



Ombudsman Assessment Report

Complaint regarding IFC's Cambodia Airport II Project

August 2010

*Office of the Compliance Advisor/Ombudsman
International Finance Corporation and
Multilateral Investment Guarantee Agency*

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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 projects in a manner that is fair, objective, and constructive and to enhance the social and environmental outcomes of projects in which IFC and MIGA play a role. In the first instance, complaints are responded to by the CAO's Ombudsman function.

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 relations and outcomes on the ground.

The complaint

In December 2009, a complaint was lodged with the CAO by a coalition of local and national NGOs. The complaint was lodged on behalf of 79 potentially affected families who reside on or hold land adjacent to the Sihanoukville International Airport (SIA) in Sihanoukville, Cambodia. The letter raises concerns about the rehabilitation and proposed expansion of the airport, and in particular the implications this will have on community members whose lands will be required for the development.

The complaint centers on issues related to the land acquisition process and range from ensuring fair compensation for lands, land improvements and lost income to requesting detailed project information that will allow communities to know when the land acquisition will happen, how their lands will be appraised and what, if any, resettlement plans are being considered.

The project and location

Societe Concessionnaire de l'Aeroport, a special purpose company, holds a 45-year concession from the Royal Government of Cambodia to operate the Phnom Penh International Airport, the Siem Reap International Airport, and the Sihanoukville International Airport (SIA).

In 2004, IFC approved a \$10 million A loan to support SCA's capital expenditure program in Phnom Penh and Siem Reap. In 2006, the Royal Government of Cambodia expanded the concession contract with SCA in order to include the rehabilitation and development of the airport in Sihanoukville.

In 2007, IFC approved a second project with SCA that reflected this change. In addition to further investment in Siem Reap, the project consisted of the mandatory capital investments required under the concession for SIA for 2006 and 2007, and capital investments required at SIA in 2008-10, should traffic at the airport increase in accordance with the company's projections. The latter came in the form of a stand-by loan of \$10 million which would be available for the company to finance the construction of the new runway at SIA if warranted by a

corresponding increase in airport traffic to SIA. The Standby Loan remained undisbursed and on December 4, 2009 was cancelled by IFC.

The airport is located 15 km from Sihanoukville and is accessed by a 2 lane road that connects to the main road between Phnom Penh and Sihanoukville.

Figure 1. Location of the Sihanoukville Airport in Cambodia¹



¹ http://www.cambodia-airports.com/index.php?tabarea=tab2&lang=en#flight_info

CAO Ombudsman Assessment

I. Rationale

CAO Ombudsman assessments seek to clarify issues and concerns raised by complainants, to gather information on the perspectives and interests of other impacted stakeholders who may not have signed the complaint, and to assist the parties in determining their best alternatives for resolving the issues. It does not gather information to determine fault or make judgments on the merits of a complaint.

To be eligible for CAO assessment, complaints must demonstrate that:

- The complaint pertains to a project that IFC/MIGA is participating in, or is actively considering.
- The issues raised in the complaint pertain to the CAO's mandate to address environmental and social impacts of IFC/MIGA investments.
- The complainant may be affected if the social and/or environmental impacts raised in the complaint occurred.

The CAO determined that the eligibility criteria were met in this case, and initiated an Ombudsman assessment in January 2010.

II. Approach

Following eligibility determination, the CAO Ombudsman reviewed project documentation from IFC and SCA, and met with IFC's project team to understand the financial structure of the project as well as the environmental and social due diligence undertaken by IFC. Based on preliminary discussion with project staff, the Sponsor and the complainant, the CAO team identified key stakeholders to meet during its assessment trip. The intention was to ensure a broad range of stakeholders and ensure that all relevant parties were considered in the course of the assessment.

A field trip was arranged to visit the project site, and meet with local and national stakeholders in Sihanoukville and Phnom Penh from May 7-13, 2010. The stakeholders interviewed are summarized in the table below.

Organization	Name and contact
Complainants	A townhall meeting with the affected families and the head of the village was held near Sihanoukville
NGO representatives	A small-group discussion was held with the NGO representatives who supported filing of the complaint.
SCA	Small-group meetings were held with senior management of SCA.
Inter-Ministerial Resettlement Commission (IRC)	H.E Seng Lim Neou, Secretary of State, Office of the Council of Ministers and President of the Inter-Ministerial Resettlement Commission H.E Say Sokhan, Undersecretary of State for Civil Aviation and

**Provincial Government
Representatives**

Member of the Inter-Ministerial Resettlement Commission
H.E S. Bong Sarath, Governor of Sihanoukville
H.E Prak Sihara, Deputy Governor of Sihanoukville and Chairman
for the Sub-Commission on Land Acquisition

A translator was engaged during the duration of the field trip to ensure ease of conversation in Khmer as necessary. CAO met with the complainants in an open townhall meeting convened by the village head which allowed for open participation by the affected families and allowed them to speak freely about their concerns. CAO also held small group discussions with the supporting NGOs as well as meeting privately with SCA representatives and provincial and national government officials who have a key role in the land acquisition process.

