



OMBUDSMAN ASSESSMENT REPORT

**Complaint Regarding the MIGA PT Weda Bay Nickel Project (#8113)
Halmahera Island, North Maluku, Indonesia**

June 2011

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

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APPENDICES:

Appendix 1	Original Request (“Complaint”) Letter Received by the CAO
Appendix 2	WBN Response

LIST OF ACRONYMS

BFS	Bankable Feasibility Study
CAO	Office of Compliance Advisor/Ombudsman
ESHIA	Environmental, Social and Health Impact Assessment (part of overall project Bankable Feasibility Study)
ESIA	Environmental and Social Impact Assessment (for pre-construction Exploration and Development)
IFC	International Finance Corporation
JATAM	Mining Advocacy Network (<i>Jaringan Advokasi Tambang</i>)
KAU	Anti –Debt Coalition (<i>Koalisi Anti Utang</i>)
KIARA	People’s Coalition for Fishery Justice (<i>Koalisi Rakyat Untuk Keadilan Perikanan</i>)
MIGA	Multilateral Investment Guarantee Agency
NGO	Non-governmental Organization
WALHI	Friends of the Earth – Indonesia (<i>Wahana Lingkungan Hidup Indonesia</i>)
WBN	Weda Bay Nickel Company

INTRODUCTION

The Office of 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. In the first instance, complaints are responded to by the CAO's Ombudsman function.

The purpose of CAO's assessment is to: (1) clarify the issues and concerns raised by the complainant; (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 suggestions for next steps among the parties. These suggestions are intended to stimulate further ideas and options for improving environmental and social outcomes on the ground. *This report does not make any judgment on the merits of the complaint.*

As per CAO's Operational Guidelines¹, the following steps will normally be 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: **Dispute resolution assessment:** Assessment of opportunities for collaborative resolution of the issues raised in the complaint (no more than 120 working days). If the assessment determines that a collaborative resolution is not possible, the CAO Ombudsman will refer the complaint to CAO Compliance for a compliance appraisal of IFC's/MIGA's social and environmental performance.
- Step 4: **Facilitating settlement:** If the CAO Ombudsman process continues, this phase involves implementation of next steps (usually based on a Memorandum of Understanding and/or 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 affected².

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.

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

Step 6: **Conclusion**/Case closure

In July 2010, the CAO received a letter from Indonesian NGOs and concerned citizens requesting CAO's assistance in addressing a number of social and environmental issues (see Appendix 1). Their concerns relate to PT Weda Bay Nickel's (WBN) proposed development of a nickel and cobalt mine and hydrometallurgical processing plant in the North Maluku Province of eastern Indonesia, a MIGA-supported project. The signatories of the complaint comprise both national NGOs, local NGOs and directly affected people living on Halmahera Island.

On August 6, 2010, the CAO determined that the letter met its three complaint eligibility criteria:

1. The complaint pertains to a project that IFC/MIGA 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/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.

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 120 working days, and was extended in this case with the permission of the parties.

1. THE PROJECT

On August 11, 2010 MIGA issued a guarantee of \$207 million to Strand Minerals (Indonesia) Pte Ltd of Singapore for its equity investment in the PT Weda Bay Nickel Project.

PT Weda Bay Nickel (WBN) is proposing to develop a nickel and cobalt mine and a hydrometallurgical processing plant in Central Halmahera and East Halmahera Regencies, North Maluku Province, eastern Indonesia. This deposit is one of the largest undeveloped nickel projects with 5.1 million tons of nickel contained in measured, indicated, and inferred ore resources. Should the mine be developed, this development will also entail construction of transport infrastructure including roads, an airport and a sea port.

Corporate structure: Strand Minerals is jointly owned by Eramet SA of France and Mitsubishi Corporation of Japan. Strand Minerals owns 90 percent of PT Weda Bay Nickel, with the remaining 10 percent being held by PT Antam (Aneka Tambang). In turn, the Indonesian government owns 65 percent of PT Antam.

MIGA's³ involvement: MIGA's guarantee covers the Feasibility Stage of this project, for up to three years, against the risks of transfer restriction, expropriation, breach of contract, and war and civil disturbance. MIGA's current Board approval and guarantee covers only the Feasibility Stage ("Phase I") of this project. MIGA's participation in the Construction and Operational Stage ("Phase II") is conditional on successful completion of 13 studies addressing social and environmental impacts of the project, further due diligence, underwriting and a separate Board Approval. The 13 studies and analyses that are MIGA contract conditions include:

- Terrestrial Biodiversity
- Marine Biodiversity and Sagea Lagoon Ecology
- Community Social Assessment,
- Public Consultation and Disclosure Plan
- Community and Indigenous People Development Plan
- Cultural Heritage Preservation Plan
- Land Acquisition and Compensation Plan
- Greenhouse Gas Emissions Assessment
- Metals Background Study
- Residue Management Impact Assessment
- Karst Limestone Deposit Analysis
- Kobe River Watershed Study
- Influx Management Plan.

MIGA has assigned this project the environmental and social risk category A, indicating the project may have potentially significant adverse social or environmental impacts that are

³ As a member of the World Bank Group, MIGA's mission is to promote foreign direct investment (FDI) into developing countries to help support economic growth, reduce poverty, and improve people's lives. It does this by providing political risk insurance (guarantees) to the private sector.

While managing social and environmental risks and impacts in a manner consistent with the Performance Standards is the responsibility of the client, MIGA seeks to ensure that the projects it supports through a guarantee are operated in a manner consistent with the requirements of the Performance Standards.

diverse, irreversible, or unprecedented. MIGA applied the following Performance Standards to the project:

- PS1: Social and Environmental Assessment and Management Systems
- PS2: Labor and Working Conditions
- PS3: Pollution Prevention and Abatement
- PS4: Community Health, Safety and Security
- PS5: Land Acquisition and Involuntary Resettlement
- PS6: Biodiversity Conservation and Sustainable Natural Resource Management
- PS7: Indigenous Peoples
- PS8: Cultural Heritage

In addition to the Performance Standards, the project is subject to compliance with all of MIGA's social and environmental policies and guidelines, including the General Environmental Health and Safety ("EHS") Guidelines, and EHS Guidelines for Mining.

2. THE REQUEST FOR ASSISTANCE

In July 2010, a letter from Indonesian NGOs and concerned citizens was sent to the CAO (see Appendix 1). The signatories of the letter comprise both national NGOs, local NGOs and five directly-affected people living on Halmahera Island. The letter requests CAO's assistance in addressing a number of environmental and social concerns related to the WBN project.

The individual community-member complainants have requested that the CAO keep their identities confidential. In November 2010, WALHI and KIARA, representing the four NGO signatories, agreed to have the letter posted on the CAO website (per CAO Operational Guidelines), including the names of the NGO signatories (local community signatories still wish to remain anonymous). Also in November 2010, the CAO received a public response from Weda Bay Nickel which seeks to provide additional information and to assist in addressing the concerns raised by the NGOs and local community members (see Appendix 2).

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 WBN complaint consisted of:

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

The CAO team conducted three field trips to North Maluku in October 2010, November 2010, and January 2011, respectively. In preparation and during the field trips, the CAO Ombudsman team reviewed MIGA, WBN, and NGO files and project documents, and met with complainants, MIGA's project team and project sponsor, and additional affected community members from Lelilef (Sawai and Waibulen), Gemaf, and Sagea. In addition, the CAO Ombudsman team visited the project area, including the Tanjung Ulie base camp, test pit, and nursery.

Individual interviews and small group discussions were held with approximately 16 representatives (12 local and four national) from all the complainant organizations and approximately 36 community members from Lelilef Sawai, Lelilef Waibulen, Gemaf, and Sagea through three separate meetings with community groups⁴. In addition, the CAO team met with 15 Tobelo forest people (nomadic, semi-nomadic, and settled) from the Tobelo Aketajiwe and Tobelo Dodaga groups/clans in Central and East Halmahera. The CAO team also met with MIGA representatives and several employees of Weda Bay Nickel (WBN), Eramet, and Mitsubishi, including the WBN Operations General Manager, Environment Manager, Communications Manager, and Site External Relations Manager. The CAO also met with WBN staff members who are involved in community development activities and working on the establishment of the Saloi Foundation, which is not yet fully operational. WBN is establishing the the Saloi Foundation as an implementing partner for local development support and to facilitate and promote ongoing cooperation and communication between local community stakeholders, WBN, Kecamatan and other relevant provincial governments.

The CAO team included Gamal Pasya, Technical Facilitator, Scott Adams, Specialist Ombudsman, Ambrosius Ruwindrijarto, Consultant, and an interpreter. Additional support in Washington was provided by Julia Gallu, Specialist Ombudsman.

The subsequent CAO visits conducted in January-April 2011 focused on confirming CAO's understanding of the issues and stakeholder concerns and assisting the parties in reaching an informed decision on a process for addressing the issues raised in the complaint. Particular care was taken by the CAO to spend sufficient time with the community members to ensure their understanding of various options and to protect their identities.

4. ASSESSMENT FINDINGS

4.1 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:

- Protecting local culture and way of life
- Maintaining a clean, healthy, safe, and sustainable environment
- Managing risks and impacts on health and the environment in a sustainable manner
- Maximizing benefits (economic, educational, infrastructure, etc.) of the WBN project for local communities (and fair distribution of those benefits)
- Demonstrating benefits to the community as soon as possible (e.g. beginning the operational and production phase of mining in order to realize employment and other economic opportunities, making land compensation payments, etc.)
- Ensuring local community members have a voice in mining project decisions that affect them
- Keeping local community members informed and educated about the WBN project and its impacts
- Avoiding/reducing social tensions and potential for conflict
- Maintaining a good relationship between the community and WBN

⁴ As a point of reference, according to figures provided by WBN, the estimated combined population of Lelilef Sawai, Lelilef Waibulen, Gemaf, and Sagea is approximately 2,850.

