



OMBUDSMAN CONCLUSION REPORT – MAPLE/PERU

This report summarizes the CAO Ombudsman process in relation to the IFC-supported Maple Energy project in Peru.

IFC's project

In July 2007, IFC approved an investment in Maple Energy plc, an energy company with subsidiaries with assets and operations in Peru. IFC's investment was aimed at supporting Maple's capital expenditure program, including exploration activities, increasing the production of existing hydrocarbon concessions, and the development of a green field ethanol plant. IFC originally considered both an equity investment of \$10 million and a possible debt investment of \$30 million, and ultimately only took the equity stake. As of July 30, 2011, IFC's stake in Maple Energy stood at 1.6%.

Maple's fully-owned subsidiary, Maple Gas Corporation of Peru, operates crude-oil producing properties (Blocks 31-B, 31-D and 31-E) located in the departments of Loreto and Huanuco, in central and north-east Peru. The company initiated its activities in Peru in 1994, taking over oil fields established in the 1930s (Maquía) and the 1950s (Agua Caliente), previously operated by other oil companies and a state oil company.

The complaint

In April 2010, the CAO received a complaint presented on behalf of indigenous communities in Canáan de Cachiyacu and Nuevo Sucre in the Department of Ucayali in the Peruvian Amazon. The complaint included allegations that the company's activities were negatively impacting the communities' health, safety, environment and sources of livelihoods, and ultimately violating their human rights. The complainants were particularly concerned with five oil spills –of varying degrees of

severity- that had occurred in 2009 and 2010 close to the two communities and their water sources. The complaint is available on CAO's website at www.cao-compliance.org



CAO's dispute resolution process

CAO assessment and elaboration of ground rules:

The CAO's first response to complaints from affected communities is an assessment of the situation carried out by its dispute resolution team. CAO assessed the issues and the stakeholders' options for resolving the complaint through a series of conversations and visits with stakeholders. In June 2010, the parties expressed interest in pursuing a collaborative process facilitated by the CAO. By February 2011, the parties had determined conditions under which they would meet, and designed ground rules that would govern their engagement.

There were two issues in the ground rules requested by the communities on which no agreement was reached: firstly, whether Maple Energy (in addition to Maple Gas) needed to be a participant at the dialogue

table, and secondly, whether the statute of limitations for presenting a case before the courts –Peruvian or otherwise - relating to issues presented in the complaint to the CAO should be suspended for the duration of the dialogue process.

The parties decided to pursue a dialogue process as the best way to address their concerns despite their lack of agreement on these points. While the remaining ground rules were not officially adopted, the parties agreed to be governed by them and act in their spirit.

Representation at the dialogue

The communities' assemblies chose 4 primary representatives from Canaán and 3 from Nuevo Sucre to participate in the dialogue, as well as an equal number of alternate representatives. The assemblies gave these representatives decision-making power, but also retained the power to review and ratify any agreements reached at the table.

The communities were supported by two sets of advisors – a team of legal advisors from the NGO Accountability Counsel, and representatives from the local indigenous federation FECONBU (of which the communities are members) and ORAU (a regional counsel for representatives of various federations representing indigenous communities).

In accordance with the jointly developed ground rules, the advisors were present at every dialogue meeting and provided counsel during breaks and deliberations, but did not have voice or vote at the table, except when all the participants were in agreement.

On the company side, three representatives and three alternates represented senior management, public relations, legal, operations, and EHS, including the General Manager of Maple Gas.

CAO engaged an independent local mediator to facilitate the dialogue. As a means of improving communication, a Shipibo-Spanish translator was also engaged by the CAO.



Dialogue process

Between April and August 2011, the company and community representatives met four times in a CAO-facilitated dialogue process that resulted in three signed agreements and the implementation of several agreed action points (not all action points were completed as the communities chose to withdraw from the process in August 2011).

At the first meeting in April, community and company representatives discussed overarching concerns and agreed on several broad points and how to address them.

Agreed topics for the dialogue:

- Community access to safe drinking water
- Improving communication between the parties
- Development of environmental and health studies
- Training in community monitoring
- Program of community monitoring

A central concern in the communities' complaint to CAO was that they felt their health had suffered from exposure to hydrocarbons, most directly when

community members participated in spill clean-up, but also from long term exposure to hydrocarbons in their environment. The company did not believe that their operations had exposed the communities to a level of hydrocarbons that would result in adverse health impacts. The company and the communities agreed to address this concern through jointly designed and approved environmental and health studies, which would help provide scientific facts to inform the dialogue.

