



CAO ASSESSMENT REPORT

**Regarding a complaint by Cradle of Life Bio-park in relation to
IFC's Tsodilo project (29378)**

September 05, 2013

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

About the CAO

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

CAO	Office of the Compliance Advisor Ombudsman
IDC	Industrial Development Corporation IDC
IFC	International Finance Corporation
MIGA	Multilateral Investment Guarantee Agency
REMDEC	Regional Mining Development and Environmental Committee

1. OVERVIEW

In April 2013, the owners of Cradle of Life, a privately owned bio-park and nature reserve area in the Badplaas district, Mpumalanga, South Africa, filed a complaint to CAO regarding alleged impacts of an application for prospecting rights brought by Tsodilo Resources Ltd (“Tsodilo”), an entity in which IFC has an equity stake. The CAO determined that the complaint met its three eligibility criteria and so began the assessment of the complaint in July 2013. In summary, the Complainant would welcome an opportunity to discuss the application for prospecting rights with Tsodilo. According to Tsodilo, this is premature given the fact that the application for prospecting rights is still pending determination by the Regional Mining Development and Environmental Committee (REMDEC). This Assessment Report provides an overview of the assessment process, including a description of the project, the complaint, the assessment methodology and next steps.

2. BACKGROUND

2.1 The Project

Tsodilo is a publicly listed exploration company (listed in Canada) currently exploring for diamonds, base and precious metals in Botswana and other parts of southern Africa. According to IFC project documentation, Tsodilo started off exploring for diamonds but has recently discovered what appears to be a promising copper/nickel deposit. Exploration of the diamond licenses is centred in an area where a previous exploration program discovered 19 kimberlites, four of which contained micro-diamonds. The company has discovered a further 9 kimberlites, bringing the total number of known kimberlites in this field to 28. Tsodilo is seeking IFC’s engagement (i) to assist in funding the continued exploration of the Project to reach a scoping study stage within a couple of years; and (ii) to provide environmental and social technical assistance to help develop the project in line with industry best practices. IFC made an equity investment of C\$5.0 million in the Tsodilo project which was approved in June 2010. As at finalisation of this Assessment Report, the total IFC equity investment is C\$7.0 million.

In the company’s March 2013 Annual Meeting of Shareholders report¹, Tsodilo presents the Barberton Au project around Barberton, South Africa as a new project for which they are processing a Prospecting Right Application. The right to prospect has been applied for by Idada Trading, of which Tsodilo hold a 70% share and control of the Board. The land covered in the application is immediately adjacent to, and includes sections of the Cradle of Life, the area of concern to the complainant. The application is currently being considered by REMDEC for assessment.

2.2 The Complaint

In April 2013, the owner of Cradle of Life filed a complaint to the CAO on behalf of themselves, local farmers and land owners. The concerns raised relate to a number of environmental and social issues allegedly arising from Tsodilo’s application to prospect, including loss of employment opportunities, loss of livelihoods, potential land degradation and pollution, inadequate capacity to compensate land owners, negative impact on the reserve status of the area and prospective investors. Furthermore, the Complainant alleges that the application conflicts with the 2008 listing of the area as a part of the first UNESCO

¹ AGM 2013 Tsodilo Resources Ltd (22nd March 2013)

World Heritage Site in Mpumalanga. Lack of adequate consultation by Tsodilo is also cited as an issue.

3. ASSESSMENT SUMMARY

3.1 Methodology

The purpose of this CAO assessment is to clarify the issues and concerns raised by the Complainant, to gather information on how other stakeholders see the situation, particularly Tsodilo, and to assess whether the Complainant and Tsodilo wish to engage in a facilitated dispute resolution process or wish the complaint to be subject to a compliance appraisal. The CAO does not gather information to make a judgment on the merits of the complaint during its assessment. (See Annex A for a complete description of the CAO complaint handling process.)

The CAO assessment of the complaint consisted of:

- reviewing project and other documentation;
- conducting confidential bilateral meetings, telephonically and in person, with the Complainant and Tsodilo representatives during July and August 2013;
- meeting IFC project team in July 2013 in Gauteng; and
- a project site visit in July 2013 in Badplaas, Mpumalanga.

