



## **CAO ASSESSMENT REPORT**

**Regarding local concerns in relation to  
IFC's TCQ project (#32763) in Puerto Quetzal, Guatemala**

September 2014

Office of the Compliance Advisor Ombudsman  
*for*  
International Finance Corporation  
Multilateral Investment Guarantee Agency  
[www.cao-ombudsman.org](http://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](http://www.cao-ombudsman.org)

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## LIST OF ACRONYMS

CAO	Office of the Compliance Advisor Ombudsman
COCODES	Consejos Comunitarios de Desarrollo [Community Development Councils]
COMUDES	Consejos Municipales de Desarrollo [Municipal Development Councils]
CPDL	Colectivo Poder y Desarrollo Local
EIA	Environmental Impact Assessment
EPQ	Empresa Portuaria Quetzal
GMTCB	Grup Maritim Terminal de Contenedors de Barcelona
IFC	International Finance Corporation
IUSI	Impuesto Único Sobre Inmuebles [Single Tax on Real Estate]
MIGA	Multilateral Investment Guarantee Agency
STEPQ	Sindicato de Trabajadores de la Empresa Portuaria Quetzal
STOPQ	Sindicato de Trabajadores Organizados de la Empresa Portuaria Quetzal
TCQ	Terminal de Contenedores Quetzal S.A.
TEU	Twenty-Foot Equivalent Unit

## **1. OVERVIEW**

In March 2014, CAO received a complaint from a local labor union working within Empresa Portuaria Quetzal (EPQ) concerned about the potential impacts of IFC's Terminal de Contenedores Quetzal (TCQ) project, which involves the construction of a container terminal at Puerto Quetzal, Guatemala. The complaint was filed on behalf of a number of EPQ workers, as well as a wider set of community groups and organizations who share similar concerns regarding potential social and environmental impacts of the project. After finding the complaint eligible, CAO began an assessment of the complaint and conducted a field visit May 5-8 2014. 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 Project**

IFC has an active project (#32763) with TCQ to construct and operate a new dedicated container terminal within Puerto Quetzal, Guatemala. The terminal will operate under a 25-year Usufruct Agreement on leased land owned by Empresa Portuaria Quetzal, the state owned company that owns and administers Puerto Quetzal. The proposed financing would help execute Phase 1 investments required under the Usufruct Agreement and create a container facility with an annual capacity of 340,000 twenty-foot container equivalent units (TEUs). At full build out, the terminal will have an annual capacity of 700,000 TEUs and be able to handle post-panamax ships.

TCQ was incorporated in Guatemala to execute the project. TCQ is 100% owned by Grup Marítim TCB (GMTCB), a Spanish port terminal operator specializing in containerized cargo. GMTCB currently operates thirteen terminals throughout the world, including four in Latin America. The project is estimated to cost approximately USD \$177 million. IFC has approved a USD \$35 million A loan and a \$9.7 million equity investment.

### **2.2 The Complaint**

In March 2014, CAO received a complaint from one of the three labor unions active in Empresa Portuaria Quetzal. The complaint alleges that the TCQ project and its Usufruct Agreement violate national law, were approved without consulting relevant sectors of civil society and were based on an unduly processed EIA. The union, Sindicato de Trabajadores Organizados de la Empresa Portuaria Quetzal (STOPQ), contends that EPQ workers' social, environmental, and economic wellbeing and that of communities neighbouring the port zone will be negatively affected by the development of the new project.

A more detailed description of the issues as presented to CAO can be found in Section 3.

## **3. ASSESSMENT SUMMARY**

The purpose of the CAO assessment is to clarify the issues and concerns raised by the complainants, to gather information on how TCQ and other stakeholders perceive the situation, and to determine whether the complainant group and TCQ 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 assessment does not gather information to make a judgment on the merits of the complaint.

The CAO assessment of the complaint consisted of:

- reviewing project documentation;
- conducting meetings with representatives of STOPQ, and separate meetings with other civil society groups who are similarly concerned and working jointly with the union;
- conducting meetings with TCQ representatives;
- conducting meetings with EPQ representatives;
- holding a meeting with other community representatives who do not form part of the complainant group;
- holding a meeting with the IFC project team.