In awaiting the design, implementation and results of these studies, the parties agreed first to tackle the communities' immediate need for safe drinking water, as well as to improve the parties' ability to communicate. For example, the company offered and the parties agreed to enhanced IT infrastructure (e.g., internet access) for the communities.

Further, the parties committed themselves to pursuing a community environmental monitoring program, and that CAO would help by providing training to participants. The community representatives requested that community monitoring would be supported by a fund managed by the communities. This idea was to be explored at a future date.

Over the course of the first three meetings, the parties made progress in discussing the various issues and how to address the related concerns. Some early agreements were made and successfully implemented. The full text of each agreement is available on CAO's website.

Focus on community access to safe drinking water

Agreed actions:

- Assessment of community water systems by company technician.
- Water testing.
- Deepening of Nuevo Sucre's well by the company.
- Company support to Canáan's interactions with the government to make their water system operational.

Outcomes:

- Initial test results showed a high level of bacteria in Nuevo Sucre's well water, and below-threshold levels of heavy metals and petroleum-derived substances.
- Deepening of Nuevo Sucre's well led to improved water production rates; test results showed much lower bacteria levels, but still above some thresholds.

The parties agreed to work together to ensure access to safe drinking water for the people in Canaán and Nuevo Sucre.

The two communities faced different situations at the outset:

- A company contractor had installed Nuevo Sucre's well water system in the past in response to community requests, but there was uncertainty as to the water quality, and the quantity of water it produced was not sufficient.
- A government contractor had installed Canáan's water system, but the system did not function properly and had not been turned over to the community to operate, meaning the system was not functional.

Over the course of the dialogue process, significant progress was made on this issue. Company technicians inspected the two water systems to assess the technical quality and capacity.

In **Nuevo Sucre**, a company contractor deepened the community well, resulting in an increase in the flow of water to an acceptable level.



Water tests were carried out on Nuevo Sucre's water system by laboratories proposed and chosen by the communities (EcoLab, based in Lima and Natura based in Pucallpa for verification of microbial levels). The work was managed by CAO and financed by the company.

At the May dialogue meeting, the parties agreed that EcoLab would conduct three rounds of water sampling in Nuevo Sucre, (before deepening the well, just after deepening, and after rehabilitation of the rest of the water distribution system). Water sampling in Canaán would take place once the system was handed over to the community.

The parties have received mutually acceptable laboratory results for the Nuevo Sucre water system on two occasions. The first results before well deepening showed above-threshold levels of bacteria, and levels of heavy metals and petroleum-

derived hydrocarbons that were below detectable levels, thus below-threshold level. The second test results after well deepening showed much lower bacteria levels, but still above national standards for potable water. Therefore, community water still needs some treatment for safe consumption.

Los resultados iniciales, antes de profundizar el pozo, mostraron un alto nivel de bacterias, por encima del umbral de peligro, pero con metales pesados e hidrocarburos por debajo de los niveles detectables y consecuentemente por debajo del umbral de peligro.

In **Canaán**, the company agreed to review the technical plans for the system, to support the community in voicing any concerns to the regional government, and to test the water in the system to determine if the water is fit for human consumption.

Improvements in communications infrastructure

In order to improve communication between the communities –especially Nuevo Sucre which did not have a reliable communication system– and the company, Maple agreed to install the necessary infrastructure and equipment for both communities to have Internet access. This effort included setting up the necessary infrastructure to receive and transmit signal, and a computer room and equipment for Nuevo Sucre.

Agreed actions:

- Installation of infrastructure and equipment for both communities to have Internet access.
- Improved design for installation in Canaán.

Outcomes:

- Internet access in both communities.
- Internet training for both communities' representatives.

- Company to provide fuel for generator to Nuevo Sucre for initial 6 months of operation.

By the time the parties met again in May 2011, the participants had identified several follow-up actions:

- Formal training on internet usage would be provided by the company to community representatives.
- The communities were unhappy with the location and appearance of the antenna tower receiving internet signal in Canáan. The company agreed to enhance the appearance of the tower and relocate it as the community saw fit.



In June, the parties reached agreement on the components of the computer training, and at the August meeting, Nuevo Sucre raised the issue of its lack of gasoline to run the community generator necessary to power the computer equipment.