- Achieving financial and operational success of the WBN project
- Maximizing development outcomes and benefits for Indonesia and the local community
- Ensuring project compliance with MIGA standards and policies

4.2 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 below⁵:

1. WBN social and environmental assessments and management systems (quality and completeness of assessments and studies, public understanding, ESIA vs ESHIA, etc.)
2. Pollution and sedimentation (especially impact on local water resources)
3. Land acquisition and compensation (especially ensuring fair process)
4. Biodiversity conservation and sustainable natural resource management
5. Consultation with Forest Tobelo and avoiding and/or properly mitigating impacts on them
6. Cultural heritage preservation
7. Improving WBN project-related community development, involvement, and consultation
8. Design and implementation of grievance mechanism(s) to address and resolve affected communities'/individuals' concerns throughout the long-term life of the project

This list is not intended as a judgment on the merits of the original complaint. It does reflect the subject areas that would need to be discussed in order for WBN and the complainants to reach a mutually satisfactory resolution.

4.3 Conclusion and Next Steps

4.3.1 Transfer to CAO Compliance

The CAO Ombudsman team spent significant time working with the complainants to assist them in understanding and exploring their options for resolving the complaint issues. Ultimately, the complainants informed the CAO that they would not participate in or support a dispute resolution or dialogue process convened by the CAO and they reiterated the request to keep individual community-member complainant identities confidential. Therefore, the complaint will be transferred to CAO's Compliance function for appraisal, per CAO Operational Guidelines.

WBN stated that it would be very willing to participate in a dialogue process with the complainants and other local community members and welcomed CAO's offer of assistance in facilitating such a process. WBN emphasized that they will continue working with locally affected communities and they remain open to constructive engagement with any stakeholders who have issues or concerns related to the project. MIGA also shared with the CAO its strong preference for the parties to resolve the complaint issues by working together.

⁵ As noted in the WBN Response in Appendix 2 of this Report, WBN believes that not all of the points raised by the complainants are related to the current feasibility phase of the project. They explained that some issues may relate to the project after the feasibility phase, which is not covered by the existing MIGA guarantee.

4.3.2 Workshop

Although a CAO Ombudsman dispute resolution process was not acceptable to the complainants, the CAO did offer to conduct a workshop for interested stakeholders, including local community members, government representatives, and WBN staff. The proposed workshop would focus on sharing experiences and strengthening mutual understanding around topics such as: methods and approaches of dispute prevention and early response; grievance mechanisms and non-adversarial dispute settlement; examples of preventing conflicts related to natural resources management; and best practices for constructive stakeholder communication and interaction. The complainants and WBN expressed their support for such a workshop (WBN also confirmed their attendance) and the CAO is currently consulting with relevant stakeholders with the goal of designing and conducting the workshop within two months of the release of this Report.

4.3.3 Options for the Parties' Consideration⁶

In order to achieve the best possible social and environmental outcomes from the WBN project, the parties may want to consider exploring some of the following options:

1. The CAO Ombudsman Assessment was conducted before WBN's ESHIA was completed. While the ESHIA is still underway, WBN may consider further developing and enhancing its ongoing consultations with local community members and discuss the issues in the original complaint and Section 4.2 above as part of the ESHIA preparation. This may help ensure that the issues and questions are addressed appropriately from the outset in the ESHIA and that the ESHIA can be prepared in a fully informed way. Indeed, WBN emphasized to the CAO that many of the complainants' concerns would likely be addressed as part of the ESHIA preparation anyway, consistent with WBN's application of the IFC Performance Standards, Equator Principles and the normal process to be followed. To the extent that any issues are not regarded by the complainants as having been adequately addressed in the ESHIA when it is released, those issues could be the subject of further dialogue and discussion as part of the ongoing consultation process which is to occur thereafter.
2. During the Assessment, complainants and some of the community members expressed a strong desire for more direct consultation by WBN with the affected communities. There is a perception among some community members that WBN works exclusively through government representatives and existing local power structures, thereby hindering full, open, and honest dialogue with the full range of affected villagers. WBN may want to explore how they can build on and improve their existing community relations and communications activities to engage more directly with local community members, while still maintaining good relations with regulators and government and respecting local laws and customs.
3. Parties could hire a conflict resolution/facilitation professional (or organization) who would be accepted as credible and neutral by all parties to assist and build on existing community engagement and development activities and systems already established by WBN (e.g. the regular village-level community meetings, ongoing community disclosure and consultation as part of the ESHIA process, etc.). It might also be helpful to have

⁶ These are *not* formal CAO recommendations and CAO does not intend to monitor their implementation. These are merely intended as possibly constructive and helpful ideas for the consideration of the relevant stakeholders.

such an independent, neutral professional to help all parties learn from the results of those experiences to date (both “successes” and “shortcomings”). Such neutral assistance could also help ensure that all stakeholders feel there is a safe atmosphere for them to speak openly and frankly about their concerns. The precise role and responsibilities for such a third-party, including the timing and term of the engagement, would need to be defined by the key parties based on their needs. The terms of payment and contracting for such services would also need to be addressed in a transparent manner so that questions of independence and neutrality would not be called into doubt.

4. The CAO recognizes that differences among community members and between communities and the company/sponsor are natural in a mining project on the scale of the proposed WBN project. When these differences are handled wisely and in a good way, the whole community can benefit. To a certain extent, it is to be expected that some tensions and differences will be ongoing and unforeseen problems will arise. Therefore, in addition to trying to solve the immediate complaint issues quickly and effectively, the CAO would encourage local community members and WBN to discuss and agree on a constructive approach for preventing and dealing with problems and conflicts when they arise in the future—how to raise concerns and how to listen to each other over the long-term so that they can continue to interact and work together even when they disagree (consistent with the Grievance Mechanism requirements of Performance Standards 1, 2, 4, 5, and 7).

Jakarta, July 2, 2010

To the
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We, of the Civil Society Organization, consisting of

- **Friends of the Earth (WALHI)**
- **Mining Advocacy Network (JATAM)**
- **Anti-Debt Coalition (KAU)**
- **People's Coalition for Fisheries Justice (KIARA)**

intend to file a complaint about the PT. Weda Bay Nickel project, which is located in Weda Bay, District of Central Hamahera, Province of North Maluku. PT Weda Bay Nickel (WBN) is a joint-venture company between PT ANTAM (10%) and the Eramet Group (90%) from France. Based on a 1998 General VII Contract of Work (KK), PT WBN has rights to a 76,280 hectare mining concession in the vicinity of Weda Bay, Regency of Central Hamahera, province of North Maluku. According to company plans, open mine nickel and cobalt mining operations will be conducted using the method of disposing of tailings in the deep sea (STD). These two methods will lead to extraordinary harm to nature followed by the destruction of the livelihood of the people who depend on local natural resources such as the rivers, the sea, forests, lakes and fields.

The PT. Weda Bay Nickel Generation VII Contract of Work was signed by Presiden Soehato on January 19, 1998. The mining concession is based on an area of 76,280 hectares, which overlaps with a forest area of \pm 72,775 hectares, comprising a:

- 35,155 hectare Ake Kobe Protected Forest (HL)
- 20,210 hectare Limited Production Forest (HPT)
- 8,886 hectare Permanent Production Forest (HP)
- 8,524 hectare Convertible Production Forest (HPK)

In the exploration permit issued by the Department of Energy and Mineral Resources (DESDM), Number 056.K/40.00/DJG/2004, the area of the exploration region is 6,096 hectares in Block 1 (Santa Monica) and Blok 2 (Gate), which based on Forest Planology Board Letter Number S.210/VII-KP/2005 states that 3,162 hectares in the Santa Monica Block is Protected Forest and in the Protected Forest Gate Block it is 1,666 hectares.

WBN will violate Forestry Law No 41/1999 if it wishes to engage in open mining in the Ake Kobe protected forest. WBN will include 6 companies given an exemption to engage in open mining in

protected forests, through a Constitutional Court decision on the Judicial Review of Regulation in Lieu of Law 1 of 2004/Law 19 of 2005.

In its operations, this company, a mining company, has the potential for damaging effects, including:

I. Identification of policy violations and social and environmental risks

PS1: Social and Environmental Assessment and Management Systems

PS1 stipulates, among other conditions, that the Social and Environmental Assessment be based on accurate project description and appropriate social and environmental baseline data; that the analysis includes the area of influence including power transmission corridors, roads, etc. and areas potentially impacted by cumulative impacts from further planned development; that the assessment consider greenhouse gas emissions; that the risks and impacts be “analyzed for the key stages of the project cycle, including pre-construction, construction, operations, and decommissioning or closure; that the Assessment be “adequate, accurate, and objective and presentation of the issues prepared by qualified and experienced persons;” that the assessment will include an examination of technically and financially feasible alternatives to the source of impacts” and documentation of the selection rationale; that the assessment will identify vulnerable groups; that “the client will establish and manage a program of mitigation and performance improvement measures and actions that address the identified social and environmental risks and impacts;” that community engagement will be “free of external manipulation, interference, or coercion, and intimidation, and conducted on the basis of timely, relevant, understandable and accessible information;” that consultation should be based on the prior disclosure of relevant and adequate information, including draft documents and plans, should begin early in the Social and Environmental Assessment process;

However in PT. Weda Bay Nickel’s Environmental Impact Analysis documents, we find that:

- The assessment did not clearly consider various alternatives for most of the impact and did not prepare clear documentation about the risks of choosing alternatives, including for the exploration and feasibility stages
- Even though the ANDAL [Environmental Impact Assessment] covered all phases of the project, the assessment (“ESIA Exploration and Development”) did not honestly cover construction, operations and decommissioning or closure, even though those matters are required in the PS1 [Performance Standards 1]
- For the qualities of biodiversity and sedimentation as well as the water, the basic data also includes inadequate information (sampling methods and efforts) to assess its accuracy
- For some impacts (see the pollution section below), some issues were not sufficiently presented or contained inadequate information (for example efforts to sample for toxins) to assess its accuracy
- Forest Destruction and water crisis

If the government allows WBN to open a nickel and cobalt mine in Santamonica, which is estimated to contain a 33% deposit, the destruction of the Ake Kobe protected forest is unavoidable. Nickel mining requires total land clearance including the vegetation on it. More than 9000 hectares of forest will be destroyed to build mine shafts, factories, roads, sedimentation ponds and housing. Even though the total is the equivalent of only 6 percent of the total forest ecosystem, its impact will be wide spread and it cannot be restored. It is almost impossible to restore a forest that is totally destroyed to its original condition. Further, the damage will affect the entire forest ecosystem resulting in a decline in ecological functions including the provider of water and flood and drought prevention.