See Annex A for an itinerary of meetings held during the May 2014 field visit.

The following section briefly summarizes the issues laid out by the different stakeholders; it does not comprise a judgment on the part of CAO about the merits of the complaint.

#### Views of STOPQ and the civil society groups who support the complaint

Based on the original complaint and further discussions undertaken prior to and during CAO's assessment trip, below is a summary of concerns raised by STOPQ and the different civil society groups working with it. These organizations/groups can also be found in Annex A.

#### *Compliance with National Laws/ Regulations*

The complainants are very concerned by the process by which the TCQ project was considered, consulted and approved by EPQ, the Government of Guatemala, and the lenders. The complainants believe there are several elements of the project that do not comply with national legislation or regulations. These include:

- Concern about the use of the Usufruct Agreement instrument, which they believe should be a Concession Agreement as stipulated in the Constitution of Guatemala.
- Concern about non-compliance with tax law, as TCQ will be exempt from the single real estate (UISI) tax which all private entities should pay to the Municipality. Only EPQ is exempt from this tax.
- Concern about non-compliance with law that states that communities and labor groups should be properly consulted in these matters.
- Concern about overriding governance structures at EPQ and vesting all powers in one individual.

#### *Terms of the Contract*

When considering the development project, complainants are concerned about some of the terms of the contract of the project which they believe leave EPQ, the Guatemalan Government and its people worse off. Specifically, they question and / or are concerned by:

- Why EPQ would have to pay for the dredging of the harbor for TCQ's operation;
- The land leasing price that was settled at 20 cents per square meter, rather than a \$4 per square meter proposal that TCQ originally presented;
- TCQ's exemption from the IUSI tax;
- That the project is not constructed/operated by EPQ so that all the benefits flow to the country and its development.

#### *Access to Information and Consultation*

The complainants believe that the information sharing and consultation process was not inclusive or transparent prior to project approval. Specifically, they are concerned that:

- Several national laws, as well as the collective bargaining agreement that the unions have with EPQ were not adhered to.

- Requests to EPQ to include TCQ representatives at information sessions and negotiations were not granted.
- Several conversations occurred between EPQ and its three active labor unions about the proposed project, convened at several levels, including the central government level. The complainants, however, have concerns about the openness and neutrality of the process, since they did not consider the facilitator to be neutral nor did they believe it was a genuine dialogue given EPQ's position that the contract with TCQ was not open to revision.
- The inability to contact anyone or address anyone at TCQ with regards to complaints or concerns from interested stakeholders.

### *Social Issues*

The complainants are concerned that the project as they understand it will weaken EPQ's financial position and profitability. They believe that this puts in jeopardy a very important source of livelihood and economic activity for the entire community of Puerto Quetzal as well as the surrounding municipality of Puerto San Jose. More specifically, they are concerned about the erosion of the following socio-economic benefits that these communities currently enjoy due to EPQ's operation:

- Approximately 1,200 jobs currently retained by EPQ which may become redundant;
- The EPQ pension plan that is a source of sustenance for retired employees and their families -- which include elderly people, widows and orphans who currently depend on their pensions from EPQ in order to survive;
- The 5% utility that is allocated and distributed annually to the municipality of Puerto San Jose, by EPQ for reinvestment by the municipality in community development projects or other social benefits;
- The 10% utility that is allocated and distributed annually to the 11 other municipalities in the Department of Escuintla by EPQ for reinvestment in community development projects or other social benefits;
- The 20% utility that goes to the central government of Guatemala for government spending on social programs for the benefit of the country.
- Potential economic loss to associated business and suppliers that currently work with EPQ since according to the complainants' understanding of the project, TCQ will operate independently and will have no need for these associated business, for example cranes.

Finally, the complainants are also concerned that while jobs may be lost at EPQ, there is a lack of clarity about how many jobs will be created by TCQ. They have heard it will be around 700, but believe this would only be at peak construction time, and they fear this will descend to closer to 50 jobs during operation, and thereby provide little in way of social/economic opportunities for locals.

### *Environmental Issues*

Complainants stated a range of environmental concerns resulting from project operations.