During the discussions with stakeholders, the CAO sought to understand better the basis for the concerns and issues raised in the complaint as well as probe whether the parties were willing to identify acceptable options to address these concerns.

III. Findings

In the course of its conversations with the stakeholders, the CAO Ombudsman identified the following series of findings regarding the issues and the complainants. The CAO Ombudsman notes that several of the key perspectives were widely shared among those involved.

- The complainants, community organizations and other stakeholders expressed their support for the development of the airport, stating that they were not opposed to the project or the presence of the project developer. The complainants recognized the beneficial role the airport could play in the region's development and welcomed the speedy completion of the project.
- There is widespread recognition among all stakeholders that there have been delays in the process of land acquisition related to SIA and that this had led to several problems and concerns for communities and other stakeholders. The main issues articulated by the community and its civil society counterparts are summarized below. The CAO Ombudsman notes that these concerns and their importance to the community were widely shared among community members and related civil society organizations.
 - Land

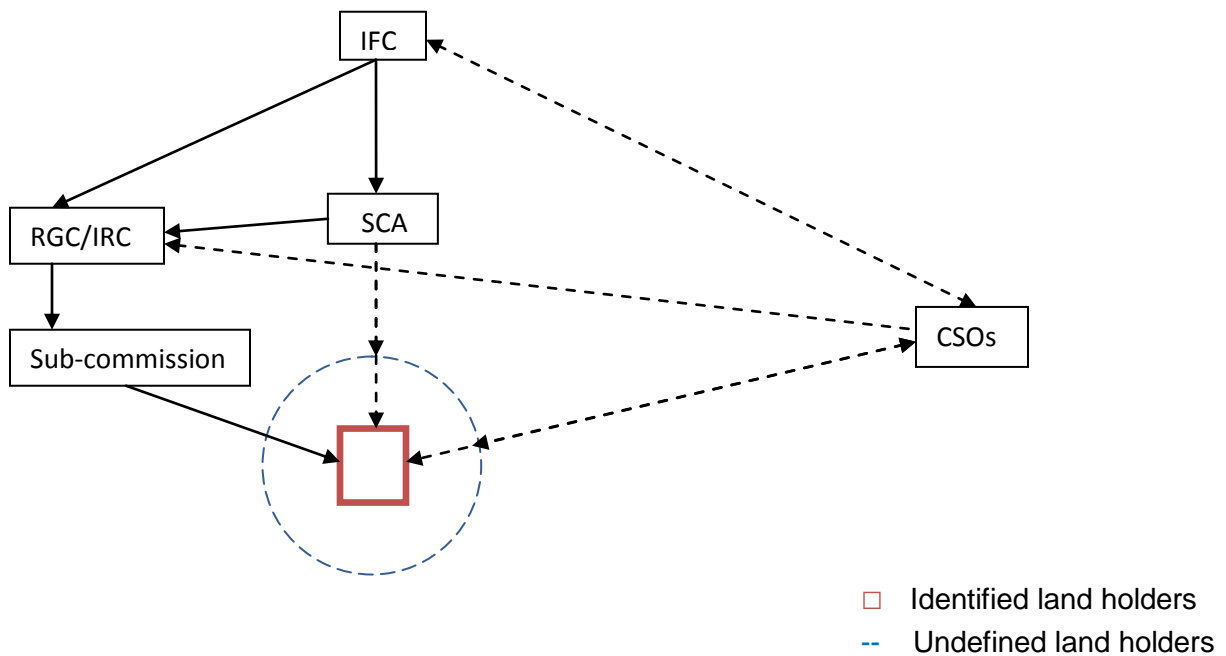
The lack of clarity perceived by communities about the status of their land and its acquisition has meant that landholders do not feel they can exercise rights over their land or make decisions about their future. They feel that their access to land, its use and the benefits derived from it have been limited by the delays in the land acquisition process, particularly when combined with the 2006 Government Decree which freezes sales of land related to the expansion of SIA. Community members state that they are not able to sell their land or put it to productive use, and that this in turn has negative consequences on their livelihoods and living standards. As stated by several community members this

has meant that they feel “imprisoned in their land” and “their land has become a prison.” The restrictions felt by the communities were identified as follows:

- Inability to expand or construct new buildings or structures on the land
 - Inability to maintain or make home improvements to structures already in place
 - High disincentives to invest in agriculture or other productive activities
 - High disincentives to invest in community services, specifically when it comes to permanent infrastructure (water, sewage, power, etc)
 - Damage to lands due to recurring saline water inflows that have resulted from damages and non-maintenance of the dam
 - Deprivation from development projects funded by NGOs or aid agencies that are not willing to invest in a community who may be resettled.
- Uncertainty of future plans
A level of uncertainty regarding future plans and developments exists among all stakeholders and several factors have added to the delays in the acquisition process. During the period after 2006, the government representatives report high fluctuations in land prices and speculative pressures in the coastal areas of the country. Such dynamics have resulted in increased demand for compensation and placed unexpected budgetary pressures on the Commission in charge of resettlement. The global financial crisis has also had an impact on the expansion of the airport and the land acquisition process since it has diminished touristic activity in Sihanoukville but it has also appears to have stabilized land prices, creating a situation more conducive for meeting the expectations of land negotiation on all sides.
- The CAO Ombudsman has understood that there is general acknowledgement that in the period from 2006, the IRC has considered information on land acquisition, has worked with community leaders and others to verify that information and has prepared detailed documentation. Our team also heard that time was invested to verify information, and that this added to the delays in the process. IRC recognizes that the verification of information has been difficult and that communicating with all landholders, some of which do not reside on the land, has been a challenge.
 - From everyone the team spoke with there is a desire that the situation is resolved quickly and effectively. There is a strong desire for clarity of the process steps and timetable. There is also a strong desire for better communication, dialogue and participation.
 - On all of the different sides, a strong desire for predictability was also expressed. In each of the meetings the CAO Ombudsman convened, people spoke about being able to negotiate fairly and transparently and to achieve just/fair compensation for land and other assets.
 - The CAO Ombudsman is encouraged to recognize the IRC’s willingness to accommodate multiple types of land and land holding relationships in its considerations.

- The principle of fair process is shared as there appears to be a consensus that the process will be based on IFC's Performance Standards.
- Our understanding is that responsibility for land acquisition lies with the government, and this responsibility has specifically been designated to the Inter-Ministerial Resettlement Commission. The Commission has designated a Sub-Commission and a series of consultation divisions, which interact with heads of commune councils and village chiefs. However, community members that we met with, numbering 50 to 75 people, expressed their desire for better information and also seemed unclear about the relationship between SCA and the government regarding the acquisition process. Some community members believe that SCA will be the one to pay the land compensation, although we were informed by SCA that this is not the case. There may also be uncertainty and disputes among landholders with respect to overlapping claims, land registration and land titles.
- In addition to the group of landholders identified by the IRC, the CAO Ombudsman team acknowledges that there are other groups of undefined community members who believe they may be affected by the land acquisition process and as a result are uncertain of their status. In the absence of clear information, these groups suffer from rumor and speculation (see stakeholder map below).
- There are differences of negotiation positions, related to land prices and just compensation that are yet to be reconciled.
- All of the voices we heard were constructive and positive. There was strong community leadership and a willingness on all sides to engage in a dialogue process.

IV. Stakeholder Map



V. Suggestions for Next Steps

Based on its discussions with local stakeholders, the CAO believes that the following suggestions could assist in addressing the issues raised in the complaint submitted to our office in a way that is beneficial to community members, the Sponsor, and the local authorities.

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1. CAO supports SCA's development of a Community Relations and Communications Plan. CAO proposes an off-site workshop with SCA and IFC (possibly together with other financiers) in order to explore options and consider alternative approaches and risks.
 2. CAO encourages a meeting between the Sub-commission, SCA and community members in order to explain their roles and responsibilities, to address questions that may arise and clarify processes as far as possible. CAO also encourages SCA and IRC to prepare a joint communiqué on the land acquisition process before this meeting and ensure that it is widely disseminated. This meeting should occur within the next month.
 3. In accordance with its existing agreements and commitments to the Sponsor and Government, IFC should support SCA and IRC to complete RAP, disclose it, ensure that it meets appropriate standards and is widely consulted with community members.
 4. As part of the land acquisition process and RAP, the CAO encourages the implementation of specific protocols to assist the parties resolve deadlocks, should they occur. CAO offers the services of mediation professionals to the parties to promote appropriate, good faith negotiations.
 5. CAO encourages community members, their leaders and supporting civil society organizations to engage constructively through consultation channels. CAO also encourages the Sub-Commission and SCA to facilitate participation and engagement with community members through these channels and resolve disputes/concerns as they arise in good faith. CAO suggests that the parties agree to a communications protocol that defines media relations.
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