PS3: Pollution Prevention and Abatement

PS3 stipulates, among other conditions, that where waste generation cannot be avoided but has been minimized, the client will recover and reuse waste; that the client will refer to the EHS Guidelines when evaluating and selecting pollution prevention and control techniques; that the client will “consider a number of factors, including the finite assimilative capacity of the environment, existing and future land use, existing ambient conditions, the project’s proximity to ecologically sensitive or protected areas, and the potential for cumulative impacts with uncertain and irreversible consequences; and (ii) promote strategies that avoid or, where avoidance is not feasible, minimize or reduce the release of pollutants;” that the “client will promote the reduction of project-related greenhouse gas (GHG) emissions in a manner appropriate to the nature and scale of project operations and impacts”

However, what we found is:

- The risks of sedimentation at all stages were not clearly identified in the matter of the impact of deforestation and the use of other lands, and in the matter of being close to ecologically sensitive (Protected Forests, coral reefs) and protectable areas (National Parks).
- The risks of pollution were not adequately identified in project documents (for all stages)
 - The sampling methods/samples, including sample measurements, for the composition of solid residues are not available in the project documents (see ANDAL V-62); the accuracy of the data for potential toxic contamination by garbage cannot be found out without this information; the potential impact from Tailing Residue Storage Facilities in the ground water has not been adequately evaluated.
 - Health threats caused by asbestos levels have not been adequately evaluated (III-4)
 - No methods for estimating projected contamination of dirty water flow to be disposed of into the sea are available; without such data, the statement that the flow of dirty water will not have a cumulative effect, will affect a limited area, and will disappear rapidly cannot be justified.
 - Air pollution from sulfuric acid production has not been adequately evaluated.
- Existing data are inadequate to verify the statement that replenishing the ground water will take place in limestone mines.

- Project plans did not sufficiently explain the pollution risks
 - The type of sewage treatment is undefined (secondary/tertiary) (I-26)
 - Sedimentation and erosion are major areas of focus and this project might not be able to mitigate their impact.
 - Zero disposal facilities, as indicated in PS Guidelines, are not an option contemplated in the ESIA.
 - The path for Residue Storage Facilities is depicted as impenetrable without making available data to indicate potential effectiveness.

- Pollution of Water Sources and the Sea

WBN mine operations will produce tailings that are planned for disposal into the sea, or the STD (*Submarine Tailings Disposal*) system. This method will clearly pollute the Weda Bay maritime ecosystem and will destroy the maritime organisms that are in Buyat Bay, North Sulawesi where Newmont has disposed of its tailings. This method is very controversial and clearly will be rejected by the Ministry of the Environment as was the PT Meares Sopotan Mining Project in North Sulawesi.

The Santamonica mine shaft will be a source of pollution for the local rivers because it contains acid rock and heavy metals. Through the water flow coming out of the mine shaft, heavy metals from former mining will pollute river water and ground water. Therefore, the Weda community, which is highly dependent on rivers to meet their need for clean water will suffer from the mining operations in Santamonica.

PS5: Land acquisition and Involuntary Resettlement

PS5 stipulates, among other conditions, that, for “people living in the project area [that] must move to another location,” the client will (i) offer displaced persons choices among feasible resettlement options, including adequate replacement housing or cash compensation where appropriate; and (ii) provide relocation assistance suited to the needs of each group of displaced persons, with particular attention paid to the needs of the poor and the vulnerable.

However what we found was:

- The presence of the Tobelo Forest people who live in the region or area of the Contract of Work conflicts with the statement that “it is hoped that there will be no physical dispossession of families from their homes” (V-1) and the claim that no moving or dispossession actions is needed.

PS6: Biodiversity Conservation and Sustainable Natural Resource Management

PS6 stipulates, among other conditions, that clients will “assess the significance of project impacts on all levels of biodiversity as an integral part of the Social and Environmental Assessment;” that the Assessment will take into account the differing values attached to biodiversity by specific stakeholders,

as well as identify impacts on ecosystem services; that the assessment retain qualified and experienced external experts for cases with critical habitat or legally protected areas; that the client will not implement project activities in “critical habitat” (which include areas with high biodiversity value “such as areas that meet the criteria of the World Conservation Union (IUCN) classification,” “including habitat required for the survival of critically endangered or endangered species;” “areas having special significance for endemic or restricted-range species sites that are critical for the survival of migratory species; areas supporting globally significant concentrations or numbers of individuals of congregatory species; areas with unique assemblages of species or which are associated with key evolutionary processes or provide key ecosystem services; and areas having biodiversity of significant social, economic or cultural importance to local communities”) unless “there are no measurable adverse impacts on the ability of the critical habitat to support the established population of species ... or the functions [justifying the critical habitat designation]” and “there is no reduction in the population of any recognized critically endangered or endangered species;” that in legally protected areas, the client must consult with all related stakeholders and act consistently with protected area management plans; that “clients involved in natural forest harvesting or plantation development will not cause any conversion or degradation of critical habitat.” Relatedly, the IFC Exclusion List precludes projects with financial intermediaries that involve commercial logging operations for use in primary tropical moist forest.

However what we found was:

- Basic information on biodiversity is insufficient and inadequate and the information is not accurate enough. There are no efforts at survey information (for example, species accumulation curves). Survey of fauna is still incomplete (VI-2). Basic data included in the ESIA shows several gaps and information disagreements (for example, unidentified bats in a cave, names of species misspelled).
- There is a critical habitat but it is not properly identified. Almost half of the Contract of Work area is identified as Protected Forest (even though the maps actually identify it as Protectable Forest. Protected Forest, under Forestry Law No. 41 of 1999, is forest “whose main function is to protect the life support systems for hydrology, prevent floods, control erosion, protect from sea water intrusion and guard soil fertility.” Protected Forests, with several site-specific exceptions that are formed by law, are outside the limits for mining. Protected Forests match the description of the categories of areas protected by the IUCN such as IV or VI. In the context of a lack of biological surveys, a number of the species are endemic to Halmahera or Maluku and at least one of the species threatened with extinction has been found in the area (for example, *Hopea gregaria* included in Threatened with Extinction, 27 species of birds are endemic, *Rattus morotaiensis* is endemic). Important populations of flocking species (bats) could be present in caves in limestone regions that have not been surveyed. Forests, limestone regions, and coral reefs also provide key ecosystem services such as water storage and erosion control as well as fish production, and fauna can play an additional role in ecosystems such as pollination. Forests and coral reefs also represent economic biodiversity and other interests for local communities. All of this marks the presence of a critical habitat, whose activities this project cannot run unless the project can guarantee that there will be no harmful impact on the critical habitat (its species or functions). The ESIA does not provide those guarantees. A critical habitat also requires an evaluation by qualified and experienced experts, which these limited data show are not part of

the ESIA. Additionally, the permanence of the natural forest (the planned clearing) could cause a conversion or degradation of the critical habitat. It seems like this will take place.

- The issues of protected areas are not properly considered in the ESIA. Protected forests are a type of region protected by the law. Additionally, a National Park is within 4 Km from the project area; however the ESIA did not discuss plans for regulating a buffer zone of that National Park.
- The truth of claims for forest habitat rehabilitation and improvement has not been proven. “It is thought that the impact can be reversed by rehabilitation” — where are the proven examples? “It is known that the complete restoration of tropical forest ecosystems is very difficult, if it is not thought to be impossible” (ESRS) but the ESIA claims that “it is expected that the impact on the forest as a natural forest can be totally reversed and restored in 20 years” (I-24) and “it is expected that the total restoration of the natural fauna in the area to be restored can occur after 10 years”(I-25)?
- The impact of deforestation on the forest habitat is unidentified and is considered not very feasible. The areas to be cleared that are in the protected forest (for exploration or other activities) are also unidentified. “The area to be cleared is very small compared to the entire forest in the lower part of Halmahera” (I-25) however this assessment fails to include the cumulative impact on deforestation planned at the construction and operation stages, and from the forest cutting activities by other parties (also mentioned but not clearly quantified)
- The wood from land clearing will be sold (I-23) and it seems that this represents a commercial mining operation. The forest appears “relatively untouched by human activity except for selective felling” and “it’s as if it was still in pristine condition (at yet untouched);” some of it seems to meet the condition of “primary tropical rain forest.” Clearing will conflict with the IF exemption on commercial felling operations in tropical rain forests.
- Decline in Biodiversity

Deforestation causes a fragmentation of the habitat and further affects all forest regions as a single ecosystem. Forest biodiversity¹ can be impacted by the following:

- A decline in population to below the minimum number for preservation
- An increase in fringe areas which make some species threatened by (1) predators (2) competition with wildlife from outside the forest and pests, as well as (3) wind
- Creation of barriers that reduce the ability of some species to (1) spread to and inhabit new habitats, (2) seek food and (3) find mates.

Mining will damage one of the most important *biodiversity hotspots* in the world. It is not an exaggeration to fear that many species of birds on this island will become extinct because they are endemic (are not found in any other hemisphere than Halmahera).