- The felling of trees within the project site without proper environmental permits.
- Impact on the mangrove ecology in the area, and fragile and / or endangered species connected to it.
- Obstruction of access points for artisanal fishermen, and water pollution that will make fishing even more difficult.
- Construction operations that could result in the salinization of potable water for communities in close vicinity.
- Given differences in depth between the current EPQ berths, and the berth TCQ is planning to construct, concern that land will shift from higher elevation to lower elevation, thereby weakening EPQ's current infrastructure.

### Views of other Community Representatives that do not form part of the complainant

The CAO also met with different community representatives who are active in the tourism, youth and artisanal fishermen sectors of civil society. These stakeholders are not opposed to the current configuration of the project, but rather see TCQ as a key source of positive economic activity, as well as good jobs in the port area. These stakeholders also believe that the current labor unions at EPQ tightly control job opportunities within the port, and that there is no open and transparent process for allocating port jobs. They expressed frustration at what they perceive as a movement by the unions to protect their private interests, and not take into account wider community needs. They perceive TCQ as a company that will offer alternative employment opportunities.

These stakeholders, however, also expressed concerns about the extent to which TCQ has been able or willing to disclose project information (regarding opportunities such as jobs, as well as mitigation of any impacts), and TCQ's willingness to engage with local communities more broadly. These stakeholders welcome the presence of TCQ and its project, but would like to see open, proactive engagement with communities so that there is clarity about TCQ's hiring process, as well as clarity about how community concerns regarding artisanal fishers, local employment or environmental issues can be raised with and addressed by TCQ.

### Perspectives of TCQ

#### *Employment*

TCQ views the project as one that will contribute to the efficiency of Puerto Quetzal as a whole, as a source of new employment, and ultimately one that will lead to significant development in the area. TCQ estimates that it will create approximately 200 jobs in the first phase and 600 jobs in the last phase of the project. TCQ will also significantly increase the level of control and security of the operations, reducing the level of illegal activities such as contraband and narco-trafficking.

#### *Container Handling / Economic Benefits*

Under the project agreement, TCQ will not take over all of EPQ container handling activities as it does not have exclusivity over container operations. TCQ notes much of the container handling (90%) of the port is already done by other private operators and that the container business represents a very small percentage of EPQ's operations which are currently operated at a loss. With TCQ's project, EPQ will benefit from the agreed payment per container, and will also be receiving rent for land that is unproductive and has been so for years. TCQ believes that because of the financial gains EPQ stands to make with the new project, EPQ will continue to be a source of social investment, and likely will be able to increase the amounts of monies that it contributes at all different levels. Similarly, TCQ believes associated businesses will see an increase in activity due to the new terminal.

#### *Community Engagement*

TCQ recognizes that in the early phase of the project it had maintained a low profile, and had limited interactions with interested stakeholder groups and limited outlets for information exchange. TCQ understands that there is misinformation about the project that affects community perceptions and is looking to broaden its scope of work around information disclosure, community engagement, and general awareness activities that will provide interested stakeholders with detailed and accurate project information, including potential benefits and any mitigation plans. TCQ also believes that as the project enters a new stage, communities will be able to see for themselves the positive impact of the project. While TCQ recognizes the need to step up its outreach activities, it also recognizes that EPQ, as the port manager, is responsible for community activities.

TCQ also expressed its intent to engage with a broader sector of the community through the different representative structures -- and not merely engage with one sector or the other.

#### *Usufruct Agreement*

In regards to the project details, TCQ clarified that its Usufruct Agreement is one of 28 currently in place within Puerto Quetzal, and that other private operators are also exempt from the IUSI tax. TCQ notes that EPQ is responsible for dredging the common waters, such as the entrance channel or the turning basin, which are used by all the users of the port, while TCQ will be responsible for dredging its own berth pocket. TCQ also states that the land use price is set at the EPQ Zone 1 official tariff, the most expensive of all EPQ Zones. TCQ believes there is confusion regarding the rate offered, since TCQ never offered \$4 per square meter. It did offer \$4 per *container*, which after negotiations was settled at \$11.50 per container.

