address environmental and social impacts of IFC/MIGA 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.

When the complaint was first received and was initially reviewed in November 2011, it looked to meet CAO's three eligibility criteria. The CAO sought further documentation to verify the participation of locally affected groups to confirm eligibility in view of the third criterion. Upon receipt and review of this additional documentation, the CAO determined on March 22, 2012 that the complaint was eligible for assessment. At this point, CAO formally accepted the complaint, informed all stakeholders, and started its assessment process.

By the time this eligibility determination was finalized by the CAO, IFC had already divested from the project. However, given that the complaint was filed in November 2011, the CAO proceeded to an assessment following established practice and in accordance with its Operational Guidelines. The CAO discussed the implications of IFC's exit from the project with the parties during its assessment.

4.2 CAO's Assessment

CAO's assessment of the Quellaveco complaint consisted of:

- A review of project documentation;
- Meetings with the IFC team;
- Interviews with the NGO that filed the complaint, and the two local groups of affected community members;
- Conversations with representatives of the company, and of Mitsubishi Corporation.

4.3 Assessment Findings

Government Initiated Dialogue Process

In March 2011, the regional government of Moquegua initiated a dialogue table comprised of 27 local stakeholders, including representatives of the company, civil society organizations, government representatives at the central, regional, municipal and district levels, and representatives of the following communities: Tumilaca, Pocata, Coscore and Tala. Local officials from other surrounding communities declined to participate in the dialogue process.

In June 2011, the dialogue table was expanded after other stakeholders proposed looking at wider mining issues in the area, while still prioritizing Quellaveco as the first project to be discussed. Also in June, the dialogue table finalized the rules of engagement that would guide the process. In December 2011, other stakeholders took up protests against the project and the dialogue table citing concerns about representation.

On March 2, 2012, the Environmental Commission created within the dialogue table reached an agreement on alternatives regarding mine closure and remediation after 35 years of mining operations at the proposed Quellaveco mine. The parties agreed that at mine closure, two thirds of "sterile materials" would be returned to the open pit,⁴ with the purpose

⁴ http://regionmoquegua.gob.pe/archivos/act_013_2012_mesa.pdf (Accessed June 6, 2012)

of partially remediating the landscape as well as lowering risk of water contamination, and that the Asana River would be re-routed to its original course.⁵

The dialogue table's Commission on Water Resources equally reported progress, and among these is an agreement to hire a consultant to carry out a revision of the hydro-geological study of the open pit. The dialogue table is looking into a process to hire the services of said consultants, among which are the United Nations Office for Project Services (UNOPS) and an individual consultant. A third Commission on Social Responsibility has also been created. As of July 2012, this government-facilitated process is on-going.⁶

Summary of Concerns and Perspectives

The following concerns were expressed by representatives of locally affected community groups:

- The impact of mine construction and operation on **water quality** of rivers and other local water sources. The project's location at the headwaters of key rivers in the watershed is perceived as problematic, as communities downstream use those water resources for human consumption and agricultural use.
- The **quantity of water** required for mine operations. The areas in proximity to the mine are arid, and aquifer and surface waters that the company will be drawing from are equally used by communities both nearby and downstream, including agro-producers who require water for irrigation.

The complainants acknowledge that changes have been made to the project's original design in response to stakeholder criticisms, but express concern that these changes may cause water shortages elsewhere. Some stakeholders have suggested that the company not use fresh water, but rather desalinized sea water in order to avoid impacts to local water sources.

- Disclosure of an **EIA** by the company in 2000 and subsequent approval by the government without the consent of several of the affected populations. While the 2000 EIA is being revised, the complainants allege they have not been able to see or comment on the revised EIA.
- Improper disposal of mine **tailings** that could constitute an environmental and health risk for the local communities both during mining operations and after mine closure.
- A **project design** that could generate social and environmental risks: adverse effects on the landscape and an increased risk of river contamination from the diversion of the Asana River at the mine site through a tunnel, and risk of water and soil pollution from the creation of an artificial lake as a depository for mineralized material in the original bed of the river.
- The quality of the company's **community engagement** in the area since project inception, which is felt neither to be sufficiently systematic or inclusive, nor to provide adequate and accessible information about potential impacts.