PS7: Indigenous Peoples

¹ Miller, G.T. Environmental science: Working with the Earth, 9th edition, Thomson Learning, 2002

PS7 stipulates, among other conditions, that the “client will consider feasible alternative project designs to avoid the relocation of Indigenous Peoples from their communally held traditional or customary lands under use. If such relocation is unavoidable, the client will not proceed with the project unless it enters into a good faith negotiation with the affected communities of Indigenous Peoples, and documents their informed participation and the successful outcome of the negotiation. Any relocation of Indigenous Peoples will be consistent with the Resettlement Planning and Implementation requirements of Performance Standard 5. Where feasible, the relocated Indigenous Peoples should be able to return to their traditional or customary lands, should the reason for their relocation cease to exist.”

However we found that:

- “The fact that the Tobelo Forest Community depends on the natural resources that is within it or that is close to the area that will be mined is unknown” and “The Tobelo Forest Community at the present time is in ... a location for which an RSF is being offered;” this project must still document the impact that might occur and get information and involve traditional community participation in the project area.

PS8: Cultural Heritage

PS8 stipulates, among other conditions, that “the client is responsible for siting and designing a project to avoid significant damage to cultural heritage; that the client will not significantly alter, damage, or remove any critical cultural heritage (internationally recognized heritage of communities who use, or have used within living memory the cultural heritage for long-standing cultural purposes, and legally protected cultural heritage areas, including those proposed by host governments for such designation).

However we found that:

- “The project area has still not been fully mapped in detail and assessed for its tangible cultural heritage” so for that reason this project cannot successfully be “responsible for the mapping and design of a project to avoid significant damage to cultural heritage” or to protect the critical cultural heritage that could be affected by the impact of exploration and the stages of feasibility, or construction, and the closure stage.

II. The matter of consultation and community involvement

PT. Weda Bay Nickel said a number of times at meetings with the civilian society, including during “consultations” held at the Cemara Hotel Jakarta on Tuesday, June 15, 2010, that consultations were also held with the local civilian society and some local NGOs, one of which is the North Halmahera Friends of the Earth. This is incorrect because the North Halmahera Friends of the Earth has never had a dialog with PT Weda Bay Nickel or with MIGA.

In addition, the community in the area of potential mining, especially, the Village of Sagea, is determined to oust WBN if their mining operations pollute the river. They will also oust WBN if they plan to dispose of their wastes in the river or in the sea (Weda Bay). The communities around Weda Bay are united by the bonds of Sawai traditional law.

III. The Open Information Problem

Documents relating to this new project were not available on MIGA's website until early April 2010, meaning they were in the form of electronic files that were hard to download, especially for the community and community organizations at the project site.

IV. Economic, political risks and other conflicts

Problem Partners

One of the shareholders of Weda Bay Nickel is PT. ANTAM Tbk, which holds 10%. This company is one of the companies that have committed environmental crimes in one of its mining areas on Gebe Island, also in North Maluku. Besides destroying the region and environment of Gebe Island, PT. ANTAM also engaged in acts of violence against the surrounding people.

A. Social Risks

- a. Mining operations in Santamonica have the potential for triggering tenurial conflicts with the local community in connection with the forest resources that they use on a daily basis for various needs and activities. If mining takes place, people's access into the forest will be restricted by security forces even though they were there far before the arrival of the company. The community will be affected if they are forbidden from using the forest because many of their needs are met by the forest, such as wood, rattan, honey, game animals and traditional medicines. This impact will be felt by the Tugutil community which lives in and fully depends on the forest. They will be very much affected by WBN mining activities, which could cause serious conflicts.
- b. In the Ake Kobe forest region there is a site that is sacred to the community, the Batu Gua Lubang that it is feared will be damaged if there are explosions. This place is very much glorified by the Sagea people because they are certain that it is where their ancestors meditated. Damaging this region means despising the local community's culture and could trigger resistance to WBN.
- c. Mining operation wastes to be disposed of in the sea and overflows of water from the mine shaft that pollute the rivers will trigger major social problems. The pollution of the living space will eliminate the community's access to clean water and sources of healthy food, and will damage their source of income. These impacts will be felt even more strongly as time goes on until eventually it will eliminate the community's ability to survive.

B. Economic Risks

Economically, WBN mining operations will not benefit the local people because the use value extracted from the sale of nickel and cobalt will not flow to the local people. On the contrary,

WBN mining operations, especially if they use the open mine and STD methods, will destroy and pollute their sources of income, such as the forests, rivers, lakes and sea. Therefore, the agrarian sector, which is what the people depend on, will be destroyed and they will experience long-term impoverishment.

C. Political Risks

WBN mining operations will be very controversial because they conflict with the Forestry Laws and will damage a *biodiversity hotspot* region recognized by the world. These mining operations will have extraordinary resistance from the community, however it will also bring forth opportunistic groups that will side with the company from government circles, parliament, and the community. Finally this process will touch on the corruption of National officials to make WBN operations run smoothly.

For the powerful reasons given above, we hereby **demand that CAO conduct an immediate investigation into the points that we have set forth above, and that MIGA delay its approval for granting a guarantee of the feasibility phase of the PT Weda Bay Nickel project study, until there is a decision on the results of the investigation conducted by CAO.**

These are our objections and complaints, along with an explanation of the potential significant impact of this project, to be used as material for consideration by the CAO.

Thank you.

Respectfully yours,



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Weda Bay Nickel Project

Response of PT Weda Bay Nickel to the CAO Complaint

Introduction

The purpose of this submission is to provide information to assist in the resolution of the various claims made in the complaint submitted to the CAO in connection with the PT Weda Bay Nickel Project ("**WB Project**"). As will be detailed below, we believe that the complaint originates from an incorrect assumption that the AMDAL and ESIA documentation was intended to be comprehensive and final. This is not the case since the WB Project is today in an initial exploration and feasibility stage. Indeed, the MIGA insurance issued in respect of the WB Project only covers such initial stage and specifically excludes construction and operations. Part of this initial stage is precisely to produce the further studies and reports required for future construction and operations. Moreover, there are a number of assertions made in the report that demonstrate that the complaining party may not have access to the correct facts of the situation. We hope that the information submitted below will assist in correcting such misconceptions and inaccurate facts.

General introduction to the Weda Bay Nickel Project

PT Weda Bay Nickel ("**WBN**") is proposing to develop a nickel and cobalt mine and a hydrometallurgical processing plant in Central Halmahera and East Halmahera Regencies, North Maluku Province. WBN is the holder of a Seventh Generation Contract of Work (CoW) on the basis of the President of Republic of Indonesia Decree No. B.53/PRES/1/1998 dated 19 January 1998 for nickel mining and processing in Central Halmahera and East Halmahera Regencies, in a post-relinquishment contract area of 54,874 hectares.

The WB Project is operated and managed by PT Weda Bay Nickel, which is owned 90% by Singapore-based Strand Minerals (Pte) Ltd and 10% by Indonesian State-owned mining corporation PT Aneka Tambang. Strand Minerals is majority owned by ERAMET S.A. with the remainder being owned by Mitsubishi Corporation. ERAMET SA is a French corporation that manages mining, processing and metallurgical operations worldwide. ERAMET acquired its participation in the WB Project in May 2006.

The WB Project is currently in the feasibility phase. WBN is continuing exploration, optimizing the process through pilot experiments outside Indonesia and completing social, health and environmental baseline data. The bankable feasibility is being evaluated and the final decision to proceed with the WB Project is scheduled for some time in 2012.

1. Background to WB Project, Past and Future Studies

The WB Project complies with the 10 guiding principles of the World Bank and the 8 performance standards of the International Finance Corporation, the best practices developed within ERAMET Group and applicable Indonesian regulations. WBN is committed to developing a project that is socially and environmentally sustainable.

1.1. Back ground to the WB Project

History

- ▶ 1996 : Start up of the WB Project

- ▶ 2001 : First basic environmental baseline studies with the support of an external environmental consultant (Dames & Moore)
 - Aquatic Ecology
 - Meteorological and Hydrological Data Collection
 - Marine Ecology
 - Socioeconomic and Cultural Studies
 - Soil Study
 - Surface Water and Sediment Quality
 - Terrestrial Ecology Studies
 - Village Well Survey

- ▶ 2006 : Commencement of ERAMET participation in the WB Project

- ▶ 2008 : Creation of the PT Weda Bay Nickel company with a dedicated enlarged EHS structure:
 - PT WEDA BAY EHS manager
 - PT WEDA BAY Environmental manager on site
 - PT WEDA BAY Communication and LDS manager
 - Preparation of the social and environmental impact studies required by applicable Indonesian legislation ("**AMDAL**")
 - First ERAMET EHS corporate audit (June 2008): identification of AMDAL weaknesses and of gaps between AMDAL and the ERAMET requirements for an international Bankable Feasibility Study ("**BFS**"). This audit was used as the basis for setting the ESHIA program scope. Pursuant to the applicable Indonesian regulations the AMDAL requires a very prescriptive approach and there is little flexibility in the report content and format prescribed thereunder, which was therefore not able to be adapted and as such was not suitable for a BFS.
 - Commencement of additional baseline studies:
 - Monitoring of impacts on air, water and soil
 - Land rehabilitation program
 - Socio-economical and Health baseline studies

- ▶ 2009 : AMDAL Evaluation and Approval by Indonesian authorities
 - Additional baseline studies carried out and integrated:
 - Water quality and sediment
 - Social baseline (Regencies of Halmahera Tengah and Halmahera Timur)
 - Air quality studies (based on seven monitoring sites, during dry and wet seasons)
 - Freshwater aquatic biota study on benthic, plankton and nekton, and monitoring water quality at 13 sites
 - Karst study, as part of a wider biodiversity assessment
 - Residue toxicological study of atmospheric leaching process residues

- ▶ 2009-2010 : Environmental, Social and Health Impact Assessment (ESHIA) Preparation
 - Definition of scope of work for additional required studies (technical memorandum),
 - Negotiation of scope of work and contract for international firm (ERM) to assist with development of ESHIA,
 - Commencement of additional studies (in line with schedule up to 2011).

