



CAO ASSESSMENT REPORT

**Regarding local stakeholders concerns in relation to
IFC's project with Lafarge Surma Cement (#8035) in India**

May 2014

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

About the CAO

The Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA), the private sector arms 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.

For more information, see www.cao-ombudsman.org

TABLE OF CONTENTS

LIST OF ACRONYMS4

1. OVERVIEW.....5

2. BACKGROUND.....5

 2.1. Project.....5

 2.2. Complaint.....5

3. ASSESSMENT SUMMARY6

 3.1 Methodology.....6

 3.2 Summary of Issues.....6

4. NEXT STEPS.....7

LIST OF ACRONYMS

CAO	Office of the Compliance Advisor Ombudsman
IFC	International Finance Corporation
LSC	Lafarge Surma Cement Ltd.
LUMPL	Lafarge Umiam Mining Pvt. Ltd.
MIGA	Multilateral Investment Guarantee Agency

1. OVERVIEW

In January 2014, CAO received a complaint from three individuals from Shella village, East Khasi Hills district in the State of Meghalaya, India, concerned about IFC's Lafarge Surma Cement project and Lafarge Umiam Mining Pvt. Ltd. (LUMPL)'s land acquisition process, and what the complainants perceived as lack of compensation for land they believe is rightfully theirs. The CAO determined that the complaint met its three eligibility criteria and began an assessment of the complaint. The complainants requested dispute resolution. LSC, through its subsidiary LUMPL, determined that it was not prepared to engage in a dispute resolution process. This Assessment Report provides an overview of the assessment process, including a description of the project, the complaint, the assessment methodology, and next steps.

2. BACKGROUND

2.1 The Project¹

According to project documentation, the IFC's project with Lafarge Surma Cement Ltd. (LSC), the parent company of LUMPL, involves the construction and operation of an integrated, dry process cement plant in the far north-east corner of Bangladesh. This plant is very close to the Indian state of Meghalaya, from where the limestone is sourced. LUMPL, the wholly owned Indian subsidiary of LSC, owns and operates a limestone quarrying and crushing operation located in Meghalaya, India which serves the cement plant in Chhatak, Bangladesh, owned and operated by LSC. An overhead conveyor belt connects the two centres of operation.

Surma Holding BV., a company registered in The Netherlands, holds 58.87% shares of LSC. Lafarge of France and Cementos Molins of Spain own 50%-50% shares of Surma Holding BV. As per the Annual Report 2012, the shareholdings of LSC were as follows:

Surma Holding B.V.	58.87 %
International Finance Corporation	1.94 %
Sinha Fashions Limited Bangladesh	3.02 %
Islam Cement Limited Bangladesh	2.75 %
Other Shareholders – Bangladesh & NRB	33.42 %

In 1998, IFC approved an A Loan of \$35 million, a B Loan of \$15 million and equity of \$10 million, and invested in 2003.

2.2 The Complaint

In January 2014, three local landowners filed a confidential complaint with the CAO in regards to LSC's operations in and around Shella Village in the State of Meghalaya, India. The complainants' state that their rightful ownership of several tracts of land was not recognized, and they therefore never received any compensation for the land that is in use by the project. A more detailed summary of issues is presented in Section 3.

¹ IFC Summary of Project Information:

<https://ifcndd.ifc.org/ifcext/spiwebsite1.nsf/78e3b305216fcd8a85257a8b0075079d/c7ca8c1b0f4378db852576ba000e2e5f?opendocument>

3. ASSESSMENT SUMMARY

3.1 Methodology

The purpose of this CAO assessment is to clarify the issues and concerns raised by the complainants, to gather information on how LSC views the situation, and to determine whether the complainants and LSC would like to pursue a dispute resolution process under the auspices of CAO Dispute Resolution, or whether the complaint should be appraised by CAO Compliance (see Annex A for CAO's complaint handling process). The CAO does not gather information to make a judgment on the merits of the complaint during its assessment.

The CAO assessment of the complaint consisted of:

- reviewing project documentation;
- conducting meetings with the complainants and some of their family members;
- conducting meetings with LSC representatives, including representatives of LUMPL; and
- holding telephonic meetings with the IFC team.

3.2 Summary of Issues

Complainant perspective

Based on the original complaint and further discussions undertaken prior to and during CAO's assessment trip, the following summarizes the complainants' perspective of the issues:

- Lack of consultation and information disclosure – The complainants state that as owners of certain parcels of land currently in use by LUMPL, they were never fully informed or consulted about the land acquisition process. They were only aware of one public meeting, after which the routing of the conveyor belt was changed, and they received no further information, nor were they consulted prior to the use of their land.
- Lack of compensation – The complainants understand that LUMPL has paid compensation to other landowners in Shella for the use or acquisition of land for the project, and that this process involved the participation of the local representative units, including the *durbar* (village council) and the village headman. The complainants contend that in their individual cases they were never properly identified as land owners, and have therefore been excluded from the process. From their perspective, the land certification process may have been open to abuse in allowing other stakeholders to incorrectly or fraudulently claim land that belonged to the complainants. The complainants are open to sharing the documents in their possession to demonstrate their claim to ownership and any relevant compensation.
- Access to Land and Livelihood – The complainants note that they are no longer able to access the land that is in use by the project, and therefore are unable to put it to productive use, negatively affecting their livelihood.