#### *Environmental Impacts*

As far as environmental impacts are concerned, TCQ is willing to listen and address specific concerns that stakeholders may have and explain how it has complied with all local laws related to assessing and mitigating impacts. Based on its review, TCQ does not believe that its project will have a significant environmental impact, given that it is sited in a port area that was designated for such purposes more than 30 years ago. The project is located in its entirety in an industrial area, and therefore TCQ does not believe that this area can be considered pristine or protected, or that it will experience a significant increase in negative impacts. However, where there are fears of impacts, TCQ is open to engaging with communities to understand their fears, explain its process and review any issues where needed.

More specifically, TCQ clarified that the felling of trees that has occurred on site was carried out with the appropriate permitting from the National Institute of Forests (INAB), and similarly the Ministry verified that no mangroves were present on site. TCQ is also not aware of any fishing sites being disturbed, as these are already far off shore, and the company is not aware of any risk of salinization of community water supplies. Finally, TCQ also noted that its planned dredging is similar to that done on other docks within EPQ that accommodate ships with deeper drafts, and that it should pose no threat to port infrastructure.

#### Perspectives of EPQ

##### *Financial Benefits*

EPQ explained in detail how from its perspective it would benefit financially from TCQ's project. Given the current state of accounts, EPQ sees the TCQ project as contributing to rather than jeopardizing the financial stability of EPQ. EPQ believes that transferring the small amount of container handling activities it currently holds will allow it to focus on those activities where it has a competitive advantage, such as grain and bulk commodity handling, and thereby produce more revenue.

##### *Employment*

EPQ also gave its assurance that the roughly 1,200 workers of EPQ will be protected from losing their jobs, and has already undertaken commitments that its workforce will not be reduced. The representative of EPQ noted that several meetings regarding the project have been held with EPQ's labor unions, as well as more general press conferences. He also expressed continued willingness to explain their reasoning to the labor unions or other members of civil society.

##### *Engagement*

EPQ also expressed its interest and willingness to engage with its labor unions on matters regarding their labor conditions as well as having an open engagement about the future development of the port, and jointly finding areas where value can be added that would benefit EPQ as well as its employees.

### **Areas of Commonality**

Given the range of perspectives of the stakeholder groups noted above, there are several areas of overlapping interests and issues of concern.

#### *Port Development*

All of the parties that CAO spoke with recognize the need for development of the port in Puerto Quetzal. The stakeholder groups understand that the port is in need of modernization, and the importance of increasing its capacity and economic potential as the main economic driver in the area.

#### *Enhancing information exchange and communication*

Moreover, there is strong interest on all sides in enhancing opportunities for information exchange and communication between TCQ and the communities and civil society sectors that are its neighbors. The parties agree that new and better ways should be found to improve communication between them, not only about the project model, but also about both positive and negative impacts, if any.

## **4. NEXT STEPS**

The parties originally indicated an in principle disposition to explore the idea of a conflict resolution process, and CAO aimed to convene a joint meeting to discuss the conditions and scope for dialogue. Before the joint meeting was held, TCQ informed CAO that after careful consideration the company had decided that the necessary conditions for dialogue, including a minimum amount of trust, did not exist, and TCQ was therefore not prepared to participate in the joint meeting or a potential dialogue process with the complainants. Given the voluntary nature of the dispute resolution process, and in line with CAO's Operational Guidelines, the case will be referred to CAO Compliance for appraisal.

**Annex A. Schedule of meetings held by CAO during the May 2014 assessment visit**

<b>Date</b>	<b>Participants</b>	<b>Location</b>
May 6	Representatives of STOPQ	Puerto Quetzal
May 6	Representatives of several COCODES, including the following communities Colonia Progreso/Jardin, Aldeas Santa Rosa, Barrio Manglar among others	Puerto Quetzal
May 7	Associations of EPQ retirees and pensioners, including some of their current members	Puerto Quetzal
May 7	Representative of CPDL – an environmental and citizen participation organization	Puerto Quetzal
May 7	Representatives of STEPQ	Puerto Quetzal
May 7	Representatives of other community organizations that do not form part of the complainant group	Puerto Quetzal
May 8	Representatives of TCQ	Guatemala City
May 8	Representatives of EPQ	Guatemala City

## Annex B. 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,<sup>1</sup> 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 affected<sup>2</sup>.

OR

**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

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<sup>1</sup> 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](http://www.cao-ombudsman.org/documents/CAOOperationalGuidelines_2013.pdf)

<sup>2</sup> 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.

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