BFS ESHIA

The BFS is a comprehensive forward-looking analysis of a project's economic indicators, to be used by financial institutions to assess credit worthiness. The BFS will provide a comprehensive evaluation of the WB Project's costs and risks, including environmental, social, and health & safety risks.

The Equator Principles (EP 2003) have been taken as the reference points for standardized evaluation of « relevant social and environmental impacts and risks » of the WB Project and such principles and the results of such evaluation is to be included in the feasibility assessment of the economics and technological aspects of the WB Project.

As the EPs established voluntary principles includes adherence to the International Finance Corporation (IFC) Performance Standards, WB Project ESHIA team will also ensure full compliance with IFC requirements as follows:

- **The Equator Principles :**
 - Review and categorization
 - Social and environmental assessment
 - Applicable social and environmental standards
 - Action Plan and Management System
 - Consultation and disclosure
 - Grievance mechanism
 - Independent review

- Covenants
 - Independent monitoring and reporting
 - Reporting
- **The IFC Performance Standards :**
 - PS 1 Social and environmental assessment and management system
 - PS 2 Labour and working conditions
 - PS 3 Pollution prevention and abatement
 - PS 4 Community, health, safety and security
 - PS 5 Land acquisition and involuntary resettlement
 - PS6 Biodiversity, conservation and sustainable natural resource management
 - PS 7 Indigenous peoples
 - PS 8 Cultural heritage

IFC is currently reviewing its policy and performance standards on social and environmental sustainability, including its policy on disclosure of information and this review is being carefully followed by the WB Project team. The April 2010 progress report of IFC in relation to this review as well as PS8 on cultural heritage are currently being reviewed by the WB Project team for application in the WB Project's compliance requirements.

- **Other standards**

Other standards have also been referenced in the WB Project management :

- World Business Council for Sustainable Development Mining, Minerals and Sustainable Development project,
- International Council on Metals and Minerals (ICMM) Sustainable Development Framework,
- European Integrated Pollution Prevention and Control (IPPC) Bureau *Best Available Techniques for the Management of Tailings or Waste-rock in Mining Activities* and *Best Available Techniques for the Non-Ferrous Metals Industries* (July 2009)...
- ERAMET Group Policies:
 - ⇒ ERAMET Group Safety Charter (Target zero accident) – 2001
 - ⇒ ERAMET Group Environmental Policy (Eight principles for the group environmental identity) – 2002
 - ⇒ ERAMET Group Health Policy (To keep the occurrence and seriousness of any consequences of health risks to a minimum) – 2007
 - ⇒ ERAMET Group Ethic Charter -2010
 - ⇒ ERAMET Sustainable Development Policy – 2010

From AMDAL to EP/IFC PS

Following the audit conducted by the Sustainable Development Division of ERAMET in 2008, the key pillars identified for application to all phases of the WB Project's requested additional studies are:

- Community safety and security (IFC PS 1) (not specifically addressed in the AMDAL)
- Labour and working conditions (IFC PS 2) (not addressed in the AMDAL) (this includes human resources, occupational health & safety, process safety management, and emergency preparedness))
- IFC PS 4 which requires that issues related to community health, safety and security be addressed
- A land acquisition and resettlement plan (not addressed by the AMDAL)
- BAPEDAL Decree 8/2000 (addresses the need for community involvement in the AMDAL, but requirements are less rigorous than EP 5)
- The IFC PS requirement of quantification of greenhouse gas (GHG) emissions and annual reporting for operations > 100,000 t CO₂eq/yr
- Marine and terrestrial biodiversities as well as hydro geological characterization have to be investigated

Based on the above pillars, a scope of work for the ESHIA, which is aimed at implementing the EP, was developed as of the end of 2008 and has been implemented by the WB project since the beginning of 2009 as follows:

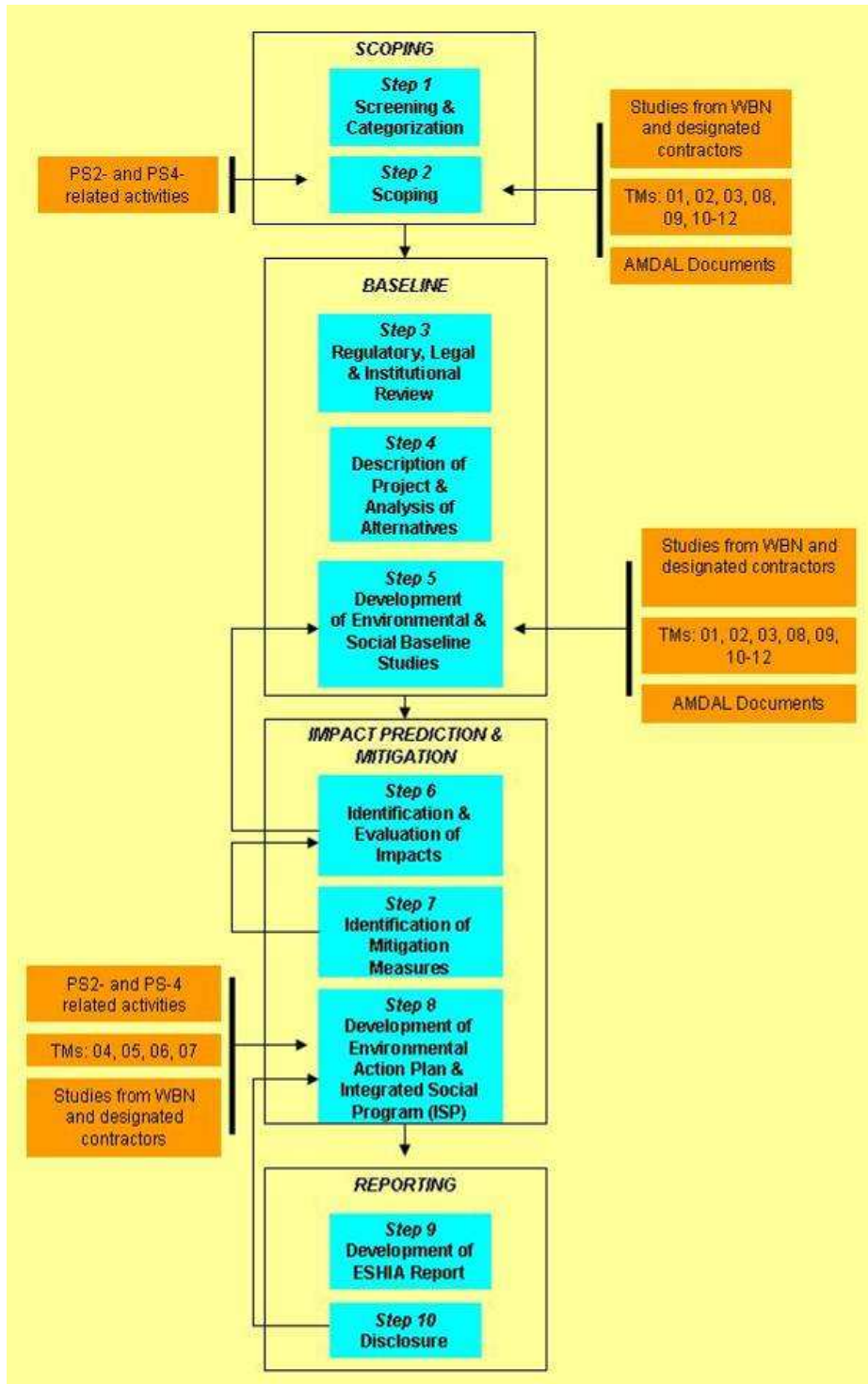
- Characterize the proposed WB Project's environmental, social, health and safety aspects and impacts
- Develop relevant and realistic mitigation measures concerning significant impacts
- Compile a robust global Environmental and Social Management Plan (ESMP), which will include as appropriate: EHS monitoring and management plan, a Biodiversity Conservation Plan, and an Integrated Social Programme consisting of a Public Consultation and Disclosure Plan (PCDP), a Land Acquisition and Resettlement Action Plan (LARAP), a Community Social Assessment (CSA), a Community and Indigenous Peoples Development Plan (CIPDP) and a Cultural Heritage Preservation Plan (CHPP)

↳ Development of 14 additional baseline studies:

- Terrestrial biodiversity
- Marine biodiversity and Sagea Lagoon ecology
- Community Social Assessment
- Public Consultation and Disclosure Plan (PCDP)
- Community and Indigenous Peoples Development Plan
- Cultural Heritage
- Land Acquisition and Resettlement Action Plan (LARAP)
- Greenhouse Gas Emission Assessment

- Food Habits and Food Consumption Study
- Residue Management Impact Assessment
- Categorization of Karst limestone deposit
- Strategic advice, project management and ESHIA Report
- CoW watersheds survey
- Health Impact Assessment
- Labor and working conditions

Following the project management plan, the BFS technical studies are ongoing and ESHIA is planned to be finalized early 2011 in accordance with the process set out below.



1.2. AMDAL

The AMDAL (*Analisis Mengenai Dampak Lingkungan*) is the Environmental Assessment process which is required under Indonesian Law (*Environmental Management and Protection, Article 22, 2009*). The AMDAL consists of several documents including the Terms of Reference (*Kerangka Acuan*), Environmental Impact Statement (ANDAL) and Environmental Management and Monitoring Plan (*RKL & RPL*).

The Contract of Work ("CoW") was signed by the Indonesian President in 1998. Since that time, the WB Project has been significantly disrupted by external events. The most notable of these events was certain ambiguities arising in relation to the Forestry Law (No 41/1999), which will be explained further in this response.

These disruptions and delays led to a situation in which the submission of studies required by the CoW could be made, but there was insufficient time for them to meet international standards. Thus, documents for the AMDAL legally required as part of the CoW Agreement were submitted as required (the *Kerangka Acuan* was submitted, as required, to the Provincial Government of North Maluku in May 2008 and the ANDAL and RPL/RKL, or 'Environment Impact Analysis documents' as referred to in the complaint, were subsequently submitted in February 2009), but there was insufficient time and information available to ensure that these documents met the IFC/MIGA performance standards.