While there are other issues mentioned in the complaint filed with CAO in January 2014, the complainants would like to keep the process focused on the issue of land ownership and compensation. The complainants have stated they have no interest in stopping the project, but rather are looking for a solution together with LUMPL.

LSC and LUMPL perspective

As described to CAO, LUMPL undertook a lengthy land identification and acquisition/leasing process in the late 1990s, which took into consideration the fact that being a tribal area, the 6th Schedule of the Constitution of India and various other local/ tribal laws and tribal customary practices were applicable. LUMPL recognizes that land is privately held in Shella Village through which the elevated belt conveyor passes, compared to the other village Nongtraï where the quarry is located and where land is held as community property. LUMPL described their efforts to identify the lands and landowners, and properly compensate for the land being used for the project.

LUMPL notes that in the majority of the State of Meghalaya there are no land records available nor were land surveys undertaken, particularly in areas that are predominantly tribal, including the East Khasi Hills where the mining operations are located. LUMPL therefore followed tribal customs for identification of ownership of land. For this purpose, LUMPL (and/or its sister concern Lum Mawshun Minerals Pvt. Ltd.) worked with the relevant local entity (the local *durbar*) to assist them in identifying the owners of the land. LUMPL states that the *durbar* is the local council recognized by law, and LUMPL recognizes the *durbar* as the rightful authority responsible for identifying land owners and settling land disputes among tribal members. LUMPL therefore requested the local *darbars* to identify the ownerships of the tribal land. Once the *durbar* had done so, LUMPL contends that compensation was fully paid and land purchase/lease agreements were duly entered with those landowners, and that this was done in full compliance with the Meghalaya Transfer of Land (Regulation) Act, 1971.

Under separate agreements with the Shella and Nongtraï *darbars*, LUMPL pays rent/ contribution to the *darbars*, which are used/distributed by these as per their own customs and decisions. LUMPL also described its CSR activities and other supports to the local community under these agreements.

LSC and LUMPL are proud to have a cross border project that enhances cooperation between India and Bangladesh. They believe due process was followed. Although LSC, through its subsidiary LUMPL, initially agreed to engage in CAO facilitated dispute resolution process, LSC through LUMPL determined that they were not prepared to participate in a dispute resolution process. The rationale for this decision was that LSC is confident that it has followed all legal and customary requirements of the land acquisition process and finds no reason to participate in a mediation process with the complainants.

4. NEXT STEPS

While the complainants requested an opportunity to dialogue with LSC/LUMPL and enter into a dispute resolution process, LSC/LUMPL determined that it was not prepared to do so given that it is confident that it has followed all legal and customary requirements of the land acquisition process. The dispute resolution process is voluntary and as such CAO cannot insist on dispute resolution, even where the complainants are requesting same. The complaint will be dealt with through the CAO Compliance process.

Annex A. CAO Complaints Handling Process

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. 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 initial assessment is conducted by CAO's Dispute Resolution 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) help stakeholders understand the recourse options available to them and determine whether they would like to pursue a collaborative solution through CAO's Dispute Resolution function, or whether the case should be reviewed by CAO's Compliance function.

This document is a preliminary record of the views heard by the CAO team, and explanations of next steps depending on whether the parties choose to pursue a Dispute Resolution process or prefer a CAO Compliance process. *This report does not make any judgment on the merits of the complaint.*

As per CAO's Operational Guidelines,² 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: **CAO assessment:** "Assessment of the issues and provide support to stakeholders in understanding and determining whether they would like to pursue a consensual solution through a collaborative process convened by CAO's Dispute Resolution function, or whether the case should be handled by CAO's Compliance function to review IFC's/MIGA's environmental and social due diligence. The assessment time can take up to a maximum of 120 working days."

Step 4: **Facilitating settlement:** If the parties choose to pursue a collaborative process, CAO's dispute resolution function is initiated. The dispute resolution process is typically based or initiated by a Memorandum of Understanding and/or a mutually agreed upon ground rules between the parties. It may involve facilitation/mediation, joint fact-finding, or other agreed resolution approaches leading to a settlement agreement or other mutually agreed and appropriate goal. The major objective of these types 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 dispute resolution process, in a way that is acceptable to the parties affected³.

OR

² For more details on the role and work of CAO, please refer to the full Operational Guidelines: http://www.cao-ombudsman.org/documents/CAOOperationalGuidelines_2013.pdf

³ Where stakeholders are unable to resolve the issues through a collaborative process within an agreed time frame, CAO Dispute Resolution will first seek to assist the stakeholders in breaking through impasse(s). If this is not possible, the Dispute Resolution team will inform the stakeholders, including IFC/MIGA staff, the President and Board of the World Bank Group, and the public, that CAO Dispute Resolution has closed the complaint and transferred it to CAO Compliance for appraisal.

Compliance Appraisal/Investigation: If the parties opt for a Compliance process, CAO's Compliance function will initiate an appraisal of IFC's/MIGA's environmental and social due diligence of the project in question to determine whether a compliance investigation of IFC's/MIGA's performance related to the project is merited. The appraisal time can take up to a maximum of 45 working days. If an investigation is found to be merited, CAO Compliance will conduct an in-depth investigation into IFC's/MIGA's performance. An investigation report with any identified non-compliances will be made public, along with IFC's/MIGA's response.

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

Step 6: **Conclusion/Case closure**