



CAO ASSESSMENT REPORT

**Complaint regarding IFC Investment in Avenell Engineering Services Ltd
(Project #32750)**

Roku Village, Papua New Guinea

February 2015

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

About the Compliance Advisor Ombudsman

The Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA), the private sector arms of the World Bank Group. CAO reports directly to the President of the World Bank Group, and its mandate is to assist in addressing complaints from people affected by IFC/MIGA supported projects in a manner that is fair, objective and constructive and to enhance the social and environmental outcomes of those projects.

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

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LIST OF ACRONYMS

AES	Avenell Engineering Services Ltd.
CAO	Compliance Advisor Ombudsman
IFC	International Finance Corporation
MIGA	Multilateral Investment Guarantee Agency
PNG	Papua New Guinea

1. SUMMARY

In September 2014, CAO received a complaint from the Kuriu Clan of Roku Village in Papua New Guinea (PNG), with the support of a local consultant. The complainants raised concerns about impacts of IFC's investment in Avenell Engineering Services (AES) (the "Company"), an electrical engineering company. After learning about the different avenues open to them through CAO, the parties did not choose to engage in a voluntary CAO dispute resolution process. Hence, the complaint is being referred to CAO's Compliance function for appraisal of IFC's environmental and social performance, as per CAO's Operational Guidelines. This Assessment Report provides an overview of the assessment process, including a brief description of the project, the complaint, the assessment methodology, and next steps.

2. BACKGROUND

2.1. The Project

According to IFC project documentation, Avenell Engineering Systems Ltd. was established in 1997 as an electrical engineering business in East New Britain Province of Papua New Guinea specializing in power generation supply and assembly. The Company subsequently diversified its interests into plant and machinery hire, construction, port development and operations.

IFC committed a US\$4 million loan to the company to fund AES's project of a capital expenditure program which includes the acquisition of plant and equipment for port operations, its construction activities as well as completion of the wharf. However, the IFC loan was never disbursed and was subsequently cancelled at AES's request.

2.2. The Complaint

A complaint was lodged with CAO in September 2014 by the Kuriu Clan of Roku village in Papua New Guinea, with support from a local consultant. The complainants' main concern relates to what they identify as an illegal occupation of their customary land by AES, and in turn to IFC's due diligence process which they argue failed to appropriately identify them as the legitimate land owners.

At the time the complaint was lodged, the Kuriu Clan also sought legal recourse to reclaim their land. They state that the Central Provincial Lands Court ruled in favor of the Kuriu Clan, and that AES was ordered to cease paying royalties to the illegitimate owners. Hence, the complainants demand that their land be returned to them, and compensation be paid for damage already done.

3. ASSESSMENT

CAO determined that the complaint met its eligibility criteria in October 2014 and commenced an assessment of the complaint. The purpose of CAO's assessment was to clarify the issues and concerns raised by the complainants, to gather information on how other stakeholders see the situation, and to determine whether the CAO Dispute Resolution or Compliance role would be initiated at the choice of the parties.

3.1. Methodology

During assessment, CAO does not gather information to make a judgment on the merits of the complaint. (See Annex A for a complete description of the CAO complaint handling process.)

CAO's assessment of this complaint consisted of:

- A review of project documents;
- Telephonic discussions and email correspondence with the Kuriu Clan's consultant;
- Email correspondence with the Company; and
- Discussions with the IFC project team.

CAO's assessment process typically also involves a field visit to meet with the affected community and the Company to gain a better understanding of the situation. In this case, the CAO did not carry out a field trip for the assessment. This decision was based on the Company's clear indication that, having cancelled their engagement with IFC, they did not wish to engage with CAO either. As a consequence, the core objective of the assessment—to help the parties determine which CAO function they wish to initiate—was not served by a visit.

3.2. Findings

3.2.1. Complainants' Perspective

Further to the issues raised in the original complaint, during the assessment, the complainants raised additional concerns:

- Due to extensive land clearing carried out by the company, and with no restorations plans implemented, there is continuous soil erosion by wind and rain.
- Local habitat of badicoot rats, wallabies, butterflies and native eucalyptus trees have been destroyed.
- Fish and crabs have migrated to breed in other areas, as their mangrove habitat has been irreversibly damaged.
- The Kuriu indigenous people have not be appropriately recognized and their cultural heritage has not be respected by AES.

3.2.2. Company Perspective

In the Company's view, they have complied with all procedures in obtaining their land lease and carrying out its operations. They further advised CAO that as they had not used their IFC loan, they do not wish to participate in a CAO assessment.

3.2.3. IFC

During discussions with IFC, CAO was informed that IFC's loan for the AES project was never disbursed, and at the Company's request, the proposed investment was cancelled.

3.2.4. Next Steps

Since a CAO dispute resolution process requires voluntary agreement to participate by the complainants and Company at a minimum, the case will be transferred to CAO's Compliance function for appraisal of IFC's performance in accordance with CAO's Operational Guidelines.

Annex A: CAO Complaint Handling Process

The Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA), the private sector arms of the World Bank Group. CAO reports directly to the President of the World Bank Group, and its mandate is to assist in addressing complaints from people affected by IFC/MIGA supported projects in a manner that is fair, objective, and constructive and to enhance the social and environmental outcomes of those projects.

The initial assessment is conducted by CAO's Dispute Resolution function. The purpose of CAO's assessment is to: (1) clarify the issues and concerns raised by the complainant(s); (2) gather information on how other stakeholders see the situation; and (3) help stakeholders understand the recourse options available to them and determine whether they would like to pursue a collaborative solution through CAO's Dispute Resolution function, or whether the case should be reviewed by CAO's Compliance function.

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

As per CAO's Operational Guidelines,¹ the following steps are typically followed in response to a complaint that is received:

Step 1: **Acknowledgement** of receipt of the complaint

Step 2: **Eligibility:** Determination of the complaint's eligibility for assessment under the mandate of the CAO (no more than 15 working days)

Step 3: **CAO assessment:** CAO conducts an assessment of the issues and provides support to stakeholders in understanding and determining whether they would like to pursue a consensual solution through a collaborative process convened by CAO's Dispute Resolution function, or whether the case should be handled by CAO's Compliance function to review IFC's/MIGA's environmental and social due diligence. The assessment time can take up to a maximum of 120 working days.

Step 4: **Facilitating settlement:** If the parties choose to pursue a collaborative process, CAO's dispute resolution function is initiated. The dispute resolution process is typically based or initiated by a Memorandum of Understanding and/or a mutually agreed upon ground rules between the parties. It may involve facilitation/mediation, joint fact-finding, or other agreed resolution approaches leading to a settlement agreement or other mutually agreed and appropriate goal. The major objective of these types of problem-solving approaches will be to address the issues raised in the complaint, and any other significant issues relevant to the complaint that were identified during the assessment or the dispute resolution process, in a way that is acceptable to the parties affected².

or

¹ For more details on the role and work of CAO, please refer to the full Operational Guidelines: http://www.cao-ombudsman.org/documents/CAOOperationalGuidelines2013_ENGLISH.pdf

² Where stakeholders are unable to resolve the issues through a collaborative process within an agreed time frame, CAO Dispute Resolution will first seek to assist the stakeholders in breaking through impasse(s). If this is not possible, the Dispute Resolution team will inform the stakeholders, including IFC/MIGA staff, the President and Board of the World Bank Group, and the public, that CAO Dispute Resolution has closed the complaint and transferred it to CAO Compliance for appraisal.

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

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

Step 6: **Conclusion/Case closure**