To address this issue, the company proposed sending a technician to evaluate whether Nuevo Sucre's solar panel could be used for the tower, to provide 6 months of gasoline, and thereafter provide gasoline (or cash equivalent) in exchange for the community's participation in cleaning the canals and roads in the oil production area. The Nuevo Sucre delegation accepted the first two proposals and would consult with their assembly on the last point.

Both communities now enjoy access to the internet, and both of the community delegations received training on using the computers and navigating the Internet, an initiative that can improve their access to the company as well as to other resources.

Environmental and health studies

To address community concerns related to Maple's operations, the dialogue partners also agreed to jointly design, oversee and approve environmental and health studies. This process, starting with the development of the Terms of Reference (TOR), would be supported by the CAO.

Agreed actions:

- Joint design of Terms of Reference (TOR).
- Joint selection of suitable experts.
- Jointly overseeing the work and scrutinizing results.

Outcomes:

- Advanced draft Terms of Reference for Environmental and Water Study.

At the May meeting, the parties engaged in a joint mapping exercise. They agreed the environmental study would include several water sampling locations, including locations of concern to the communities, and locations upstream and downstream from the zones of interest agreed between the parties, so as to have better understanding of the watershed and other companies or actors influencing it. The testing points in both Canaán and Nuevo Sucre are summarized in the agreement.



In June, they also discussed at length the TOR for the environmental study to be undertaken, focusing on what should be studied, the ideal characteristics of a technical team and how the team should be recruited. The parties agreed that fish and water would be the media to be sampled and tested, and two cycles of testing would take place, one during the dry and the other during the rainy season.

In the run-up to the next dialogue meeting in August 2011, the parties continued to work on the Terms of Reference (TOR) through a CAO-facilitated process, and a joint draft of the document was near being finalized.

At the last dialogue meeting, the parties discussed the financing of the environmental study. The community delegations insisted that the company commit to financing the study, while the company stated it was unable to do so until the full cost of the study was known. The parties were unable to reach agreement during the dialogue on the process and timing of study financing.

Community monitoring program & community training

The parties agreed to develop and implement a new community monitoring program, and CAO committed to providing training for community members participating in the monitoring efforts. Participants worked on water supply, well sampling and development of the TORs as

a prelude to developing the community monitoring program. The dialogue concluded at the communities' request before much progress had been made on this issue.

Conclusion of the dialogue process

On July 10, 2011, one month before the fourth dialogue table was convened, an oil spill of approximately two barrels occurred close to the community of Nuevo Sucre (as per the company's reporting to the Government of Peru). The company activated its emergency response plan, and several members of Nuevo Sucre were engaged to participate in the clean-up efforts.

At the next dialogue meeting held in August 2011, it became clear that the parties had divergent views on the amount of oil spilled, the effectiveness of the company's response to the oil spill, whether community members had been exposed to health risks, and what the company's next steps should be. There was also disagreement over the follow up actions that the company should have taken in the wake of the spill. The communities put forward five demands in relation to the oil spill –ranging from provision of medical services to provision of food and water– yet no consensus was reached on all of these items.

The parties also discussed pending issues from the previous meeting, and reached an impasse on how the environmental and health studies would be financed. The community delegations requested that the company commit to fund the total study amount, to find funds within a defined time frame, or commit to a certain percentage of funding they were willing to provide. The company stated it was unable to do so until the full cost of the study was known, but made assurances that they would participate in funding the studies. The parties were unable to reach agreement on the financing of the studies.

The parties broke for consultation several times throughout the meeting, and ultimately these two areas of disagreement proved insurmountable. After lengthy deliberations, the communities decided to withdraw from the dialogue process.

Both parties agreed that they would continue to discuss matters related to Community Relations.



Outcomes of the Dialogue Process

The CAO-facilitated dialogue table involving the communities of Nuevo Sucre and Canaán and the company Maple Gas generated some good early progress: an agreed process to address the communities' concerns, and some concrete early results. Further, a series of facilitated dialogue meetings helped improve the parties' understanding of each other.

The process was not completed, however, and had not yet tackled the core, underlying concern or carried out the centerpiece of the agreed process: to establish mutually agreeable scientific facts around the question of the impacts on the communities' health from the company's operations through a jointly designed and implemented environmental and health study.