3.2 Summary of Issues

In claiming potential environmental impacts, the Complainant alleges that Cradle of Life has for the past 14 years invested in the Badplaas area, purchasing large tracts of unproductive land for rehabilitation and returning it to its natural state. Believing that the area has unique geographical, geological and historical significance, the Complainant seeks to preserve the area and to develop a range of eco-tourism and preservation activities. The Complainant has already invested in this vision, establishing an eco-park, wild cat rehabilitation center, accommodation facilities, a visitors' center, museum, and restaurant. Further, an application has been brought to have the area declared a World Heritage Area, and it has recently been placed on the UNESCO World Heritage Tentative List. The Complainant strongly asserts that the application for prospecting rights brought by Tsodilo threatens his established business, the preservation of a unique and valuable environment, and the potential UNESCO World Heritage listing. The Complainant contends that no reserve area that is subject to active mining interests will be able to achieve World Heritage status. Failing to achieve this status will mean that the opportunities for livelihood and job creation will be lost. The Complainant further asserts that the natural environment will be irrevocably harmed by any mining activity within its boundaries.

Regarding social impacts, the Complainant claims that the Industrial Development Corporation (IDC) of South Africa was considering an investment in a large scale lemon farming business in the immediate area. According to the Complainant, this project, which would have created as many as 2100 permanent job opportunities for local residents, would supply lemon extract to the Coca Cola Company. However, the IDC has, as a direct result of the Tsodilo application for prospecting rights, decided to withdraw from this project. The Complainant is in possession of a letter to this effect from the IDC which lists the application for prospecting rights as one reason amongst others for withdrawing from the project.

Regarding IFC, the Complainant is of the view that IFC should not invest in entities which are not in the business of sustainable development and which cause negative environmental and social impacts. In particular, the Complainant raises concerns about the application of IFC Performance Standards 1, 4 and 6.

Regarding prospective investors, the Complainant alleges that it approaches MIGA for the necessary guarantees required to secure future investment. MIGA refused such guarantees on the basis that the dispute between the Complainant and Tsodilo must be resolved. As a result the Complainant claims that it has been unable to secure additional investment.

Lastly, the Complainant contends that an Environmental Impact Assessment was not concluded and, as a result, only limited impacts have been addressed.

Tsodilo is of the view that much of what the Complainant alleges falls squarely within the purview of the South African government as it considers the prospecting application. All the environmental and social impacts will be taken into account through that process and, as such, the correct avenue for having these concerns viewed is the applications process itself. While Tsodilo is not averse to meeting with the Complainant to discuss these concerns, Tsodilo is of the view that it would be premature to do so now since there is no determination regarding whether the application to prospect will be granted. In the event such application is granted, the process moving forward is a lengthy one, during which time Tsodilo will have to embark on certain consultation processes governed by the relevant process. Regarding IFC, Tsodilo claim that they are under no specific obligation to obtain IFC's permission in applying for the rights to prospect and there is no duty to specifically advise IFC of its intentions in this regard. IFC's involvement does create additional environmental and social standards with which Tsodilo have to comply.

4. NEXT STEPS

While the Complainant is willing to meet with Tsodilo at this time to discuss the application for prospecting rights, and while Tsodilo has no in principle objection to meeting with the Complainant, Tsodilo is not prepared to meet the Complainant at this time. The basis for this is that Tsodilo believe the complaint to be premature since the application for prospecting rights has not yet been determined. Further, any meeting prior to the awarding of a prospecting license would be speculative in nature. The complaint will be dealt with by CAO's compliance function and compliance appraisal will commence on publication of this assessment report.

ANNEX A. CAO COMPLAINTS HANDLING PROCESS

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

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

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

As per CAO's Operational Guidelines,² the following steps are typically followed in response to a complaint that is received:

- Step 1: **Acknowledgement** of receipt of the complaint
- Step 2: **Eligibility:** Determination of the complaint's eligibility for assessment under the mandate of the CAO (no more than 15 working days)
- Step 3: **CAO assessment:** "Assessment of the issues and provide support to stakeholders in understanding and determining whether they would like to pursue a consensual solution through a collaborative process convened by CAO's Dispute Resolution function, or whether the case should be handled by CAO's Compliance function to review IFC's/MIGA's environmental and social due diligence. The assessment time can take up to a maximum of 120 working days."
- Step 4: **Facilitating settlement:** If the parties choose to pursue a collaborative process, CAO's dispute resolution function is initiated. The dispute resolution process is typically based or initiated by a Memorandum of Understanding and/or a mutually agreed upon ground rules between the parties. It may involve facilitation/mediation, joint fact-finding, or other agreed resolution approaches leading to a settlement agreement or other mutually agreed and appropriate goal. The major objective of these types of problem-solving approaches will be to address the issues raised in the complaint, and any other significant issues relevant to the complaint that were identified during the assessment or the dispute resolution process, in a way that is acceptable to the parties affected³.

OR

² For more details on the role and work of CAO, please refer to the full Operational Guidelines: http://www.cao-ombudsman.org/documents/CAOOperationalGuidelines2013_ENGLISH.pdf

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

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

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

Step 6: **Conclusion**/Case closure