Following public hearings, the Indonesian public authorities approved the AMDAL documentation in June 2009.

1.3. ESIA

The Environmental and Social Impact Assessment ("ESIA") was developed specifically for the exploration and feasibility phase of the WB Project, as part of the application to MIGA for insurance during this period. The preparation of the ESIA commenced in February 2010 as part of the application process for MIGA insurance. The document was therefore developed to address the potential environmental and social risks which might arise during this study phase only (which is the only phase covered by the MIGA policy - - construction and production activities being specifically excluded). Accordingly although the ESIA does discuss some of the significant issues that are anticipated for the construction, operations and closure phases of the WB Project, the document is not meant to be a comprehensive assessment of, and subsequent mitigation strategies for, all risks which may arise during all these phases, and of all existing documents which have been made available.

Consistent with the above purpose, the main objectives of the ESIA were:

- to document early 2010 conditions at the WB Project site,
- to assess in general terms the history and impacts of the past 14 years of development,
- to document impact mitigation measures that have been, or will be, implemented.

The intention of the ESIA was therefore to cover the present and immediate future conditions in the interim period and prior to WB Project construction start up only.

Accordingly, the ESIA study provided to MIGA summarizes environmental and social impacts during the pre-construction (exploration and feasibility) activities at the WB Project.

It has largely been based on data available from:

- the first round of baseline studies conducted prior to ERAMET participation in the BP Project (1999 to 2006)
- the Indonesian environmental and social impact analysis (AMDAL) process completed in June 2009
- information available from the earliest findings of a series of baseline studies being implemented according to Equator Principles Standards within the framework of WB Project Bankable Feasibility Study Environmental, Social and Health Impact Assessment ("**BFS ESHIA**").

This ESIA study serves as an advance, abbreviated, and focused version of the BFS Environmental and Social and Health Impact Assessment ("**ESHIA**"), for the purposes of pre-testing the ability of the WB Project to complete the Equator Principles/Performance Standards Environmental and Social Clearance process. It was never intended that the ESIA act as a substitute for the comprehensive ESHIA, which is currently being undertaken and details of which are set out below.

1.4. ESHIA

Following audit conducted by the Sustainable Development Division of ERAMET in 2008, it was decided as of 2009, to launch additional surveys and studies to complete the AMDAL documents and databases (water, air, soil, sub-soil, biodiversity, fauna, flora, etc.) and to continue collecting information on local communities and culture. These studies and surveys include:

- Terrestrial biodiversity
- Marine biodiversity and Sagea Lagoon ecology
- Community Social Assessment
- Public Consultation and Disclosure Plan (PCDP)
- Community and Indigenous Peoples Development Plan
- Cultural Heritage

- Land Acquisition and Resettlement Action Plan (LARAP)
- Greenhouse Gas Emission Assessment
- Food Habits and Food Consumption Study
- Residue Management Impact Assessment
- Categorization of Karst limestone deposit
- Strategic advice, project management and ESHIA Report
- CoW watersheds survey
- Health Impact Assessment
- Labor and working conditions

The WB Project has engaged international experts and institutions as well as Indonesian experts and institutions to complete these studies and integrate the results in a comprehensive document: the ESHIA.

The ESHIA is currently being developed for the construction, operations and closure phases of the WB Project at international level and is part of the BFS. The ESHIA is being developed in parallel with the engineering studies required to develop a detailed capital and operational expenditure budget for the purposes of obtaining financing. By developing these two processes simultaneously it is possible for the environmental, social and health impacts of the WB Project to be integrated into its engineering planning, thereby using the assessment as a key reference point for engineering decisions.

WBN is confident that any legitimate concerns expressed in the CAO complaint will be addressed as part of the risk/impact assessments in the ESHIA and in subsequent management and mitigation plans.

Upon completion of the ESHIA document (which, as referred to above, is planned to be finalized in 2011), this ESHIA document will be made publicly available and the WB Project welcomes comments relating to its plans from all stakeholders and interested parties.

2. WB Project Contract of Work

The CoW for the WB Project was signed by President Suharto in 1998. The original areal of entitlement for the CoW was 120,500 hectares. Through a series of relinquishments, as required under the CoW system, the final CoW area (which allows for the exploitation of the nickel resource) is 54,874 hectares.

Under the Ministry of Forestry classification for Forestry areas, the areal breakdown within the CoW is as follows:

- Protection Forest – 25,118 ha
- Limited Production Forest – 13,026 ha
- Production Forest - 6,807 ha
- Convertible Production Forest – 8,650 ha

Additional non-forestry land is also found within the CoW on the coastal area.

The current Exploration Permit (S.675/Menhut-VII/PW/2008) allows for the WB Project activities in all forestry areas as classified above.

3. Application of Forestry Law

As noted above, certain ambiguities arose under the Forestry Law in Indonesia. As this area is the subject of some claims made in the complaint, WBN considers that it is important to explain the actual and correct position, which is as follows:

Forestry Law No 41, 1999, defines Protection Forest as “*a forest area having the main function of protecting life-supporting systems for hydrology, preventing floods, controlling erosion, preventing seawater intrusion and maintaining soil fertility*”.

Forestry Law No 41, 1999 also defines Conservation Forest as “*a forest area with specific characteristics, having the main function of preserving plant and animal diversity and its ecosystem*”.

There are no Conservation Forest areas within the CoW. The closest Conservation Forest is the Aketajawe National Park, which lies 3.2km to the west of the western most boundary of the CoW. The Lolobata National Park, also classified as a Conservation Forest, lies 31.5km to the north east of the CoW. There is no drainage from the CoW into either National Park.

Forestry Law No 41, 1999 also stipulates that ‘open cast mining’ would not be allowed in ‘Protection Forest’. However in 2004, Presidential Decree in lieu of law No 1, 2004, and subsequent Forestry Law No 19, 2005, provided an exemption to 13 companies (and not 6 companies, as referred to in the complaint), which held Contracts of Work that had been approved prior to the 1999 Forestry Law, the WBN being one of these 13 companies.

4. Response to the CAO Complaint

With the above background in mind, the following responses have been prepared to specific allegations made in the complaint and are based on the baseline environmental and social studies, engineering and mining studies and operational planning currently available.

4.1. Identification of Policy violations and environmental risks

PS1 Social and Environmental Assessment and Management Systems

- *Alternatives* - The ANDAL document (section 2.5) does contain a list of alternatives and a discussion on the risks of each alternative.
- *ESIA* - The intention of the ESIA document was to cover specifically the exploration and feasibility phases that correspond to the MIGA insurance coverage period, thus significant detail is not provided in the ESIA as regards the additional phases of the WB Project but will be included in the BFS ESHIA document currently being prepared.
- *Sampling Methods* - As disclosed in the ANDAL and Exploration and Development ESIA, analytical results of baseline data for surface water, groundwater, marine water and sediments were provided by KAN (Komite Akreditasi Nasional – National Accreditation Committee of Indonesia) accredited laboratories, with the analysis of water samples, conducted in accordance with standard methods of the American Public Health Association. The updated terrestrial and marine biodiversity survey will be integrated into the ESHIA.
- *Impact Assessment* – As described above (in §1.), the WB Project complies with IFC performance standards and the ESHIA is currently being developed at to appropriate international level to reflect such compliance and ensure that it is maintained moving forwards. A gap analysis was conducted in June 2008 on what was to be submitted in the ANDAL and what would be required for the ESHIA. The analysis identified 14 additional studies, most of which have been launched to date.

Forest Clearing – The total area to be used for mining and processing for the first 30 years will approximate 2,650 ha, which corresponds approximately to 5% of the total area of the CoW. If operations continue for up to 50 years, the clearing could be extended to 4,650 ha (i.e. 8.5% of the total area of the CoW). Detailed mining plans are still under development.

WBN recognises the ecological functions that forest provides and is committed to mitigation of the impacts resulting from forest clearing. Detailed water management plans designed to control flows and limit run-off are being developed as part of the ESHIA. In addition, rehabilitation trials in the lower montane forest (i.e. the habitat responsible for much Protection Forest) and lowland forests have been conducted since 2007 in order to collect valuable information to ensure a successful and progressive rehabilitation program once mining commences.

PS3 Pollution Prevention and Abatement

- *Sedimentation*

Sedimentation has been identified as potentially have a significant impact. The ANDAL has assessed the sedimentation risk based on USLE (Universal Soil Loss Equation) and HEI (Hazardous Erosion Index). In addition a specific study for the ESHIA will characterize watersheds and investigate impacts on surface and groundwater hydrology as a result of forest clearing. Modelling of watersheds is to be used to fully assess impacts related to flow regimes and sedimentation on downstream environments. The modelling will drive specific mitigation and management strategies on water flow and sediment control.

- *Unidentified risks of pollution*

- *Residue* – WBN recognises that the residue storage may potentially have significant impact. In accordance with Indonesian Government Regulations (Government Regulation No85, 1999 regarding Hazardous Materials), the residue was submitted to TCLP testwork. The results of this testwork were presented in the ANDAL V-62. The potential for groundwater impacts, which were presented in the ANDAL 5.5.3, was based on information available at the time of the preparation of the ANDAL. A specific study has since been commissioned on Residue Management as part of the ESHIA. The study will include but not be limited to an international benchmarking of residue management and more detailed assessment of surface and ground water impacts.

- *Asbestos* – Asbestos is suspected in a geologic unit at the bedrock below the saprolite ore zone. The mining operation will be focused on the ore bodies above the bedrock layer, however road cuttings may expose bedrock with asbestos forming minerals. As part of the ESHIA development, a risk analysis will be conducted which identifies and evaluates the potential for exposure of asbestos forming minerals and develops management strategies to minimise the impacts on workers and the community.