In keeping with CAO's voluntary process, the CAO respects the wish of the

complainants to pursue an alternative avenue to address their concerns. This issue is now being addressed through a government process.

Early results

Most immediately, the process resulted in improved access to water for both communities, and significant investments in communications infrastructure for the two communities who now enjoy access to the internet.

The most significant of the concrete outcomes, however, stemmed from the participatory process which the two communities and the company undertook to design the TOR for the environmental study. Through that process, the parties engaged in face-to-face problem solving on how to assess environmental impacts, what and where to measure and what to look for in a technical team. The final product was an advanced draft of the TOR, which – although never finalized – could be used in the future by the parties to design and carry out an environmental study.

More generally, the dialogue table opened up spaces where both company and community representatives could work collaboratively with each other and learn how better to manage their relationship in the future.

In a similar vein, the process leading up to the water sampling in Nuevo Sucre allowed the parties to jointly participate in agreeing on a laboratory, choosing the testing points and setting up a system for the transportation and oversight of samples.

As is to be expected in a process that came to an end before the jointly agreed action items have been implemented, there are significant open issues that need to be addressed in future through other channels.

- **Access to safe drinking water:** CAO encourages the parties to continue to work together to ensure access to safe

water for both communities. While significant progress has been made, the sample collected after Nuevo Sucre's well was deepened indicates the water still does not meet applicable standards, due to high bacteria levels. The water in Canaán needs to be tested after the water system installation is completed and handed over to the community by the regional government.

- **Establishing scientific facts around the health impacts of the communities' exposure to oil:** Mutually accepted scientific data is required to help establish whether and how the communities' health may have been impacted by the company's operations. Any company responsibility towards the communities' health and wellbeing, beyond that which they currently assume as 'good neighbors', will only spring from scientific fact and evidence that is accepted by both parties. Responding to a request of the communities, the Peruvian government has initiated a multi-sector technical commission to study these impacts, and CAO hopes this will help generate acceptable data to help address this core underlying concern.
- **Community monitoring (and training):** Participatory monitoring can help build trust in water tests and inform and improve company actions to prevent negative impacts on the communities. CAO hopes that the parties will still go ahead and implement a participatory monitoring program outside of a CAO-convened process.

Lessons and Insights

CAO has learnt from its involvement with this complaint, and will further review lessons for our own operations once CAO's monitoring and evaluation survey of dialogue participants has been implemented.

1. **Do not "front-load" a dialogue process too much.** Development of a framework and basic ground rules for interaction is very important in CAO's experience. When too many rules are being pre-negotiated at a time when the parties have not had an opportunity to build trust, this process step can turn out almost insurmountable. The parties will be in a better position to address difficult issues once they have had an opportunity to build trust through dialogue.
2. **CAO needs direct and close relationships with affected communities.** NGO advisors play very important roles in CAO dispute resolution processes through the support that they provide to communities. CAO has experienced through its handling of this complaint, that relationships with a strong supporting NGO cannot replace the important role of a direct relationship between CAO and the affected people, whose empowerment through the CAO convened process is at the heart of all of CAO's most successful cases.
3. **Capacity building is crucially important.** It is often the case that there is a power imbalance between parties, and in some cases it is felt or perceived more than in others. The imbalance is not just about differences in financial situations but also in technical know-how or communication skills. In other CAO cases, this has been addressed by joint training or capacity building at the outset, and at different moments throughout the process. In this case, CAO offered capacity building before the first meeting, but it was put aside given the communities' preference to start the dialogue as soon as possible. Capacity building helps communities feel empowered in their role at the table and their ability to communicate issues that are important to them. In CAO's

experience, capacity building and coaching of the company can be just as important. As such, CAO could have more emphatically pursued this for the benefit of all parties.

- 4. The *how* is just as important as the *what*.** One of the most interesting inter-cultural discussions at the table took place around the physical appearance of the internet tower in Canáan. The community was clearly concerned about its appearance—whether it looked stable, modern and aesthetically pleasing— and its location. They saw the tower as a symbol of the pride they take in their

community. The company on the other hand was focused on whether the tower was installed, and whether it worked. The matter was discussed at length and eventually resolved. For the CAO, it served as a fresh reminder that the process is as important as the outcome. A dialogue table may have a finite goal of reaching particular outcomes. However, its broader objective is changing how the parties interact and relate to each other.