⁵ <http://www.larepublica.pe/02-03-2012/quellaveco-encapsulara-en-tajo-material-esteril-de-mina> (Accessed June 6, 2012)

⁶ For more details on the government initiated dialogue process please see: <http://regionmoquegua.gob.pe/web13/index.php/lateral/contenido/mesadedialogo.html> (Accessed June 6, 2012)

- A lack of **support for the project from local communities**, which the *Frente* notes is demonstrated by a survey in the Torata district in November 2011, in which 81 percent of those surveyed were against the mine being located in their area.
- Existing **land claims** on the project sites, that some of the lands on which the project is to be located are private lands.
- Questions around the representativeness of local interests at the **government-initiated dialogue table**, and a sense that the process is dominated by participants who will benefit from the project and therefore de-emphasizes the potential negative impacts of the mine.

Company perspective:

In correspondence and discussions with the CAO, the company set out its perspective:

- Commitment to the established dialogue: The company confirmed its commitment to engaging with locally affected stakeholders through dialogue. As a manifestation of the company's commitment, company management notes the decision in late 2010 to halt the project's advance to join the dialogue and address local concerns. They note that the existing dialogue process convened by the local government is well underway with 14 meetings in plenary since March 2011.
- Dialogue outcomes: From the company's point of view, the negotiations have reached substantive resolution of many of the issues presented in the complaints to the CAO, and the company has agreed to structural changes to the project design such as mine closure plans, and increased investment in water infrastructure. Company management believes that social and community issues will also be addressed constructively by the dialogue process, following progress on environmental and water issues.
- Willingness to engage and make a positive contribution: The company believes that it has taken many positive and proactive steps to engage with local communities and understand their needs and concerns. Company management points to significant investments in community support programs and efforts at generating local benefits and opportunities. The company hopes that through the present dialogue, the parties will be able to identify and implement additional ways for the company to contribute to the development of the area.
- Acknowledgement of local opposition: The company acknowledges that there are some stakeholders that have voiced strong opposition to the project, but believes they represent a minority voice in taking a primarily ideological stance against the mine.

5. CONCLUSIONS AND NEXT STEPS

The CAO understands that while the local complainants were willing to sit down with the company for an initial engagement convened by CAO, the complainants did not expect to see their concerns resolved through such an engagement, but rather intended to use the opportunity to explain to the company why they see the project as socially and environmentally unviable. Some complainants have since expressed an interest in deeper engagement with the company.

The company notes that given the IFC's exit from the project, and the existence of an ongoing dialogue process convened by local government that already substantively

addresses many of the issues presented in the complaint to the CAO, it prefers to continue to work through the existing dialogue process than to see the CAO engage in a dispute resolution process.

Given these perspectives and the voluntary nature of CAO's dispute resolution process, the CAO Ombudsman concludes that this complaint is not amenable to resolution through a collaborative process convened by the CAO.

In June 2012, in accordance with the CAO's Operational Guidelines, the CAO Ombudsman concluded its involvement in the case and referred the complaint to CAO Compliance for initial appraisal of IFC's social and environmental due diligence. The appraisal will determine if an audit of IFC's role in the project is necessary to provide assurances to the World Bank Group President and the public that IFC complied with the relevant social and environmental policies regarding this project.

Annex 1:

As per CAO's Operational Guidelines,⁷ 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 situation and assisting the parties 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 period can take up to a maximum of 120 working days.
- Step 4: Facilitating settlement: If the parties are willing to engage in a CAO Ombudsman process, 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.

OR

Compliance Appraisal/Audit: If the complaint is transferred to CAO Compliance for a compliance review, CAO Compliance will initiate an appraisal of IFC's/MIGA's social and environmental due diligence of the project in question to determine whether the case merits a compliance audit of IFC's/MIGA's intervention in the project. The Compliance appraisal process can take up to a maximum of 45 working days.

Step 5: Monitoring and follow-up

Step 6: Conclusion/Case closure

⁷ 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>