- *Discharge Water* – The discharge of industrial effluent is assessed in the ANDAL 5.5.4. Wastewater was generated as part of the first Pilot Plant trials and analysed and assessed in accordance with the appropriate Indonesian Regulation (State Minister for Environment Decree No. 9 year 2006 regarding Effluent Standards for Nickel Mining Activity). A more detailed assessment of the wastewater discharge will be made as part of the ESHIA, based on updated information on the physical and biological environments and physical and chemical characteristics of the wastewater (including information from additional baseline studies) as well as numerous additional Pilot Plant trials.

- *Air Emissions* – Ores will be processed in the hydro-metallurgical plant. To support the main facility, WBN will construct and operate diverse extra units including sulphuric acid plant, lime plant, power plant (steam-based) and back-up boilers. In December 2009, WB Project environment and technical teams

discussed together the different emissions from hydro-metallurgical process and supporting units and determined what should constitute the WB Project requirements according to the results of an international regulatory benchmark. Emissions from the sulphuric acid plant were assessed in the ANDAL, 5.7.1. The computer modelling of emissions used information available at the time. An updated model, with more accurate information on planned location of stacks, stack heights and emissions rates will be conducted as part of the development of the ESHIA.

In parallel, air-emission from the mining activities is being assessed in detail as part of the ESHIA BFS preparation.

- *Groundwater in Limestone Quarry*

Groundwater is assessed in ANDAL 5.3.6.5. The conclusion is that groundwater changes may potentially have a significant impact and more information is required to determine the extent of the changes. A specific study on the impacts of limestone quarrying is part of the ESHIA. The study will include a detailed assessment of the groundwater characteristics and a computer model to evaluate the anticipated changes in groundwater as a result of quarrying.

- *Project Plans –*

- *Sewage Treatment* – Sewage treatment facilities for construction and operations are being designed to meet effluent quality standards stated in IFC EHS Guidelines for Mining.

- *Sedimentation* – Sedimentation has been discussed previously and is a subject for further assessment as part of the development of the ESHIA.

- *Zero discharge* – Mining waste (to be differentiated from industrial waste to which the following section is referring) management will vary according to site constraints and will be compliant with IFC EHS Guidelines for Mining. Potential environmental impacts include groundwater and surface water contamination due to sedimentation in mining areas, as developed earlier in this document, but there is no potential for the formation of Acid Rock Drainage, which is commonly associated with sulphidic ore bodies. The cobalt-nickel ores that will be extracted have been weathered (or exposed to oxygen and water) for over hundreds of thousands of years.

- *Residue Storage Facility* – The ore processing and metals extraction process was designed and optimized specifically for the WB Project site, with pilot testing beginning in 2006 and continuing to the present at ERAMET's research facility in France. The hydrometallurgical process will generate two streams of solid residues: iron residue and manganese residue. The two solid residues have been proved to be TCLP compliant. The ANDAL documentation provided a mass balance of all inputs and outputs in ore processing, including water, assessed and selected the environmentally preferred alternative to wet storage of slurry in

storage reservoirs and dams, and the design features of the Residue Storage Facility include an impervious clay layer. As mentioned previously, a specific study on Residue Management is part of the development of the ESHIA, in order to ensure compliance with all relevant international standards and guidelines for residue storage. Bottom barrier and cover designs will be key components of this evaluation as well as the water collection, the operating sequences, the leaching dynamics and the biodiversity management.

- *Residue Transport* – Detailed design is still be conducted for the transport of residue. Potential impacts associated with residue transport (i.e. relating to biodiversity, water quality, air quality, noise, etc) will be examined as part of the ESHIA.

- *Pollution of Water Sources and the Sea*

There will be no disposal of solid residues to the sea. This option was investigated in the pre-feasibility stage of the WB Project and was rejected. After careful assessment of the surrounding risks, the decision was made to store residues on land, in a dewatered state.

PS5: Land acquisition and Involuntary Resettlement

- *Land Acquisition and Resettlement*

In accordance with PS5 (Land acquisition and involuntary resettlement), WBN will mitigate project impacts from activities that cause physical and economic displacement of populations or villages.

The first phase of the land acquisition process, which includes community consultation and negotiation, land survey, claimant identification, verification and census, commenced in early 2009. In parallel with the land acquisition process, the land in question must be converted from Convertible Production Forest to areas defined as ‘other use’, in order for WBN to legally acquire the land. This process, which involves the Forestry Department at all levels of government (i.e. local, provincial and central) is ongoing.

WBN is committed to, wherever possible, avoiding resettlement. Thus far, no resettlement has been required.

If project plans are to change in the future, a full social and environmental assessment will be conducted in order to evaluate the impacts associated with the change. Although WBN is committed to avoiding resettlement, all potential impacts must be taken into account in the decision making process. If WB Project plans do change and resettlement becomes unavoidable due to other more significant environmental and social impacts, then WBN is committed to following, and will follow, PS5 and PS7 with respect to resettlement.

PS6: Biodiversity Conservation and Sustainable Natural Resources Management

- *Biodiversity Information*

Following the compilation of studies prepared for the ANDAL submission, WBN recognised that there were some information gaps. Additional field studies have subsequently been conducted as part of a Terrestrial and Marine Biodiversity Impact Assessment. The results of this study will form part of the ESHIA document.

- *Critical Habitats*

The identification of Critical Habitats is not required under Indonesian Government legislation regulating the AMDAL. Previous studies have indicated that Karst Cave ecosystems could possibly fit the 'Critical Habitat' definition, however this is not yet conclusive. Terrestrial and Marine Biodiversity Impact Assessments are being conducted as part of the ESHIA development and will determine if in fact the Karst Caves and other ecosystems meet the IFC/MIGA definition of "Critical Habitat". If critical habitats are identified then WBN will assess its plans in those locations and determine (using objective data, scientific methodology and analysis) the potential for a measurable adverse impacts on the ability of the habitat to maintain its high biodiversity value. If the analysis shows adverse impacts are likely to occur in these areas, then WB Project plans will be modified to avoid or further mitigate impacts in such areas. The Biodiversity Impact Assessments are being conducted by international biodiversity specialists, in conjunction with a team of highly respected Indonesian scientists.

- *Protection Forests*

The CoW area includes four Ministry of Forestry classification types and WBN is permitted to conduct current activities in all of them. There are no Conservation Forests within the CoW. WBN recognises that it is a stakeholder for the Aketajawe National Park, and continues to work closely with the Aketajawa-Lolobata National Park Agency at a Provincial Level. The issue of a buffer zone has not been raised in discussions thus far, however it may be appropriate for future management of the National Park. This would be a matter that would need to be considered in conjunction with the National Park Agency.

- *Forest Rehabilitation*

As previously mentioned, WBN has been conducting rehabilitation trials in lower montane and low lowland habitats since 2007. These trials focus specifically on the use of tree species sourced from the surrounding forest and their ability to adapt to disturbed soils. To date trials have shown a 90% survival rate for over 7,000 tree seedlings planted from 19 species. The next five years will be used to continue refining and improving rehabilitation methods.

These encouraging results can also be viewed in conjunction with ERAMET experience in New Caledonia, where new mining methods have been developed since the 1970s to reduce the environmental impact of its activity, and surveys have been carried out with the IRD to diversify the pioneer local species and restore vegetation cover of mining sites

(a technique has been developed for revegetation by hydraulic seeding in association with SIRAS Pacifique).

- *Forest Clearing*

The assessment of the impacts of forest clearing in the ESIA is commensurate with the level of risk during the exploration and feasibility stage. The cumulative impacts of forest clearing during Construction and Operations will be detailed in the ESHIA.

- *Cleared Timber*

The re-use of cleared timber as part of a community based timber industry is one option that has the potential to add value to the timber resource and simultaneously create additional benefits for the community. It is proposed to only harvest the productive timber that is felled as part of clearing for WB Project activities. As this would occur within the CoW, WBN would be able to manage the process closely, in conjunction with the relevant Government Authorities. However if there is significant stakeholder concern with this option then WBN would consider other alternatives. It should be noted that WBN has no current intention to apply for a permit to sell wood and is extremely unlikely to apply for such permitting in the future.

- *Decline in Biodiversity*

WBN recognises the global significance of the biodiversity on Halmahera Island. The WB Project is located in close proximity to the Aketajawe National Park, which has an area significantly greater than the WBN CoW (i.e. the Aketajawe National Park is approximately 77,000ha). WBN plans to continue to work closely with the National Park Agency on matters of biodiversity.

WBN will be addressing the three impacts on forestry biodiversity identified by the complaint, along with other impacts including cumulative and indirect impacts, as part of the Terrestrial Biodiversity Impact Assessment which will form part of the ESHIA.

PS7: Indigenous Peoples

- *Forest Tobelo*

Several Studies have been conducted to understand the Tobelo Forestry Community, their society, culture and way of life including their connections with the surrounding environment and natural resources and their nomadic movements.

The studies have found that the Tobelo Forestry Community can be broadly categorised into two groups. The first group are those Forest Tobelo who have been resettled, as a result of Indonesian Government Programs of the 1970s and 1980s, but may still return regularly to old sites in the Forest. The second group remain nomadic and identify themselves as *O hongana ma nywa* or 'forest people'. The *O hongana ma nyawa* are not unified and have divided some of the forest areas of Central and Eastern Halmahera amongst themselves. Although total numbers are hard to determine, knowledgeable sources estimate a total of 100 individuals.

As part of exploration activities, WBN has had intermittent and irregular interaction with the Tobelo Forestry Community. These interactions have generally been of a peaceful nature and typically led to the exchange of food such as processed rice, for the forest produce of the Tobelo Forestry Community, such as bananas and cassava.

Currently WBN recognises the Tobelo Forestry Community as a vulnerable group within the WB Project Affected Communities. As such they require special attention in terms of consultation and community development. Assessment of potential impacts on their lifestyle and livelihood, along with plans for on-going consultation and community development relating to the Tobelo Forestry Community will be documented as part of the ESHIA.

PS8: Cultural Heritage

- *Cultural Heritage Assessment*

The first preliminary Cultural Heritage survey commissioned by WBN was conducted in 2001. The survey identified one specific site of cultural heritage, which lay outside the CoW. In 2009, community focus group discussions, as part of the Community Social Assessment, confirmed the results of the 2001 survey, and identified several other locations of cultural heritage.

A Cultural Heritage Screening has been commissioned as part of the development of the ESHIA. Using local and international specialists, this study will determine if a Cultural Heritage Assessment is required. The outcome of the Screening and/or the Assessment, if required, will be a Cultural Heritage Preservation Plan that includes a Chance Find Procedure.

Current exploration and feasibility activities will not impact on already identified sites of cultural heritage. Although exploration and feasibility activities are considered low impact, WBN has already implemented a procedure for Land Clearing that includes identifying, within the zone of clearing, any sites of cultural value based on discussions with community representatives. Thus far no such areas have been identified.

4.2. The matter of consultation and community involvement

During public consultation as part of the AMDAL process in May 2008 and again in April 2009, local and national NGOs including WALHI (Friends of the Earth Indonesia) were invited and subsequently attended the meetings. They were provided with numerous occasions to express their views and make comments on the WB Project. These comments were subsequently noted in the submission of the ANDAL document.

During the preparation for the WBN/MIGA consultation with local NGOs in Ternate in June 2010, an attempt was made to invite the head of the North Maluku branch of WALHI. However this did not occur as it is believed that the recently appointed leader of

the branch was not in Ternate at the time. Thus the former leader of this organization was invited to share his knowledge and his experience during his time as leader of the organization.

During meetings in the Cemara Hotel on June 14, 2010, the national NGOs JATAM, KIARA, WALHI, ICEL, KAU, AMAN, FPP, HuMA, Birdlife, WWF, LATIN, Forest Watch and Greenpeace were invited for discussions on the project with WBN and MIGA. Unfortunately, the national branch of WALHI along with several other NGOs elected not to engage in dialogue, preferring instead to hold a demonstration outside of the Cemara Hotel. WBN considers this situation regrettable as we welcome comments and concerns from all interested parties, especially during the planning and development stage of the WB Project.

4.3. The Open Information Problem

WBN recognises that providing access to information to Project Affected Communities in an electronic format is not appropriate.

During the exploration and feasibility stage WBN consults on a daily basis with those communities directly affected by WB Project activities. In addition WBN holds regular Community Forums (held within villages) in which the status of the WB Project is discussed and details of current activities and potential impacts are disclosed. At the end of each such forum, the floor is opened for discussion on topics of community concern which relate to the WB Project.

In addition, WBN has developed an Information Centre in order to provide further disclosure of the WB Project to Project Affected Communities, Government Officials and interested parties. Since the Information Centre officially opened in December 2010, it has seen over 650 visitors, including local employees, community groups and individuals, school groups and Government Officials.

WBN is committed to free, prior and informed consultation with Project Affected Communities. WBN will continue to disclosure of information to Project Affected Communities in a manner that is accessible, understandable and culturally acceptable.

4.4. Economic, political risks and other Conflicts

Indonesian partners: WBN Corporate is committed to a high standard of social and environmental management, and remains committed to using the IFC/MIGA Performance Standards as a basis for its operations. WBN operates in compliance with the ERAMET Code of Ethics and as such the requirements of this code apply to the activities undertaken by it for the WB Project.

- *Social Risk*

- WBN recognises the rights of local communities to access forest resources. The Community Social Assessment, Forest Tobelo Ethnographic studies, Baseline Biodiversity studies and a Food Habits and Food Consumption study and an Ethnobotany study will complete background information on the use of forest resource by the local communities. This information will be used in conjunction with Project Plans to assess this impact and to develop mitigating strategies, in consultation with local communities, in order to avoid social conflict related to any perceived restriction on access to the forest resources.

- The Canggungelo and Boki Maruru (or Batu Lubang) cave system, located in the Sagea Limestone Formation are recognised by WBN as having high cultural and environmental value. Although the cave system lies outside of the CoW, WBN has identified blasting as having a potential impact on the system from its proposed quarrying operations. As part of the development of operational plans for the quarry, a specific acoustic study will be conducted and the results reported in the ESHIA.

- WBN is aware that any changes to environmental conditions, as a result of its operations (or perceived to be from its operations) may lead to potential tension and potential conflict with Project Affected Communities. WBN is committed to a high standard of environmental management, using the IFC/MIGA performance standards as basic guidelines from which to begin to develop its operational plans. In addition WBN is committed to disclosing environmental and social risks and management strategies for those risks in a free, prior and informed manner and to encourage joint decision making. By communicating openly and honestly and developing trust with Project Affected Communities, WBN aims to avoid, or at the very least minimise, conflict which could potentially arise as a result of perceived negative impacts of the WB Project.

- *Economic Risks*

The economic benefits of the WB Project for the Project Affected Communities will be significant and measurable. The most apparent benefit, identified by Project Affected Communities during focus group discussions and reinforced by the following data, is employment. In 2009, the WB Project employed over 900 men and women from North Maluku province (as casual or permanent employees). This equated to over US\$2.5 million in wages being injected into the local economy. The WB Project, through WBN and its Contractors, is currently the single largest employer in Central Halmahera regency.

Business opportunities associated with the WB Project also provide significant stimulus for economic growth in the two regencies in which WBN operates and also in a provincial context. During 2009, over US\$2 million was spent on goods and services supplied from around North Maluku, including over US\$250,000 for fruit, vegetables and fish from Project Affected Villages.

Indirect economic benefits include payment of taxes, training and development of employees and contractors, and benefits associated with the Community Development Program. In 2009 over US\$4 million was paid in taxes to the regency and provincial governments, and US\$150,000 was spent on training and development of local employees.

During 2009, the WBN Community Development Programs included 22 tertiary scholarships (in addition to the existing 10 scholarships from 2008), teacher training programs for primary and high school teachers, educational tools for 21 schools in the Project Affected Communities, laboratory equipment for the provincial university, a dormitory for a high school in one Project Affected Community, additional medical support through the placement of doctors in both Central Halmahera and East Halmahera and additional medical supplies, sanitation units in 3 Project Affected Villages, construction of a *Posyandu* (i.e. young mothers and baby health clinic) in 8 Project Affected Villages, assistance with agricultural and fishery business ventures, electrical supply installations in 4 Project Affected Villages, infrastructure assistance in the form of road maintenance and the construction of a jetty in one Project Affected Village, and more. The total expenditure for the Community Development Program in 2009, at pre-construction stage, was over US\$1.5million.

In all, over US\$10 million has been spent in the Province of North Maluku. Due to the fact that most of the current WB Project facilities are based in Central Halmahera Regency and the majority of the 900 local employees are from Central Halmahera, it is expected that a significant proportion of the expenditure went to those Project Affected Communities in Central Halmahera.

To put the local expenditure into perspective, the Gross Domestic Product for Central Halmahera for 2009 was approximately US\$37million¹. Although a direct comparison can not be made, it is clear that WBN is already having a significant positive economic impact on the livelihoods of Project Affected Communities, whilst still in the exploration and feasibility stage.

- *Political Risks*

WBN operates in compliance with the ERAMET Code of Ethics which has been written in line with the OECD Anti-Bribery Convention (17 December 1997). In addition, WBN is currently developing its own Code of Conduct which strictly prohibits corrupt practices.

Conclusion

WBN appreciates the opportunity to make this submission and hopes that these responses assist in clarifying the various claims which have been made. On our reading of the complaint, it appears that the majority of these claims originate from an incorrect

¹ This figure is taken from 'Trends of the Selected Socio-Economic Indicators of Indonesia', *Badan Pusat Statistik*, August 2010 (<http://dds.bps.go.id/eng/index.php>), using an exchange rate of rupiah 10,000:US\$ 1.

assumption that the AMDAL and ESIA documentation was intended to be comprehensive and final. We hope that this submission assists in clarifying that this is not and was never intended to be the case. The AMDAL documentation was intended to meet local Indonesian legislative requirements only and could be completed in accordance with the applicable international standards within the timeframe required due to a number of external issues facing the WB Project at the time, and which have since largely been overcome. The ESIA was prepared solely for the purposes of progressing the exploration and feasibility stage and the accompanying MIGA insurance, which in fact only covers such initial stage and specifically excludes construction and operations. In terms of developing the ESIA into a more comprehensive package appropriate for the WB Project moving forward, there will be an ESHIA, and this will logically and normally be prepared during this first stage. Consistent with this position is the fact that the MIGA policy itself sets out the environmental and social obligations of WBN as it moves forward in progressing the WB Project, which includes preparation of a comprehensive ESMP, land acquisition and compensation plan and BFS. WBN will of course comply with these requirements and remains committed to finalizing the ESHIA in accordance with the IFC Performance Standards as detailed in this submission.

In view of the above, we believe it is clear in the individual responses (included in this submission) to each claim made, that many claims have been made prematurely and will be addressed when the full and comprehensive BFS ESHIA is finalized. To the extent that other claims have been made which do not relate to omissions in earlier documentation (which are being addressed in current documentation), for example that tailings will be disposed into the sea, these claims are not consistent with, nor based on, the actual facts. Again, we hope that this submission adequately clarifies the correct facts of the situation and would of course be happy to provide further clarification should it be required.

We understand that the objective of this stage of the CAO Ombudsman process is to clarify issues raised by the complainant, gather information from the various stakeholders and help the parties determine whether and how they may be able to resolve the complaint. We believe that in this response we have indicated the various activities and tasks we will be undertaking which we believe should significantly alleviate, if not resolve, all of the issues raised in this complaint. We will continue to work constructively toward this outcome and would of course be happy to discuss with you and the complainants/affected parties any other activities or undertakings which you believe are necessary or would otherwise assist in comprehensively resolving the complaint which has been made.

PT Weda Bay Nickel
29 October 2010